

APPROVED
FEB 20 2020

**BOARD OF RECREATION
AND PARK COMMISSIONERS**

BOARD REPORT

NO. 20-033 REVISED

DATE February 20, 2020

C.D. ALL

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: AWARD OF CONTRACT FOR AS-NEEDED MARKETING AND COMMUNICATION SERVICES – USE OF THE SELECTION PROCESS OF THE SAN DIEGO ASSOCIATION OF GOVERNMENTS TO PROVIDE THESE SERVICES UNDER CONTRACT NO. 5005375 WITH PASTILLA, INC.

AP Diaz	_____	S. Pifa-Cortez	_____
H. Fujita	_____	C. Santo Domingo	_____
V. Israel	_____	*N. Williams	<u>now</u>



General Manager

Approved X Disapproved _____ Withdrawn _____

RECOMMENDATIONS

1. Find that the Department of Recreation and Parks (RAP) desires to secure a contract to provide on call marketing and communication services;
2. Find that Pastilla, Inc. (Pastilla), is experienced in providing marketing and communication services, and is willing to perform such services;
3. Find that Pastilla can provide such services economically and expediently to RAP and it is in RAP's best interest to secure these services with Pastilla;
4. Find, pursuant to Charter Section 371(e)(2), that the professional, scientific, expert, technical or other special services to be provided by Pastilla are of a temporary and occasional character for which competitive bidding is not practicable or advantageous;
5. Find, pursuant to Charter Section 371(e)(8), that the City of Los Angeles (City) may, in lieu of undertaking its own competitive bidding or proposal process, utilize the San Diego Association of Governments (SANDAG) Contract No. 5005375 (SANDAG Contract) with Pastilla (Appendix A);
6. Find, pursuant to Charter Section 371(e)(10), that the services to be provided by Pastilla are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;
7. Find, in accordance with Charter Section 1022, that RAP does not have available in its employ personnel with the necessary expertise to undertake and accomplish the

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aforementioned specialized supplies and professional services in a timely manner and that it is more feasible to secure these services by contract; and

8. Authorize RAP to enter into a proposed contract (Contract) substantially in the form attached to this Report (Exhibit 1), subject to the review and approval of the Mayor, the City Council and the City Attorney as to form, between RAP and Pastilla for marketing and communication services on an on-call and as needed basis for the services set forth in the SANDAG Contract, in an amount not-to-exceed Five Million Dollars (\$5,000,000.00) and in accordance with the fee schedule set forth in the SANDAG Contract; the initial term of this Contract being from the date of execution through the prorated remainder of the SANDAG Contract which is set to expire March 31, 2024;
9. Authorize RAP's General Manager at his sole discretion to extend the term of the Contract for up to six calendar months if SANDAG exercises its option to extend its SANDAG Contract with Pastilla for up to six months, with a corresponding expiration date of September 30, 2024;
10. Direct the Board of Recreation and Park Commissioners (Board) Secretary to transmit the Contract to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), and to transmit the Contract to the City Council for approval, and to the City Attorney for approval as to form;
11. Authorize RAP's General Manager or their designee to make technical corrections to the proposed Contract as necessary; and
12. Authorize the Board President and Secretary to execute the proposed Contract upon receipt of the necessary approvals.

SUMMARY

RAP has an ongoing need for marketing and communication services on an occasional and as-needed basis. The ability to procure such services is critical to meeting RAP's needs to promote various RAP programs to the public.

The proposed Contract with Pastilla provides RAP with access to crucial services, including: Graphic Design, Printing, Signage/Exhibit Display, Visual Simulations, Video, Audio and Photography. These services are essential to the success of RAP's many initiatives to improve recreation access to Angelenos by communicating RAP's message on various platforms.

RAP staff is recommending that the Board authorize RAP to utilize SANDAG's competitively bid contract (Appendix A). The SANDAG Contract was a result of a competitively bid process RFP #5005360 (Exhibit 2). A new competitive process facilitated by RAP is in development and that process is expected to result in a new agreement in 2021. However, use of this SANDAG Contract will allow RAP to develop branding and outreach materials to announce and promote the City's Youth Sports initiative in parallel to the 2020 Tokyo Olympics, which is key in supporting the success of that program. Previously, RAP secured marketing and communication

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services to promote *SwimLA*, an initiative that increased access to free and low-cost swim lessons throughout the City. These services enabled the development of a citywide marketing campaign, creating stronger recognition and program awareness and leading to a significant increase in enrollments in the summer swim classes. RAP will issue a separate contract number and enter into a separate contract with Pastilla (Exhibit 1), which will incorporate the terms of the Contract (Appendix A) and the Standard Provisions for City Contracts (Rev 10/17)[v.3] (Appendix B). The Contract is set to expire on March 31, 2024. Additionally, SANDAG has the option to extend its SANDAG Contract, which if exercised would extend the term of its contract for six months with a corresponding expiration date of September 30, 2024. In the event that SANDAG exercises its option, it is recommended that RAP's General Manager have the sole discretion to also extend RAP's Contract for an additional six months as outlined above.

The proposed Contract is recommended in an amount not-to-exceed Five Million Dollars (\$5,000,000.00). The contract amount is an estimate, and RAP does not guarantee that the contract maximum amount will be reached. RAP, in entering into the Contract, guarantees no minimum amount of business or compensation. The contract awarded through this Report shall be subject to funding availability and early termination by RAP, as provided in the Standard Provisions for City Contracts (Rev 10/17)[v.3]. Funding for projects may be provided from funds committed through the Youth Sports Agreement with LA 2028 for youth sports programming and/or from other RAP funding sources.

FISCAL IMPACT

Executing this proposed Contract will enable RAP to procure marketing and communication services on an occasional as-needed basis, and has no impact to RAP's General Fund.

STRATEGIC PLAN INITIATIVES AND GOALS

Approval of this Report advances RAP's Strategic Plan by supporting:

Goal No. 4: Actively engage communities

Outcome 4: Enhanced visibility and awareness of RAP parks, programs and projects.

This Report was prepared by Rachel Ramos, Sr. Management Analyst II, Finance Division, and reviewed by Matthew Rudnick, Chief Management Analyst Finance Division.

LIST OF ATTACHMENTS/APPENDICES

- 1) Appendix A – Contract between the SANDAG and Pastilla
- 2) Appendix B – Standard Provisions for City Contracts (Rev 10/17)[v.3]
- 3) Exhibit 1 – Proposed Contract between RAP and Pastilla
- 4) Exhibit 2 - RFP with all addenda



STANDARD SERVICES AGREEMENT

5005375
CONTRACT NO.
Various
PROJECT NUMBERS

THIS AGREEMENT is effective as of this ___ of _____ 2019, in the State of California by and between San Diego Association of Governments (SANDAG), and the following contractor, hereinafter referred to as "Consultant." This Agreement will terminate on March 31, 2024, unless an amendment is executed by the parties.

Name: Pastilla, Inc.
Address: 84 Bronze Leaf
City, State, ZIP: Irvine, CA 92620
Form of Business: Corporation
Tax ID Number: 43-2094218

RFP DBE Goal Range: 0-25%
Consultant DBE Commitment Set at task order level
Is Consultant a DBE? YES NO

Authorized person to sign contract:
Name: Rudy Manning
Title: Co-Founder and Chief Creative Officer
Phone: (626) 415-4480
Fax: (N/A)
Email: rmanning@pastilla.co

The attached Standard Terms and Conditions are part of this Agreement. The Consultant agrees to furnish to SANDAG services and materials, summarized as follows (the "Project"):

Category E- Graphic Design, Printing, Signage/Exhibit Display, Visual Simulations, Video, Audio, Photography

Contract Type-IDIQ

The minimum contract value is \$50 U.S. dollars. The total value of all agreements issued under RFP No. 5005360 shall not exceed \$5,000,000 U.S. dollars unless amended.

SAN DIEGO ASSOCIATION OF GOVERNMENTS	CONSULTANT AUTHORIZATION
By: _____ Department Director	By: _____ Signature
Approved as to form:	
By: _____ Office of General Counsel	

STANDARD TERMS AND CONDITIONS

I. AUTHORIZATION TO PROCEED

A. Notice to Proceed

Specific authorization to proceed with all or a portion of the work described in the scope of work (an Exhibit to the Standard Services Agreement) shall be granted in writing by SANDAG via a Task/Work Order or a Notice to Proceed. Consultant shall not proceed with the work unless it is authorized. No expenditures are authorized on a Project, and work shall not commence, until a Notice to Proceed or Task/Work Order for those tasks has been executed by SANDAG.

B. Use of Task Order and Work Orders

For any work to be performed in excess of \$10,000 a Task Order will be issued to the Consultant. For work less than \$10,000 a Work Order will be issued.

C. Performance Period

1. This Agreement shall go into effect on the date shown on the first page of the Agreement, contingent upon approval by SANDAG, and Consultant shall commence work after notification to proceed by SANDAG. The Agreement shall end on the date shown on the first page of the Agreement, unless extended by Agreement amendment.
2. Consultant is advised that any recommendation for Agreement award is not binding on SANDAG until the Agreement is fully executed and approved by SANDAG. Any Task Order Amendment or Agreement amendment issued under this Agreement also is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.
3. The period of performance for each specific project shall be in accordance with the Task/Work Order for that project. If work on a Task/Work Order is in progress on the expiration date of the Agreement, the terms of the Agreement shall be extended by amendment.

II. CONSIDERATION

A. Compensation

1. SANDAG agrees to pay invoices within 30 days after receipt of invoice or approval of all goods or services, whichever occurs last, and payment shall be deemed made upon mailing by SANDAG.

Whether or not a DBE goal is set for the procurement or a DBE commitment is made for the Agreement or a Task or Work Order, Consultant shall submit a document entitled "Final Report – Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses" ("the FUR") within 90 days after the date of completion of the scope of work for the Agreement and/or a Task or Work Order. SANDAG is required to track use of DBE and SB firms on procurements, whether or not federal funding is used.

2. The Consultant agrees to complete, to the full satisfaction of SANDAG, all the services described on the Scope of Work set forth in the Exhibit of that name attached to the Standard Services Agreement. Progress payments will be used as the method of compensation for this Agreement. Progress payments must be invoiced by Consultant in arrears, and no more often than monthly, based upon services or deliverables provided, unless otherwise stated in the Rate Schedule (an Exhibit to the Standard Services Agreement). Consultant shall invoice SANDAG at the fixed price amounts set forth in the attached Rate Schedule up to the maximum aggregate amount of the Agreement. It is understood and agreed that the actual amount of work requested by SANDAG may be less than the Maximum Aggregate Amount. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement. Fixed price amounts shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. Issuance of Task or Work Orders under this Agreement shall be contingent on funding, budget approval, Consultant's performance, and other relevant factors. SANDAG reserves the right to increase or decrease the amount of estimated funds allocated to each Task Order. Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG.

As tasks are identified, SANDAG may issue Task/Work Orders to Consultant. Consultant is not authorized to perform services for SANDAG before the effective date of each Task/Work Order or beyond the termination date set forth in each Task/Work Order. The parties have agreed to the **Rate** Schedule attached to this Agreement as an Exhibit. For any Task or Work Orders that may be issued, the parties will negotiate the amount of payment due based on the amounts in the **Rate** Schedule attached to the Standard Services Agreement. Payments may be made on a fixed fee or cost reimbursement basis at SANDAG discretion. Under no circumstances should Consultant presume that Task/Work Orders will be issued or that it will receive more than the maximum amount agreed to by the parties for any currently issued Task Order. Issuance of Task/Work Orders under this Agreement shall be contingent on funding, budget approval, Consultant's performance, and other relevant factors. SANDAG reserves the right to increase or decrease the amount of estimated funds allocated to each Task/Work Order. Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task/Work Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG. The maximum amount authorized in each Task/Work Order shall not be exceeded without an amendment to such Task/Work Order.

B. Travel Reimbursement

Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but shall not exceed the rates stipulated in the Caltrans Travel and Expense Guide for Non-Represented Employees at dot.ca.gov/hq/asc/travel/ch12.htm.

C. Limitations

Premium time or overtime is not allowed without the express written approval of SANDAG. If Consultant uses staff that are on the payroll of a temporary agency, whether such staff are treated by Consultant as temporary employees or subconsultants, SANDAG shall not be charged more than the amount invoiced by the temporary firm or subconsultant to Consultant unless the arrangement is fully disclosed to SANDAG and expressly agreed to in this Agreement or an executed amendment.

III. ESCALATION

Consultant will be paid at the rates set forth in in the attached Rate Schedule. Rates listed in the Rate Schedule Exhibit are inclusive of the following:

Agreement Execution until March 31, 2021 (End of year two): Rates per Fee Schedule Exhibit ("Base Rates")

Since a fixed (3.5%) percent increase will be applied to the rate schedule for years three through five, no additional ECI increase will be applied for the term of the contract.

IV. SUBCONTRACTOR REIMBURSEMENT AND PAYMENT

A. Allowed Costs

In determining allowable incurred subcontractor costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred by reason of payment, SANDAG will allow subcontractor costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant as valid, undisputed, due, and payable.

B. Time for Payment

By submitting accrued but unpaid subcontractor costs for reimbursement, Consultant agrees that, within ten days of receipt of reimbursement, the full amount submitted as a reimbursable accrued subcontractor cost shall be paid to the subcontractor. All payments hereunder shall be in US dollars and made upon mailing by SANDAG.

C. Payment in the Event of Non-Completion

If Consultant fails to satisfactorily complete a deliverable or portion thereof according to the schedule set forth in the Agreement or a Task or Work Order, no payment will be made until the relevant deliverable or portion thereof has been satisfactorily completed or the parties have agreed to amend the scope of work or terminate the Task or Work Order.

D. Change of Address

Payments shall be made to the address or account specified in the Standard Services Agreement or such other address or account as is specified by Consultant in writing from time to time, provided that Consultant shall give SANDAG at least 90 days' prior notice of any account, address or other change in payment instructions. SANDAG will not be liable for any late or misdirected payment caused by Consultant's failure to provide timely notice of any such change.

V. INVOICE REQUIREMENTS

A. Information Required

Consultant shall submit invoices that reference the Agreement number, Project title, and any applicable Task or Work Order number. Invoices shall be submitted no later than 45 calendar days after completion of each billing period or upon completion of the Agreement as well as each Task or Work Order.

B. Final Invoice

Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed maximum amount of the Agreement. Final payment of any retained amounts will be made following Consultant's submittal of all required documentation and completion of the Project, including the FUR. Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. Payments shall be subject to review by SANDAG for compliance with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of services. No other compensation will be paid except for work done under an amended agreement approved pursuant to the Section in this Agreement entitled, "Changes in Work."

VI. COMPLIANCE INFORMATION SYSTEM

Consultant and all subconsultants shall report payment details using the SANDAG web-based CIS by the 15th of each month. CIS allows consultants to manage their own records, maintain accurate contract information, and report payment details online.

CIS is mandatory for Consultant and subcontractors to use unless SANDAG instructs otherwise. A Consultant account will be created after award, which will allow Consultant to enter data into CIS via an internet browser. After award, Consultant will receive instructions on how to set up their account and enter required subconsultant data. Consultant must require each of its subconsultants to enter required payment information into CIS. Failure of Consultant or its subconsultants to enter required information on a timely basis will result in delay of payment by SANDAG.

VII. INDEPENDENT CONTRACTOR

A. Not a SANDAG Employee

Consultant hereby declares that it is engaged in an independent business and agrees that, in the performance of this Agreement, it shall act as an independent contractor and not as an employee of SANDAG. Consultant has and hereby retains full control of all the employment, compensation, and discharge of all employees of Consultant assisting in its performance hereunder. Consultant shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Consultant will be solely responsible for determining means and methods for performing the services described in the scope of work.

B. Withholding and Employment Taxes

The payments made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

C. No Agency

Except as SANDAG may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise, or to bind SANDAG or its members, agents, or employees to any obligation whatsoever.

VIII. INSURANCE

Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection, with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

A. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Pass-Through Costs to SANDAG

To the extent Consultant elects to pass through insurance premium costs to SANDAG, Consultant shall not charge SANDAG for any insurance costs that are not directly attributable to the Project. Consultant shall not pass through insurance costs to SANDAG that are attributable to, or overlap with, work performed for Consultant's other projects or clients or are included in Consultant's overhead rate.

C. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to SANDAG. Consultant shall notify SANDAG immediately following Consultant's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to SANDAG. Notice of cancellation sent by registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.

D. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements outlined herein. If consultant fails to maintain the insurance as set forth herein, SANDAG shall have the right, but not the obligation, to purchase said insurance at Consultant's expense and to withhold the expense of such insurance from any payments otherwise due to Consultant.

E. Certificates of Insurance and Endorsements

Consultant shall furnish SANDAG with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by SANDAG before work commences. Consultant shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to SANDAG upon request and no later than five (5) days after such request. Failure to provide SANDAG a copy of the insurance policies required in this contract shall be deemed a material breach of contract, which shall be deemed at the option of SANDAG to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Consultant shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

1. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

- a. SANDAG, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
- b. Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Consultant's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively. Auto liability coverage shall be provided in the form of an additional insured policy endorsement at least as broad as the ISO CA 20 48 form.
- c. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. Consultant shall provide SANDAG a conforming ISO CG 20 01 Endorsement for Commercial General Liability and ISO CA 04 50 Endorsement for Auto Liability, respectively.
- d. Consultant agrees to waive all rights against SANDAG and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this contract. Consultant shall provide SANDAG a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 44 Endorsement for Auto Liability, respectively.

F. Insurance Certificate Submittal

SANDAG will use myCOI to track and verify insurance coverage. On SANDAG receipt of the executed Agreement, Consultant will receive an email from:

certificaterequest@mycoisolution.com

Follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from Consultant's insurance agents. Consultant shall not commence work and no payments shall be made to Consultant, unless Consultant is registered with myCOI and compliant Certificates of Insurances (COIs) have been received. Consultant shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. Consultant is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of the Agreement via myCOI.

Consultant shall include the Agreement number and/or task order number on all insurance-related correspondence submitted to myCOI (i.e., the insurance certificate itself).

G. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SANDAG, or their insurance Consultants

are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Consultant above such limits shall provide protection to SANDAG and all additional insureds to the same extent as other insurance provided by Consultant.

H. Coverage for Subconsultants

Insurance required of the Consultant shall be provided by all subconsultants or by Consultant on behalf of all subconsultants to cover their services performed under this Agreement. Consultant shall not require subconsultants to maintain insurance amounts that are disproportionate to the risk exposure, scope of work and/or dollar value of work subcontracted. Consultant shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subconsultant.

I. No Waiver of Requirements

Acceptance by SANDAG of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by SANDAG of strict compliance with the provisions herein.

J. Self-Insured Retentions

Any self-insured retentions must be declared to SANDAG. At the option of SANDAG, the Consultant shall provide a financial guarantee satisfactory to SANDAG guaranteeing payment of losses and related investigations, claim administration and defense expenses.

K. Claims -Made Coverages

If any of the Consultant's insurance are written on a claims-made form:

1. The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of work under the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Consultant must purchase an extended reporting coverage for a minimum of two years after completion of work under the Agreement.
4. A copy of the claims reporting requirements must be submitted to SANDAG for review.

L. Cross-Liability Coverage

If Consultant’s liability policies do not contain the standard ISO separation of insured’s condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

M. Additional Insureds

The Commercial General Liability, Auto Liability, policies shall name in the endorsements and schedules as additional insureds the following entities including their directors, officers, agents, employees, and designated volunteers as their interests may appear, unless otherwise specified by SANDAG in a Task Order.

1. San Diego Association of Governments (SANDAG)
2. The San Diego Metropolitan Transit System (MTS)
3. The North County Transit District (NCTD)
4. California Department of Transportation (Caltrans)

N. Minimum Policy Limits and Requirements

Prior to performing any work, Consultant shall provide proof and maintain limits no less than the following coverages:

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an “occurrence” basis. Policy shall include all elements of Coverages A, B, and C.	Limits no less than \$1,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on a policy basis.
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	Limit no less than \$1,000,000 - per accident for bodily injury and property damage. The policy shall be issued on a combined single limit.

Insurance Type	Requirements	Limits
Workers' Compensation and Employer's Liability	<p>Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.</p> <p>Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Consultant.</p>	As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.
Professional Liability	Policy to cover losses arising from wrongful acts and pollution incidents whenever committed in the performance of professional services under this contract.	Limit no less than \$1,000,000 per claim and annual aggregate limit of \$2,000,000.

Task or Work Order proposals may identify all applicable insurance costs that are not already included in Consultant's rate. For example, if cyber liability insurance is not part of the Consultant's standard insurance coverage and the cost was not included in the rate, then the Consultant can identify the cost for the cyber insurance as an ODC at the Task or Work Order level.

IX. TERMINATION OF AGREEMENT

A. General

1. SANDAG reserves the right to terminate this Agreement upon 30 calendar days written notice to Consultant with the reasons for termination stated in the notice.
2. SANDAG may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. If SANDAG terminates this Agreement with Consultant for convenience, SANDAG shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to SANDAG exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.

3. The maximum amount for which SANDAG shall be liable if this Agreement is terminated is the capacity amount remaining on the Agreement or Task or Work Orders that are open as of the date of the notice of termination.
4. Consultant shall immediately notify subcontractors and service or supply vendors providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

B. Termination for Cause

1. In the event SANDAG determines sufficient cause exists, SANDAG will send a notice to cure to the address set forth in this Agreement for Consultant. If Consultant fails to satisfactorily cure the problems within 10 days of receiving written notice from SANDAG specifying the nature of the cause, SANDAG may immediately cancel and/or terminate this Agreement and every right of the Consultant and any person claiming any right by or through the Consultant under this Agreement.
2. Termination for cause also shall be merited in the event of a material breach of this Agreement. Events of material breach shall include, but not be limited to, failure to adhere to the Project time schedule, failure to maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by Consultant in connection with this Agreement; documentation or lack thereof establishing that Consultant is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; Consultant refuses or negligently fails, except in cases for which extension of time is provided by SANDAG, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or Consultant negligently or intentionally disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
3. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. All actual and reasonable costs to SANDAG in the event of termination for cause ("termination costs") shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand. Termination costs include, but are not limited to, the cost of soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

C. Termination for Convenience

1. General Conditions

SANDAG may terminate this Agreement or a Task or Work Order, in whole or in part, at any time by written notice to the Consultant when it is in the best interest of SANDAG. Consultant shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination if it is terminating for convenience. Consultant shall promptly submit its termination claim to SANDAG to be paid to Consultant. If Consultant has any property in its possession belonging to SANDAG, Consultant will account for the same and dispose of it in the manner that SANDAG directs. No billable costs will be considered payable after notice of termination is given to Consultant.

D. Consultant's Deliverables under Early Termination

Consultant shall provide all Project-related documents and correspondence required as part of the scope of work/Deliverables or included in Task or Work Orders. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by SANDAG, or documents in draft and/or incomplete form for those deliverables which are in progress by the Consultant and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

E. Invoice Submittal under Early Termination

Separate final invoices for Project-related costs and termination settlement costs, if applicable, shall be submitted no later than 30 calendar days after the date Consultant is notified of acceptance of the final cost proposals by the Executive Director. The invoice for termination settlement costs shall include the following, to the extent they are applicable: Lease termination costs for equipment and facilities approved under the terms of the contract; equipment salvage costs for equipment valued over \$3,000; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection, and disposition of property acquired or produced under the contract, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

F. Reimbursement under Early Termination

Termination settlement expenses will be reimbursed in accordance with 48 CFR 31, Federal Acquisition Regulations System, except on negotiated contracts procured under a Request for Proposals (RFP), which shall instead be governed by 48 CFR 15.

G. Consultant Claims under Early Termination

Consultant agrees to release SANDAG from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by Consultant of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement or Task or Work Order.

X. INDEMNIFICATION

A. General

With regard to the Consultant's performance in connection with or incidental to this Agreement, the Consultant agrees to defend, indemnify, protect and hold SANDAG and its directors, officers, and employees as well as any additional insured identified in the Agreement or related Task or Work Order , harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Consultant's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Consultant and its subcontractors and their agents, officers, or employees, in performing the work or services herein, or the breach of any representation, warranty, covenant or obligation of Contractor and/or its subcontractors associated with the Project under this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its directors, agents, officers, or employees.

B. Retention of Funds

In addition to any other remedy authorized by law, so much of the money due Consultant under this Agreement as shall be considered necessary by SANDAG may be retained until disposition has been made of any claim for damages.

C. Survival of Indemnification

This Section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. This Section of the Agreement shall survive in perpetuity.

XI. ASSIGNMENT AND SUBCONTRACTING

A. Subcontracting

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between SANDAG and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to SANDAG for the acts and omissions of its subconsultant and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant.

Consultant's obligation to pay its subconsultant is an independent obligation from SANDAG obligation to make payments to the Consultant.

2. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement or a Task or Work Order shall be subcontracted without written authorization by SANDAG Project Manager, except for instances which are expressly identified in an approved Task or Work Order.
3. Consultant shall pay its subconsultant within ten calendar days from receipt of each payment made to Consultant by SANDAG.
4. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultant.
5. Any substitution of subconsultant must be approved in writing by SANDAG Project Manager prior to the start of work by the subconsultant.

B. SANDAG Consent Required

Consultant shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement, or any rights under or interest in this Agreement, without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to SANDAG in writing.

C. Responsibility for Subcontractors

If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts, errors, or omissions of Consultant's subcontractor and of the persons employed by the subcontractor as Consultant is for the acts and omissions of persons directly employed by Consultant.

XII. STANDARD OF CARE

A. Service Performance

Consultant's services shall be performed in accordance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to the reasonable satisfaction of SANDAG. Errors or omissions identified in the Consultant's work product and deemed to be negligent shall be corrected upon written notification by the Project Manager, and no additional payment shall be made for said corrections. Corrections of errors or omissions to the Consultant's work product shall not limit enforcement of any other provision of this Agreement.

B. No Waiver

Neither the SANDAG review, approval, or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and the Consultant shall be, and remain liable to, SANDAG in accordance with applicable law for all damages to SANDAG by Consultant's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

C. Inaccuracy of Data

Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information derived and provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place any applicable insurance carrier on notice of a potential claim.

D. Evaluation of Performance

Consultant's performance will be evaluated by SANDAG. A copy of the final consultant evaluation will be sent to Consultant. The evaluation, together with any responsive comments that may be sent to SANDAG by Consultant, shall be retained by SANDAG. Interim or yearly evaluations also may be performed by SANDAG.

XIII. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To SANDAG:
San Diego Association of Governments
Attention: Tedi Jackson
401 B Street, Suite 800
San Diego, CA 92101

To Consultant:
As shown on front page.

XIV. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

A. Equal Opportunity Certificate

Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their workforce. A signed Equal Employment Opportunity Certificate is a proposal submittal requirement and is a condition for contract award to Consultant.

B. No Discrimination

Consultant shall ensure equal employment opportunity for all persons. Consultant and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical, or mental disability, Vietnam-era veteran or special disabled veteran status, marital status, or citizenship, within the limits imposed by law. These principles are to be applied by the Consultant in all employment practices, including recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.

C. Compliance with Non-Discrimination Laws

During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246 [Johnson, 1965]), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted. In addition, pursuant to Final Rule (RIN 1250-AA06) on pay transparency (effective January 11, 2016) and which implements Executive Order 13665, Consultant and its subconsultants with government contracts in excess of \$10,000 are prohibited from terminating or otherwise discriminating against employees for discussing, disclosing, or inquiring about their own pay or co-workers' pay. The Final Rule also protects pay discussions by job applicants.

D. Workforce Make-up Reports

From time to time SANDAG may request that Consultant provide information regarding its workforce to SANDAG. Within 30 days of such a request from SANDAG, Consultant shall complete and submit the Agreement Exhibit entitled "SANDAG Annual Employment Utilization Report."

XV. CONFORMITY TO LEGAL REQUIREMENTS

A. Compliance with Laws

Consultant shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code Section 1775 when applicable. Consultant shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local and shall pass all of the provisions in this section of the Agreement through to all of its subconsultants.

B. Verification of Employment Eligibility

Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement.

C. Licenses and Permits

Consultant represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications and approvals, of whatever nature, that are legally required for Consultant to practice its profession. Consultant further represents and warrants to SANDAG that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Consultant to practice its profession and/or perform services under this Agreement.

D. Rebates, Kickbacks or Other Unlawful Consideration

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any SANDAG employee. For breach or violation of this warranty, SANDAG shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XVI. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

Consultant shall not be entitled to additional compensation for out-of-scope work, unless it has given SANDAG a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Consultant believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to SANDAG prior to the time Consultant shall have performed the work if based upon an act or failure to act by SANDAG or, in all other cases, within 15 calendar days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that any claim for out-of-scope work be brought to the attention of SANDAG at the earliest possible time so that matters related to any such work can be settled in a prompt manner. Consultant hereby agrees that it shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

XVII. DISPUTES

A. Interpretation of the Agreement

This Agreement shall be interpreted in accordance with the laws of the State of California.

B. Continuation of Work During Dispute

In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten calendar days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be in writing.

C. Request for Mediation

If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within 30 calendar days. If SANDAG agrees mediation is appropriate, a mutually-acceptable mediator shall be selected by the parties, and the parties will proceed to mediation of the dispute.

D. Litigation

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

XVIII. LIMITATIONS ON USE AND DISCLOSURE

A. Services exclusively for SANDAG

The deliverables hereunder are provided for the exclusive use of SANDAG, and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Consultant are not to be used or relied upon by other parties except as authorized by SANDAG.

B. Sensitive Information

Consultant shall not use for financial gain, disclose, or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other PII; and knowledge of selections of contractors or subcontractors in advance of an official announcement by SANDAG. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out this Agreement, shall be protected by the receiving party from unauthorized use and disclosure. Additional terms concerning sensitive, privileged or confidential information or data, including, but not limited PII, PCI, or data covered by confidentiality or privacy laws, may be set forth in the Special Provisions.

C. Limitation on Disclosure

Permission to disclose Sensitive Information on one occasion or public hearing relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

D. Permission for Public Comment

Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by SANDAG and receipt of written permission from SANDAG.

E. Subcontract Disclosure Requirements

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

F. Disclosure Required by Law

Consultant is allowed to disclose Sensitive Information when required by law, rule, regulation, or court order upon notice to SANDAG sufficient to allow SANDAG to challenge such required disclosure.

G. Access to Procurement Information

All information related to a construction estimate, an independent cost estimate for non-construction work, evaluation of proposals or bids submitted to SANDAG, or scope of work for a future SANDAG procurement that may be prepared in whole or in part by Consultant for use by SANDAG for a third-party procurement is confidential, and shall not be disclosed by Consultant to any entity other than SANDAG.

H. SANDAG Data

In the event Consultant or its subconsultants will have access to a SANDAG database, server or other SANDAG technology or data, Consultant and all applicable subconsultants, and applicable employees thereof, shall take adequate precautions to ensure SANDAG information is not leaked, hacked or otherwise lost, disclosed or misused. All Consultant or subconsultant employees with access to SANDAG data by electronic means shall be required to sign the acknowledgement included in the Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees" and Policy Acknowledgement Regarding Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees."

In the event of a data breach caused by Consultant, subconsultants, or any of their employees, the indemnification provisions of this Agreement shall apply and all costs for remedying the breach shall be reimbursed to SANDAG by the relevant Consultant and/or subconsultants.

XIX. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A. Agency DBE Goals

As a recipient of federal funding, SANDAG has established DBE program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated.

B. Applicability Regardless of Use of Federal Funding

Even if no federal funding will be used on the Agreement and no DBE goal was set, the Consultant is required to document use of SBs and DBEs in the performance of its work.

C. Department of Transportation Funding

This Agreement will be funded in whole or in part by United States DOT funds. The applicable requirements are set forth below.

1. FHWA Funding Will Be Used - Additional DBE requirements for this Agreement are set forth in detail in the Standard Federal Provisions for FHWA (Non-Construction) (an Exhibit to the Standard Services Agreement) and in the attachment to the RFP entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

The FHWA DBE contract-specific commitment range for this Agreement is 0.00 – 25.00 percent.

Consultant will be notified of the FHWA DBE goal prior to the time a Task Order is executed. Ability to meet or attempt to meet goal must be documented.

2. Federal Transit Administration (FTA) Funding Will Be Used - Additional DBE requirements for this Agreement are set forth in detail in the Standard Federal Provisions for FTA (an Exhibit to the Standard Services Agreement) and in the attachment to the RFP entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

The FTA DBE contract-specific commitment range for this Agreement is 0.00 – 25.00 percent.

Consultant will be notified of the FTA DBE goal prior to the time a Task Order is executed. Ability to meet or attempt to meet goal must be documented.

3. Federal Railroad Administration (FRA) Funding may be used at some point during the term of the Agreement; however, SANDAG has not established a specific FRA DBE goal for this RFP. Proposers are encouraged to obtain DBE participation for Task Orders that are funded with FRA monies.

D. Post-award Compliance Monitoring

SANDAG will conduct post-award monitoring of Consultant’s compliance with the DBE provisions of the Agreement. For example, SANDAG may ask to review Consultant’s subcontracts to ensure that DBEs have done the work for which credit was claimed. Consultant shall cooperate with SANDAG requests for assistance with post-award monitoring. Failure by the Consultant to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SANDAG deems appropriate.

XX. RETENTION AND PROMPT PAYMENT

A. Payment of Subcontractors

Consultant shall pay its subconsultants within ten calendar days from receipt of each payment made to the Consultant by SANDAG. The ten days is applicable unless a longer period is agreed in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the prior written approval of SANDAG.

B. Retention of Funds

SANDAG shall hold a ten percent retention from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by SANDAG, of the work performed under this Agreement and pay retention to Consultant based on these acceptances. Consultant or subconsultant shall return all monies withheld in retention from all subcontractors within ten days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by SANDAG. Any delay or postponement of payment may take place only for good cause and with the prior written approval of SANDAG. Any violation of these provisions shall subject the violating Consultant or subconsultant 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 Consultant or subconsultant; deficient subconsultant performance and/or noncompliance by a subconsultant.

XXI. RECORDS RETENTION

A. Project Records

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and SANDAG shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, SANDAG, FHWA, FTA or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Consultant's or its subconsultants' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to SANDAG or its designated agent if requested. Subcontracts in excess of \$25,000 shall contain this provision.

B. Work Documentation Records

Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five years from the date of final payment under this Agreement. This Section must be included in any subcontract entered into as a result of this Agreement.

C. Location of Stored Records

Consultant shall ensure that no records relevant to this Agreement are stored at a location or on a server or remote database (cloud) outside of the United States.

XXII. COVENANT AGAINST CONTINGENT FEES

A. Restrictions on Participation

No elected official(s) of SANDAG or any of its member agencies, the State of California, or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.

B. No Gifts or Fees

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

XXIII. OWNERSHIP OF DOCUMENTS AND OTHER WORK PRODUCTS

A. Ownership of Deliverables

All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of SANDAG. The term "deliverables" includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code, data sets, analyses, maps, and other work products developed for the Project.

B. Intellectual Property Resulting from Creation of Deliverables

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work products required by this Agreement shall be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG. Additional provisions concerning intellectual property, if applicable, may be included in the scope of work or Special Provisions.

C. Information and Data Not to Be Disclosed or Sold by Consultant

Consultant and all of its subconsultants, agents, representatives and employees are prohibited from disclosing or selling data or information provided, collected or obtained pursuant to this Agreement without express, written permission from SANDAG. Additional terms concerning privileged or confidential information or data, including, but not limited to such information or data that may qualify as PII, PC, or data covered by any other privacy laws, may be set forth in the scope of work or Special Provisions.

XXIV. TIMELY PERFORMANCE

Consultant acknowledges that timely performance is an important element of this Agreement. Accordingly, the Consultant shall put forth its best efforts to complete its services in accordance with the agreed-upon schedule. It shall be the responsibility of Consultant to advise SANDAG on a monthly basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the schedule and budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG and, if applicable, to the satisfaction of any government agency as directed by SANDAG.

This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

XXV. CHANGES IN WORK

If changes in the work seem merited by Consultant or SANDAG, and informal consultations with the other party indicate that a change is warranted, it shall be processed by SANDAG in the following manner: A letter outlining the changes shall be forwarded to SANDAG by Consultant, but no statement of estimated changes in fee or time schedule shall be provided initially. The SANDAG Project Manager will prepare an independent cost estimate if he/she believes the additional work is needed. The SANDAG Project Manager will then request that Consultant provide an estimate of hours and costs for the change. If SANDAG determines the change is merited, is due to an unexpected circumstance, and was caused through no fault of the Consultant, an amendment to the Agreement may be prepared by SANDAG following negotiation with the Consultant. SANDAG will not be required to pay for the changes in work unless the amendment is executed by both parties **before** performance of such services commences. **Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work that would increase the cost of this Agreement or an issued Task or Work Order without SANDAG Executive Director approval.** Such an amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

XXVI. FORCE MAJEURE

Either party is excused from performance hereunder if such non-performance results from acts of God, war, riots, acts of governmental authorities, or any other cause that could not have been overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a force majeure event, the party unable to perform shall promptly notify the other party. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

XXVII. ENTIRE AGREEMENT

This Agreement represents the entire understanding of SANDAG and Consultant as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by SANDAG and Consultant.

XXVIII. INCORPORATION OF EXHIBITS

The SANDAG RFP and Consultant's proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. The following documents (exhibits to this Standard Services Agreement) also are attached and incorporated by reference if the box next to document title is marked:

- (Part 2) Scopes of Work
- (Part 2) Rate and Rate Escalation Schedule
- (Part 2) Special Provisions for Service and/or Equipment Agreements
- (Part 3) Standard Federal Provisions for Federal Transit Administration

- ☒ (Part 4) Federal Provisions for Federal Transit Administration Procurements in Excess of \$100,000
- ☒ (Part 5) Standard Federal Provisions for Federal Highway Administration (Non-Construction)
- ☒ (Part 6) Final Report - Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses
- ☒ (Part 7) Consultant Contract or Task Order Commitment
- ☒ (Part 8) Surplus DBE Utilization Form
- ☒ (Part 9) DBE Certification Status Change Form
- ☒ (Part 10) SANDAG Annual Employment Utilization Report
- ☒ (Part 11) Request to Add Subconsultant Form and/or Bench Firm Form
- ☒ (Part 12) SANDAG Office Space User Agreement
- ☒ (Part 13) Consultant Employee in Project Management Role - Conflict of Interest and Confidentiality Statement
- ☒ (Part 14) Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees" and Policy Acknowledgement

In the event of conflicting provisions, the following order of precedence will apply: 1) Standard Federal Provisions for FTA & FHWA; 2) Federal Provisions for FTA Procurements in Excess of \$100,000; 3) Special Provisions for Service and/or Equipment Agreements; 4) Exhibits to the Standard Services Agreement; 5) the Standard Services Agreement; 6) Attachments to the RFP; 7) the RFP; and 8) Consultant's proposal.

Wherever the word "contractor" may appear in the attachments or exhibits to this Agreement, it should be read as the equivalent to the word "consultant." Wherever the words "bid" or "bidder" may appear in the attachments or exhibits to this Agreement, they should be read as the equivalent to the words "proposal" or "Proposer."

XXIX. ADMINISTRATION OF AGREEMENT

Consultant proposes to assign various staff members as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the Project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new Project Manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

XXX. HEADINGS

Section headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

XXXI. PRESERVATION OF AGREEMENT

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

XXXII. SUCCESSORS OR ASSIGNS

All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

XXXIII. SURVIVAL

The rights, obligations and conditions set forth in the Sections of this Agreement entitled Indemnification, Limitations of Liability, Representations and Warranties, Insurance, Limitations on Use and Disclosure, Assignment and Subcontracting, Standard of Care, Notices, Disputes, Records Retention, Ownership of Documents and Other Deliverables, as well as the Special Provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof.

XXXIV. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

PART 2 - STANDARD SERVICE AGREEMENT EXHIBITS

SCOPES OF WORK

Category E - GRAPHIC DESIGN, PRINTING, SIGNAGE/EXHIBIT DESIGN AND/OR FABRICATION, VISUAL SIMULATIONS, VIDEO PRODUCTIONS, DIGITAL AUDIO AND VIDEO OUTREACH, AND PHOTOGRAPHIC SERVICES

Many of the projects discussed in this RFP will require, to varying degrees, one or more services which are described in detail below. The consultant will work closely with SANDAG to ensure the output clearly conveys the intended message and/or desired visual metaphor or depiction. Services could include:

- Graphic design and production of advertising, marketing, and other collateral materials to support SANDAG projects and programs. These materials may include brochures, newsletters, graphics, fact sheets, print and/or online advertisements, banners, storyboards, promotional items, billboards, bus wraps, and other collaterals.
- Signage including the design, fabrication, and installation of construction project and highway signage, custom exhibit/trade show exhibits. The consultant is encouraged to bring creative and new ideas forward to enhance connecting with all SANDAG audiences.
- Procurement of promotional items such as mugs, pens, t-shirts, and other promotional items as necessary. The consultant is encouraged to bring creative and new ideas forward to enhance connecting with all SANDAG audiences.
- Video production to develop both cost-effective videos, "vlogs" and high-end, multi-media presentations for use on a variety of platforms including the web and PowerPoint presentations. The ability to produce animated PowerPoint presentations is highly desirable. These efforts will require production, editing, casting, scriptwriting, digital animation and other technical expertise.
- Digital audio (Spotify, Pandora, etc.) and video streaming (Connected TV with pre-roll video on devices such as Roku, Apple TV, Android, Samsung Smart TV and X-Box and publishers like Hulu and Amazon).
- Digital pre-roll video and retargeting display ads and general display ads with specific compatibility on mobile and desktop devices. Other digital tools may include native ads, YouTube bumper ads, WAZE and AdWords.
- Digital video/computer simulations to depict transportation, smart growth, and other projects and GIS-based maps and other simulations to engage stakeholders and assist them in understanding and visualizing plans and projects. For more information, please see the SANDAG YouTube channel at youtube.com/channel/UCouAv3PNma0Sm7MiLbrD_bw

- Photographic services in support of targeted marketing campaigns, public outreach campaigns and special events. For more information please see the SANDAG Facebook page here facebook.com/SANDAGregion/. The Keep San Diego Moving site at keepsandiegomoving.com/Home.aspx may be a helpful resource as well. Where appropriate, attention should be paid to the photographic documentation of ethnic, cultural, and age diversity that reflects the region's demographics. For special events such as groundbreakings, photos should clearly capture the breadth and depth of the event, including key moments, the physical environment, project highlights, and the variety of attendees. Photos taken during public events with an easily recognizable person require a release form provided by SANDAG for each recognizable person in the photo. If a person is not easily recognizable, that person is not required to sign a release form. If a person in the photos is a minor, the photo release form must be signed by a parent or guardian. Photos provided can be used in all media, including PowerPoint, Web, print publications, and displays

Photos saved at 300 dpi or higher as required by certain projects as RAW, and .jpg files

Photos provided in electronic form with agreed-upon naming convention

Photo organization: Extensis Portfolio preferred consultant-specified gallery or other

- Other types of desired expertise may include direct mail strategies and electronic marketing, printing of marketing, outreach, and other collateral materials such as signage and banner ads, use of web-based public engagement tools, and experience with website and/or other application development. This could include expertise in HTML programming.

RATE AND RATE ESCALATION SCHEDULE

Project Title: On Call Communications Services-Category E

Consultant Name: Pastilla, Inc. Contract # 5005375 Date: / /19

Consultant Job Classification	SANDAG Job Classification	Years Experience	Loaded Hourly Billing Rates	From	To	Escalation Rate %
Account Manager	Sr. Account Executive		\$ 135.00	/ /2019	3/31/2020	0.00%
			\$ 135.00	4/1/2020	3/31/2021	0.00%
			\$ 139.73	4/1/2021	3/31/2022	3.50%
			\$ 144.62	4/1/2022	3/31/2023	3.50%
			\$ 149.68	4/1/2023	3/31/2024	3.50%
Project Manager	Sr. Project Manager		\$ 110.00	/ /2019	3/31/2020	0.00%
			\$ 110.00	4/1/2020	3/31/2021	0.00%
			\$ 113.85	4/1/2021	3/31/2022	3.50%
			\$ 117.83	4/1/2022	3/31/2023	3.50%
			\$ 121.96	4/1/2023	3/31/2024	3.50%
Project Coordinator	Associate Account Executive		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Creative Director	Creative Director		\$ 140.00	/ /2019	3/31/2020	0.00%
			\$ 140.00	4/1/2020	3/31/2021	0.00%
			\$ 144.90	4/1/2021	3/31/2022	3.50%
			\$ 149.97	4/1/2022	3/31/2023	3.50%
			\$ 155.22	4/1/2023	3/31/2024	3.50%
Art Director	Sr. Graphic Designer		\$ 110.00	/ /2019	3/31/2020	0.00%
			\$ 110.00	4/1/2020	3/31/2021	0.00%
			\$ 113.85	4/1/2021	3/31/2022	3.50%
			\$ 117.83	4/1/2022	3/31/2023	3.50%
			\$ 121.96	4/1/2023	3/31/2024	3.50%
Mid-Level Graphic Designer	Assoc. Graphic Designer		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Junior Graphic Designer	Junior Graphic Designer		\$ 65.00	/ /2019	3/31/2020	0.00%
			\$ 65.00	4/1/2020	3/31/2021	0.00%
			\$ 67.28	4/1/2021	3/31/2022	3.50%
			\$ 69.63	4/1/2022	3/31/2023	3.50%
			\$ 72.07	4/1/2023	3/31/2024	3.50%
Production Artist	Modeling/Imaging Supervisor		\$ 55.00	/ /2019	3/31/2020	0.00%
			\$ 55.00	4/1/2020	3/31/2021	0.00%
			\$ 56.93	4/1/2021	3/31/2022	3.50%
			\$ 58.92	4/1/2022	3/31/2023	3.50%
			\$ 60.98	4/1/2023	3/31/2024	3.50%

RATE AND RATE ESCALATION SCHEDULE

Project Title: On Call Communications Services-Category E

Consultant Name: Pastilla, Inc. Contract # 5005375 Date: / /19

Consultant Job Classification	SANDAG Job Classification	Years Experience	Loaded Hourly Billing Rates	From	To	Escalation Rate %
Print Production Manager	Production Manager		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Copywriter/Editor	Copywriter/Editor		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Animation Supervisor	Animation Supervisor		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Storyboard Artists/Illustrator			\$ 65.00	/ /2019	3/31/2020	0.00%
			\$ 65.00	4/1/2020	3/31/2021	0.00%
			\$ 67.28	4/1/2021	3/31/2022	3.50%
			\$ 69.63	4/1/2022	3/31/2023	3.50%
			\$ 72.07	4/1/2023	3/31/2024	3.50%
2D Animator			\$ 65.00	/ /2019	3/31/2020	0.00%
			\$ 65.00	4/1/2020	3/31/2021	0.00%
			\$ 67.28	4/1/2021	3/31/2022	3.50%
			\$ 69.63	4/1/2022	3/31/2023	3.50%
			\$ 72.07	4/1/2023	3/31/2024	3.50%
3D Animator			\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Marketing Director	Marketing Strategist		\$ 110.00	/ /2019	3/31/2020	0.00%
			\$ 110.00	4/1/2020	3/31/2021	0.00%
			\$ 113.85	4/1/2021	3/31/2022	3.50%
			\$ 117.83	4/1/2022	3/31/2023	3.50%
			\$ 121.96	4/1/2023	3/31/2024	3.50%
Digital Marketing Director	Marketing Strategist		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%

RATE AND RATE ESCALATION SCHEDULE

Project Title: On Call Communications Services-Category E

Consultant Name: Pastilla, Inc. Contract # 5005375 Date: / /19

Consultant Job Classification	SANDAG Job Classification	Years Experience	Loaded Hourly Billing Rates	From	To	Escalation Rate %
Director			\$ 110.00	/ /2019	3/31/2020	0.00%
			\$ 110.00	4/1/2020	3/31/2021	0.00%
			\$ 113.85	4/1/2021	3/31/2022	3.50%
			\$ 117.83	4/1/2022	3/31/2023	3.50%
			\$ 121.96	4/1/2023	3/31/2024	3.50%
Script Writer			\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Lighting/Audio Tech/Sound	Lighting/Audio Technician		\$ 65.00	/ /2019	3/31/2020	0.00%
			\$ 65.00	4/1/2020	3/31/2021	0.00%
			\$ 67.28	4/1/2021	3/31/2022	3.50%
			\$ 69.63	4/1/2022	3/31/2023	3.50%
			\$ 72.07	4/1/2023	3/31/2024	3.50%
Directory of Photography	Director of Photography		\$ 90.00	/ /2019	3/31/2020	0.00%
			\$ 90.00	4/1/2020	3/31/2021	0.00%
			\$ 93.15	4/1/2021	3/31/2022	3.50%
			\$ 96.41	4/1/2022	3/31/2023	3.50%
			\$ 99.78	4/1/2023	3/31/2024	3.50%
Editor	Copywriter/Editor		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
General Video Production Svs			\$ 75.00	/ /2019	3/31/2020	0.00%
			\$ 75.00	4/1/2020	3/31/2021	0.00%
			\$ 77.63	4/1/2021	3/31/2022	3.50%
			\$ 80.34	4/1/2022	3/31/2023	3.50%
			\$ 83.15	4/1/2023	3/31/2024	3.50%
Video Production Manager	Video Production		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
Web Designer	Web Designer		\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%
HTML Programming			\$ 85.00	/ /2019	3/31/2020	0.00%
			\$ 85.00	4/1/2020	3/31/2021	0.00%
			\$ 87.98	4/1/2021	3/31/2022	3.50%
			\$ 91.05	4/1/2022	3/31/2023	3.50%
			\$ 94.24	4/1/2023	3/31/2024	3.50%

SPECIAL PROVISIONS FOR SERVICE AND/OR EQUIPMENT AGREEMENTS

The Special Provisions below are incorporated into the Agreement:

I. OPTION TO EXTEND

SANDAG shall have the option to extend the term of this Agreement in one or more increments for a total of no less than one and no more than six calendar months at the discretion of SANDAG in order to address unforeseeable circumstances or delays. Each extension shall be effected by written unilateral Agreement amendment delivered to Consultant no less than 15 calendar days prior to expiration of any Agreement term. The rates set forth in the Agreement shall apply to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to availability of funds from SANDAG.

II. CONFLICT OF INTEREST

A. Conflict of Interest Statement

Consultant's employees shall file a Conflict of Interest Statement with the SANDAG Executive Director if it is required by the SANDAG Conflict of Interest Code. SANDAG shall determine if Consultant's employees must be designated in the SANDAG Conflict of Interest Code for purposes of the Political Reform Act or for compliance with any applicable financial disclosure requirements based on the scope of work in the Agreement. Consultant represents that, to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code Section 1090 for the SANDAG employees or Board of Directors. Depending on the work assigned to them, Consultant's employees may be required to sign agreements regarding confidentiality and/or conflicts of interest. Employees of Consultant or subconsultant that will be in a position to influence a procurement or contracting decision by SANDAG will be required to file Disclosures of Financial Interests, which will be public records. Such employees will be prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract with as a result of the services covered by the Agreement. An example of the type of document Consultant's employees may be required to sign is attached to the Agreement as an Exhibit entitled "Consultant Employee in Project Management Role – Conflict of Interest and Confidentiality Statement." In addition, a Consultant's employees may be required to meet additional background check requirements depending on the nature of the duties they will perform for SANDAG or fill out forms disclosing financial interests. SANDAG will supply copies of the agreements or documents that the Consultant's employees may need to execute to meet these additional requirements when applicable.

B. Attempts to Influence Government Decisions

Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic or organizational interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic or organizational conflict of interest or other prohibited conflict of interest on the part of Consultant or any of its subcontractors during the term of this Agreement.

C. Ethical Standards of Conduct

All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004 and 016 at sandag.org/legal. SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

D. Exchange of Gifts with SANDAG

Consultants, contractors, vendors and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

E. Determination of Conflict

A Proposer is eligible for award of service contracts by SANDAG so long as the contract or Task or Work Order in question will not create an actual, potential, or apparent financial or organizational conflict of interest. A prohibited organizational conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to SANDAG or where a firm would receive an unfair competitive advantage. Examples of situations that could create such a conflict of interest are listed in Board Policy No. 016. Proposers that have a conflict of interest due to performing work for SANDAG are ineligible to submit a proposal. A process for determining whether a Proposer has a conflict is set forth in Board Policy No. 16. Ineligible firms include the prime Proposer, its subconsultants and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

III. EQUIPMENT PURCHASING

A. Authorization and Appraisal

Prior authorization in writing, by SANDAG Project Manager, shall be required before Consultant enters any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in the Agreement or applicable Task/Work Order and exceeding \$5,000, prior authorization by SANDAG Project Manager is required. Three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased because of this Agreement is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, SANDAG shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit SANDAG in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established SANDAG procedures; and credit SANDAG in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by SANDAG and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG." 2 CFR 200 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

B. Expediting by SANDAG

The goods furnished under this Agreement shall be subject to expediting by SANDAG. SANDAG shall be afforded free access to Consultant's shops, factories, or places of business, and those of Consultant's suppliers, for expediting purposes. As required by SANDAG, Consultant shall supply schedules, unpriced copies of purchase orders, and progress reports for the use of SANDAG in expediting.

C. No Substitutions

Substitutions of goods shall not be permitted without express written permission from a SANDAG employee with the title of Division Director or higher.

D. Units of Measurement

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("*Système International d'Unités*," or "SI units") with the United States equivalents clearly shown.

E. Standards and Codes

Whenever references are made in the scope of work to standards or codes in accordance with which the goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Technical Specifications supplied by SANDAG, SANDAG will determine which will govern.

F. Delivery Free On-Board Destination

Delivery of goods shall be free on-board destination, with the destination address to be supplied by SANDAG. SANDAG shall have no liability for goods until they are accepted at their final destination by the SANDAG Project Manager or his/her designee.

IV. WORK ON PREMISES OF SANDAG OR OTHERS

All or a portion of Consultant's work is to be performed on SANDAG property, premises where SANDAG is conducting operations, or the premises of San Diego Metropolitan Transit System (MTS); North County Transit District (NCTD); California Department of Transportation (Caltrans District 11), the 18 cities within the County of San Diego, and the County of San Diego. Therefore, Consultant shall take all necessary precautions to prevent the occurrence of injury to persons or damage to property during the progress of such work and, except to the extent that any such injury or damage is due to the negligence, act, or omission by SANDAG, as the case may be, Consultant shall defend and indemnify SANDAG, its officers, employees, agents, and landlord, and San Diego Metropolitan Transit System (MTS); North County Transit District (NCTD); California Department of Transportation (Caltrans), the 18 cities within the County of San Diego, and the County of San Diego their officers, employees, agents, and landlords against any and all loss, costs, liability, damage, or expense (including without limitation, attorney's fees and expenses) which may result in any way from any act or omission of Consultant, its employees, servants, agents, or contractors arising from work performed on such property.

It may be determined that on certain Task or Work Orders the Consultant will be required to provide onsite staff at SANDAG and/or the above-named local agency offices. In those situations where SANDAG or one of the above named local agencies provides such office space, computers, software, and/or supplies for the Consultants' (or its personnel, the Consultant shall be required to reduce the "Overhead" portion and or "combined overhead" rate from the billing rates for the affected personnel for such Task Orders in accordance with the guidelines set forth in the most recent version of the American Association of State Highway and Transportation Officials Uniform Audit and Accounting Guide. The relevant Overhead modification provisions are set forth in Section 5.6 "Field Office rates" of the 2010 version of which is available for review at audit.transportation.org/Documents/2010_Uniform_Audit_and_Accounting_Guide.pdf.

Overhead for "Fringe" benefits and "General Administration" shall not be affected under such circumstance. Exceptions to this Overhead removal requirement shall be in writing and at the sole discretion of SANDAG.

V. GRANT REQUIREMENTS

SANDAG anticipates use of grant funding from sources that have not been identified at this time. Once they are identified Consultant will be required to comply with any pass-through grant obligations. SANDAG will notify the Consultant of any such requirements through a contract amendment or at the time task/work orders are issued. In the event that the grant requirements impose substantial additional requirements on Consultant, Consultant may request that the scope and compensation set forth in the Agreement be equitably adjusted.

VI. AGREEMENT WITH FEDERAL TRANSIT ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION PROVISIONS

This Agreement requires the use of both Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) Standard Provisions. In case of a conflict between an FTA and FHWA provision, the United States DOT and/or the SANDAG Office of General Counsel may be consulted for a determination. For Buy America and Disadvantaged Business Enterprise requirements, both the FTA and FHWA provisions and certifications shall apply.

VII. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. Allowable Costs

1. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
2. Consultant also agrees to comply with federal procedures in accordance with 2 CFR 200.
3. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to SANDAG.

B. Application to Subcontractors

All subcontracts in excess of \$25,000 shall contain the above provisions.

VIII. AUDITS

Consultant has already or may in the future undergo a pre-award or post-award audit. Consultant and all of its subconsultants that work on the Project will be subject to audit by SANDAG or its representatives as described in this Section. Therefore, this Section of the Agreement must be passed through in writing to all subconsultants, hired by Consultant. All references to "consultant" in this section shall mean Consultant and all of its subconsultants. SANDAG will not pay Consultant at rates or in amounts that exceed the amounts negotiated or required by SANDAG following an audit. An additional audit may need to be carried out if this Agreement is amended, legal requirements change, or circumstances warrant additional auditing. Each consultant agrees to fully cooperate if an additional audit is requested. Consistent with 49 U.S.C. 5325(b)(3)(A)(B), any contract or subcontract awarded under this section must be performed and audited pursuant to Federal Acquisition Regulations. SANDAG will accept a consultant's indirect cost rates, established in accordance with Federal Acquisition Regulations cost principles, for one-year applicable accounting periods by a cognizant federal or state government if those rates are not currently under dispute

A. Audit Review Procedures

1. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the SANDAG, Department Director of Finance.

2. Not later than 30 days after issuance of the final audit report, a consultant may request a review by SANDAG, Department Director of Finance of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by SANDAG will excuse a consultant from full and timely performance, in accordance with the terms of this Agreement. Consultant and subconsultants' contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or review such as, but not limited to, a Contract Audit, and Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR Audit Workpaper Review, it is the consultant responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by the consultant and approved by SANDAG contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by SANDAG at its sole discretion. Refusal by a consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of this Agreement or other applicable contract and disallowance of prior reimbursed costs.

IX. CONSULTANT EMPLOYEE USE OF SANDAG OFFICES OR NAME

Consultant agrees that if its employees or employees or its subcontractors will work from SANDAG office space or have access to SANDAG servers, databases, or records storage areas it will cause those employees to do the following prior to the employee having access to any of the foregoing:

A. Complete Classroom Training

Complete a harassment and discrimination class no less often than every two years that contains the training components set forth in California Government Code Section 12950.1 and acknowledge receipt of documentation from Consultant informing the employees that unlawful harassment and discrimination is prohibited when conducting business with SANDAG.

B. Drug and Alcohol Documentation

Acknowledge receipt of documentation from Consultant informing the employee that drug and alcohol use and violence are prohibited during work hours, including when conducting business with SANDAG;

C. Ethics Training

Complete a training program regarding ethics and conflicts of interest that, at a minimum, informs the employee of his/her obligation to immediately report any potential or actual financial or organizational conflicts of interest with SANDAG to the SANDAG Project Manager.

D. Office Space Agreement

Agree to and execute the attached SANDAG Office Space User Agreement if SANDAG office space will be used. Failure by Consultant, its subcontractors, or employees to comply with this Section of the Agreement shall be cause for termination of the Agreement for cause at the sole discretion of SANDAG.

E. Use of SANDAG Name

Consultant's and its subconsultants' employees shall not use any SANDAG stationary, business cards, email address signatures, or any other practice or methodology that may mislead the public into believing those employees have an employment relationship with SANDAG or have authority to act on behalf of SANDAG. Consultant's employees that wear clothing displaying one or more SANDAG-owned logos also shall wear a prominent nametag that clearly designates the person as an employee of the Consultant in order to not mislead the public.

X. ADDITION OF NEW SUBCONSULTANT

A. Consultant shall use the Request to Add Subconsultant or Bench Firm Form to obtain approval to add new subconsultants.

B. General Requirements for Addition or Removal of Subconsultants

1. Consultant must obtain prior approval for adding new subconsultants or removing existing subconsultants. To add staff or subconsultants, SANDAG must approve the changes in writing, however, a formal Agreement amendment shall not be required to add staff or new subconsultants. Consultant may substitute a subconsultant if the work SANDAG proposes to assign or has assigned under the Agreement or a Task or Work Order cannot be fulfilled by one of the subconsultants listed in the Consultant's proposal because the subconsultant is unavailable, unwilling or unable to perform the work. In addition, a subconsultant addition may be allowed if the work SANDAG intends to assign is not in any of the work categories listed for subconsultants that SANDAG has already approved for use under the Agreement. It is Consultant's responsibility to select qualified and responsible subcontractors. Consultant may request assistance from SANDAG in identifying subconsultants, but SANDAG may not direct Consultant to hire a particular subconsultant unless a sole source is warranted. The following procedures should be used to add or substitute a subconsultant.
2. SANDAG will require documentation that establishes that the proposed rates for the new subconsultant are reasonable. SANDAG staff may be able to document this by comparing the proposed rates against a) the rates charged in other contracts for similar services; or b) what other public agencies have been charged for similar services. If SANDAG is unable to locate sufficient documentation to compare prices, the Consultant will be required to attempt to locate other firms qualified to perform the services and provide rate data for those firms to SANDAG.

3. Consultant does not have to select the subconsultant with the lowest rates. Selection of a subconsultant should be based on a combination of factors including qualifications, experience and price.
4. Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subconsultants without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different subconsultant. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost.
5. Consultant and any new subconsultant may be required to amend previous documents or sign new documents in order to comply with SANDAG procurement and contracting requirements. Consultant and subconsultant shall complete, sign, and return to SANDAG any forms SANDAG may require in order to add the subconsultant.

C. Addition or Removal of DBE Subconsultants

1. Additional requirements shall apply to replacement of DBE subconsultants that Consultant agreed to use to carry out work on an Agreement or Task or Work Order with a DBE commitment. If the removal, substitution, or addition affects a DBE subconsultant that was to be used by Consultant to meet its DBE commitment, Consultant also shall comply with the additional applicable requirements concerning substitution of DBE, including but not limited to following the process for the Disadvantage Business Enterprise Certification Status Change Form, the Request to Add Subconsultant or Bench Firm Form, the requirements in the FTA and FHWA Federal Provisions, and filling out a new Consultant Contract DBE Commitment Information form (Caltrans Exhibit 10-O2).
2. The procedures to be followed by Consultant for substitution of a DBE for another DBE or non-DBE firm are described in the RFP Attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

XI. PROVISIONS FOR CONFIDENTIAL, PRIVILEGED, PRIVATE OR SENSITIVE DATA ACCESS

Consultant's scope of work includes access to, creation of, or Processing of Sensitive Information. Accordingly, the following provisions shall apply to the Agreement.

A. Definitions

"Authorized Users" means all persons, including end users, authorized by SANDAG to access and use the Consultant's Materials, SANDAG intellectual property or SANDAG Data under this Agreement.

"Confidential Information" means any information that is treated as confidential by either party ("Disclosing Party"), including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing, regardless of whether such information was intentionally or unintentionally disclosed or marked as "confidential" or "proprietary" by the Disclosing Party or otherwise obtained (including by visual inspection) by the other party or any of its Representatives ("Receiving Party").

"Consultant Materials" means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all service software, documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or used by Consultant in connection with performing the scope of work, in each case developed or acquired by the Consultant independently of this Agreement.

"Hosted Services" means the hosting, management and operation of the software or other services for remote electronic access and use by SANDAG and its Authorized Users as may be called for in the scope of work.

"Personal Information" means data or information obtained or derived from Consultant or any of its subconsultants when carrying out the scope of work (including the Processing) that constitutes Personally Identifiable Information, Personal Credit Information, or any other information to which legal restrictions apply in order to protect the privacy of individuals. means any information that any of the Consultant Personnel collects, receives or obtains, from or on behalf of SANDAG or any of its Authorized Users that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address, social security number, etc., and any other information relating to an identified or identifiable individual. The foregoing applies whether the information regarding a specific individual can be directly, derivatively, or by aggregating it with other information. Personal Information includes such information of or pertaining to SANDAG personnel, directors, officers, agents, suppliers, contractors, members of the public or customers and all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.), "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d), any other similar laws applicable to privacy of individual information and all rules and regulations issued under any of the foregoing.

"Processing" means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works; (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available; or (c) block, erase or destroy. "Processing" and "Processed" have correlative meanings.

"SANDAG Data" means any and all information, data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of SANDAG or any Authorized User for Processing by or through any Hosted Services; or (b) collected, downloaded or otherwise received by Consultant or any Hosted Services for SANDAG or any Authorized User pursuant to this Agreement or any Service Order or at the written request or instruction of SANDAG or such Authorized User. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any SANDAG Data are themselves also SANDAG Data. For the avoidance of doubt, SANDAG Data includes all User Data and Personal Information but does not include any Consultant Materials.

"Sensitive Information" refers collectively to Confidential Information, Personal Information, User Data, and information covered by federal or state government statutes or regulations intended to protect sensitive security information. All notes, analyses, summaries, interpretations and other embodiments, expressions and derivative works of, containing, based on, derived from or otherwise reflecting any Sensitive Information, in whole or in part, and prepared by any person, shall themselves constitute the Sensitive Information of the Disclosing Party on whose Sensitive Information they are based. Without limiting the foregoing, (a) all SANDAG Data (including all Private Information and Confidential Information) is and will remain the Sensitive Information of SANDAG; and (b) the Consultant Materials will remain the Sensitive Information of Consultant.

"User Data" means any and all information reflecting the access or use of Consultant Materials, SANDAG intellectual property or SANDAG Data by or on behalf of SANDAG or any Authorized User, including any end user profile-, visit-, session-, impression-, click through- or click stream- data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

B. Confidentiality

1. Exclusions. Confidential Information does not include any information or material that the Receiving Party can demonstrate by written or other documentary records: (a) is or becomes generally known other than through a breach of this Agreement or another confidentiality or non-disclosure agreement, obligation or duty, or other wrongful act, of or on behalf of the Receiving Party or any of its Representatives; (b) was already rightfully known to the Receiving Party, without restriction on use or disclosure, prior to being directly or indirectly disclosed by or on behalf of the Disclosing Party, or obtained by or on behalf of the Receiving Party; (c) has been or hereafter is rightfully received by or on behalf of the Receiving Party from a third-party without restriction on use or disclosure and without breach of any agreement or obligation or duty of confidentiality to the Disclosing Party or any other Person; or (d) was or is independently developed by the Receiving Party without access or reference to or use of any Confidential Information of the Disclosing Party.

2. SANDAG Data Exception. Notwithstanding the provisions of Subsection 1 or any other provisions of this Agreement, none of the exclusions set forth in Subsection 1 apply to any SANDAG Data, whether provided by or on behalf of SANDAG to Consultant for Processing or generated or derived from such Processing and regardless of whether such SANDAG Data may be publicly available or otherwise qualify for exclusion under any of the other provisions of this Section. The preceding sentence does not prohibit or limit Consultant from any use or disclosure of any information that may be the same as any SANDAG Data but which Consultant can demonstrate by documentary evidence was: (a) obtained by Consultant without access to, reference to or use of any SANDAG Data; and (b) at all times maintained separately from and not in any way combined, commingled, compared, benchmarked or in any way associated with any SANDAG Data.
3. Confidentiality and Use. Consultant shall use, and ensure that its representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information, to safeguard the SANDAG Sensitive Information from use or disclosure other than as permitted under the Agreement. Without limiting the foregoing, Consultant shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement. As a condition to being provided with such Sensitive Information, Consultant agrees that, during the Term and for two years thereafter, it will:
 - a. Not use or permit the use of SANDAG Sensitive Information other than as strictly necessary to exercise its rights or perform its obligations under this Agreement;
 - b. Not use or permit the use of any of SANDAG Sensitive Information, directly or indirectly, in any manner to the detriment of SANDAG;
 - c. Maintain SANDAG Sensitive Information in strict confidence and, subject to the following Subsection, not disclose or make available SANDAG Sensitive Information to any person without prior written consent from SANDAG, provided, however, that Consultant may disclose the Sensitive Information to its representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such Sensitive Information, under this Agreement; (ii) have been informed in writing of the highly confidential nature of the Sensitive Information and the limitations, procedures and obligations that apply to the access, use and disclosure of Sensitive Information under this Section; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that Consultant shall be responsible for ensuring its representatives' compliance with, and shall be liable for any breach by its representatives, of this Section.
4. Compelled Disclosures. If Consultant becomes compelled by applicable Law to disclose any Sensitive Information, Consultant shall, to the extent permissible by applicable law:

- a. As soon as possible after becoming aware of such requirement and prior to disclosing Sensitive Information pursuant thereto, notify SANDAG in writing of such required disclosure so that SANDAG may seek a protective order or other appropriate remedy or waive its rights under this Section;
 - b. At the Consultant's expense, use reasonable efforts not to release such Sensitive Information pending the outcome of any measures taken by SANDAG to contest, oppose or limit such compelled disclosure or any further disclosure or use of Sensitive Information that may result therefrom;
 - c. Use reasonable efforts to obtain assurance that the Sensitive Information will be accorded confidential treatment if a protective order or other remedy is not obtained or SANDAG waives compliance with this Section; and
 - d. Disclose only the portion of Sensitive Information that it is legally required to produce to the minimum extent required by applicable Law.
 - e. No such compelled disclosure by the Receiving Party will otherwise affect Consultant's obligations hereunder with respect to the Sensitive Information so disclosed.
5. Return or Destruction of SANDAG Sensitive Information. Upon SANDAG written request at any time and subject to any contrary obligations under applicable law, Consultant shall at SANDAG direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on SANDAG Sensitive Information, in whole or in part; or (b) solely such specific SANDAG Data, databases or other collections or articles of SANDAG Sensitive Information as SANDAG may request, and provide a notarized written statement to SANDAG certifying that it has complied with the requirements of this Subsection.

C. Personal Information

1. Consultant shall not cause or permit any Personal Information to be Processed in any manner or for any purpose other than the performance of the scope of work in compliance with the restrictions set forth in this Agreement and all applicable Laws.
2. Ownership and Treatment of Personal Information. As between SANDAG and Consultant, SANDAG is and shall remain the sole and exclusive owner of all right, title and interest in and to Personal Information. Without limiting any other representation, warranty or obligation of Consultant under this Agreement, Consultant represents, warrants and covenants, and shall obtain the binding written representations, warranties and covenants of all Consultant Personnel involved in any aspect of the scope of work, that:

3. During the Term and thereafter in perpetuity, Consultant will not Process or otherwise undertake or refrain from any act with respect to any Personal Information in any manner, including any actual or attempted Processing thereof, except for the sole purpose of performing the scope of work and in compliance with: (i) the express terms and conditions of this Agreement or as SANDAG may hereafter expressly direct in advance in writing; (ii) the then current SANDAG privacy and security policies; and (iii) all applicable laws (including all then current and applicable laws relating to spamming, privacy and consumer and data protection);
4. Except as SANDAG or an Authorized User may submit to Consultant personnel for purposes of SANDAG or such Authorized User's use of the scope of work, or as SANDAG may hereafter expressly direct in advance in writing, Consultant will not under or in connection with this Agreement or any transaction or arrangement hereunder collect any Personal Information from or in connection with SANDAG or any Authorized User's access to or use of the scope of work, or through any access Consultant may have to the SANDAG Systems, including through any cookies, applets, beacons or other data mining methods or technologies;
5. Consultant shall promptly notify SANDAG in writing when Consultant becomes aware of any unauthorized access, use or other act respecting Sensitive Information or if Consultant becomes the subject of any government, regulatory or other investigation or proceeding relating to its data privacy, security or handling practices;

D. Security

1. Protection of SANDAG Sensitive Information. Throughout the term of the Agreement and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:
 - a. Maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of SANDAG Sensitive Information that meet or exceed the requirements of SANDAG data security requirements and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;
 - b. Provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of SANDAG Sensitive Information and the nature of such Sensitive Information, consistent with best industry practice and standards;
 - c. Take all reasonable measures to:

- i Secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the scope of work against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Consultant's systems or the information found therein;
- ii Prevent (a) SANDAG and its Authorized Users from having access to the data of other customers or such other customer's users of any Hosted Services; (b) SANDAG Sensitive Information from being commingled with or contaminated by the data of other customers or their users of any Hosted Services; and (c) unauthorized access to any SANDAG Sensitive Information;
 - Continuously monitor its systems for potential areas where security could be breached;
 - Immediately report to SANDAG any breach of security or unauthorized access to SANDAG Sensitive Information that Consultant detects or becomes aware of;
 - Use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to SANDAG a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting any Sensitive Information of SANDAG that sets out written details regarding Consultant's investigation of such incident and, upon SANDAG written request, provide a second more in-depth investigation and results of its findings;
 - Refrain from notifying, for or on behalf of SANDAG or any Authorized User, any regulatory authority, consumer or other Person of any such security breach or unauthorized access unless SANDAG specifically requests in writing that Consultant do so; and
 - If such security breach or unauthorized access results from any act or omission of Consultant or any Consultant personnel, promptly reimburse SANDAG for all reasonable costs and expenses SANDAG may incur in providing any notification of such security breach or unauthorized access.
 - Without limiting the generality of the foregoing, Consultant and SANDAG will work together to formulate a plan to rectify all security breaches and unauthorized access concerning SANDAG Sensitive Information.

2. **Unauthorized Access.** Consultant shall not access, and shall not permit any access to, the SANDAG Data, in whole or in part, whether through Consultant's systems or otherwise, without express prior written authorization from SANDAG. Such authorization may be revoked by SANDAG in writing at any time in its sole discretion. Any access to the SANDAG Data shall be solely in accordance with the terms and conditions, and in no case exceed the scope of, the SANDAG authorization pursuant to this Section. All SANDAG-authorized connectivity or attempted connectivity to SANDAG Data or systems shall be only through SANDAG security gateways and firewalls and in compliance with SANDAG security policies as expressed by the SANDAG Director of Technical Services or his/her designee.
3. **Consultant Systems.** Consultant shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Consultant to access SANDAG Data or systems or otherwise in connection with the scope of work (SANDAG Systems) and shall prevent unauthorized access to the SANDAG Systems through Consultant's systems.
4. **Security Audits.** During the Term and for five years thereafter, Consultant shall:
 - a. Maintain complete and accurate records relating to its data protection practices and the security of any of SANDAG Sensitive Information, including any backup, disaster recovery or other policies, practices or procedures relating to SANDAG Sensitive Information and any other information relevant to its compliance with this Section; and upon SANDAG request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by SANDAG or its authorized representative, provided that SANDAG shall: (i) give Consultant reasonable prior notice of any such audit; (ii) undertake such audit no more than once per calendar quarter, except for good cause shown; and (iii) conduct or cause to be conducted such audit in a manner designed to minimize disruption of Consultant's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Agreement. SANDAG may, but is not obligated to, perform such security audits, which shall, at SANDAG option and request, include penetration and security tests, of any and all Consultant Systems and their housing facilities and operating environments.

- b. **Regulatory and Compliance Audits.** Any authorized representative of any regulatory agency, taxing authority or private entity that functions in a quasi-regulatory manner that has jurisdiction over SANDAG in connection with its regulatory functions (each, a "Regulator") shall, upon request, have the same audit rights as those set forth in foregoing Subsection, provided that no condition or restriction stated herein shall apply to any Regulator to the extent it is contrary to applicable law. Consultant shall cooperate with all individuals conducting such audits and comply with all reasonable recommendations that result from such inspections, tests and audits within reasonable time frames. Without limiting any of Consultant's other obligations under this Section, if Consultant engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Consultant's operations, information security program or disaster recovery/business continuity plan, Consultant shall provide a copy of the audit report to SANDAG promptly within five Business Days after Consultant's receipt of such report. Any such audit reports shall be Consultant's Sensitive Information.

- c. **Nonexclusive Remedy for Security Breach.** Any failure of the Consultant to meet the requirements of this Agreement with respect to the security of any SANDAG Data or other Sensitive Information of SANDAG, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Agreement for which SANDAG, at its option, may terminate this Agreement immediately on written notice to Consultant without any notice or cure period, and Consultant shall promptly reimburse to SANDAG any fees prepaid by SANDAG prorated to the date of such termination.

E. Redundancy, Data Backup, and Disaster Recovery

- 1. Consultant shall, in accordance with the provisions of this Section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard the SANDAG Data and SANDAG other Sensitive Information, Consultant's Processing capability and the availability of any portion of the scope of work constituting Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder. The force majeure provisions the Agreement shall not limit Consultant's obligations under this Subsection.

2. Redundant Hosting and Connectivity. Consultant shall simultaneously operate a mirror system at a hardened data center facility in the United States that is geographically remote from the primary system on which any software that is a deliverable for SANDAG or Hosted Services that are hosted by Consultant (the "Secondary Backup Facility") that may be called for in the scope of work. Except for its location and housing facility, the mirror system shall: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all SANDAG Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Agreement and the specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Consultant shall operate, monitor and maintain such mirror system so that it may be activated within 24 hours of any failure of the Hosted Services to be available.
3. Data Backup. Consultant shall conduct or have conducted contemporaneous backups of SANDAG Data and perform or cause to be performed other periodic backups of SANDAG Data on at least a daily basis and store such backup SANDAG Data in a commercially reasonable location and manner within the United States and, in addition, no less than daily at the Secondary Backup Facility. On written notice from SANDAG and, in any case, on a monthly/daily basis, Consultant shall provide SANDAG with a copy of the backed up SANDAG Data in such machine-readable format as SANDAG reasonably requests. Consultant shall provide all monthly/daily backups at its sole cost and expense. No backup of SANDAG Data shall be counted in allotting or calculating any data storage actually used or permitted to be used by SANDAG or any associated payment or fee.
4. Disaster Recovery/Business Continuity. Throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:
 - a. Maintain a Business Continuity and Disaster Recovery Plan for any Hosted Services (the "Plan") and implement such Plan in the event of any unplanned interruption of the Hosted Services. Consultant's current Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the Plan will be provided to SANDAG upon request. Consultant shall actively test, review and update the Plan on at least a quarterly basis using industry best practices as guidance. Consultant shall provide SANDAG with copies of all such updates to the Plan promptly upon request. All updates to the Plan shall be subject to the requirements of this Section; and
 - b. Provide SANDAG with copies of all reports and summaries resulting from any testing of or pursuant to the Plan promptly after Consultant's receipt or preparation thereof. If Consultant fails to reinstate the Hosted Services within the periods of time set forth in the Plan, SANDAG may, in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under the Termination provisions of the Standard Services Agreement.

***PART 3 - STANDARD FEDERAL PROVISIONS FOR
FEDERAL TRANSIT ADMINISTRATION***

Any subcontract entered into as a result of the Agreement, shall contain all the provisions of these Standard Federal Provisions. Use of the term "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As an FTA grantee, SANDAG is required to inform the Contractor of the following information:

I. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the relevant Grant Agreement or Cooperative Agreement between SANDAG and FTA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Contractor or any other third-party contractor.

II. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801, et seq., and United States DOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this Agreement. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

III. ENERGY EFFICIENCY

Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

IV. PROHIBITED INTERESTS

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

If Consultant will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, Consultant will be required to submit a statement to SANDAG certifying that Consultant has no financial or other interest in the outcome of the Project (40 CFR 1506.5[c]).

V. TITLE VI CIVIL RIGHTS ACT OF 1964

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

A. Compliance with Regulations

The Contractor and any subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); 49 U.S.C. 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the DOT -- Effectuation of Title VI of the Civil Rights Act," 49 CFR 21, and any implementing requirements FTA may issue, 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 contract.

B. Nondiscrimination

The Contractor, subrecipient, 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 C.F.R. 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 Agreement 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.

C. Solicitations for Subcontractors, including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the Contractor 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 Contractor of the Contractor's obligations under this Agreement and the regulations relative to nondiscrimination described in the Agreement.

D. Information and Reports

The Contractor shall provide all information and reports required by the regulations or directive 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 Recipient or the FTA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SANDAG or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of noncompliance, SANDAG shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Agreement until the Contractor complies.
2. Cancellation, termination, or suspension of the contract, in whole or in part.

F. Incorporation of Provisions

The Contractor shall include the provisions of Sections A through E of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SANDAG or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance provided; however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SANDAG to enter into such litigation to protect the interests of SANDAG, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. EMPLOYEE PROTECTIONS

A. Non-construction Contracts Exceeding \$2,500

The Contractor shall comply with the following employee protection requirements:

1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 332, Contractor shall assure that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with the applicable United States DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR 5.
2. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.

B. State and Local Government Employees

Contractor shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. 206 - 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the Project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

C. Transit Employee Protective Arrangements

Applicable to Each Contract for Transit Operations Performed by Employees of a Contractor Recognized by FTA to be a Transit Operator. The Contractor shall comply with the following requirements applicable to transit operations performed in connection with the Project:

1. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved, the Contractor shall carry out the Project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and to meet the requirements of 49 U.S.C. 5333(b), and United States guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in that United States DOL certification. That the DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance Projects for the elderly and persons with disabilities authorized by 49 U.S.C. 5310(a)(2) or to formula assistance Projects for non-urbanized areas authorized by 49 U.S.C. 5311.
2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. 5310(a)(2) for the Elderly and Persons with Disabilities. If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. 5333(b) are necessary or appropriate for public body subrecipients under the Project, the Contractor shall carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), and DOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in the DOL certification. The DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.

3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas. The Contractor shall comply with the terms and conditions of the Special Warranty for the Non-Urbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by DOL or any revision thereto.

VII. CARGO PREFERENCE - PROCUREMENTS INVOLVING EQUIPMENT, MATERIALS, OR COMMODITIES TRANSPORTED BY OCEAN VESSELS

A. Applicability

46 U.S.C. 1241(b)(1) and 46 CFR 381 impose the United States cargo preference requirements on the shipment of foreign made goods and shall apply to this procurement.

1. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
2. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph A above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.

B. Application to Subcontracts

The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

VIII. REPORTING, RECORD RETENTION, ACCESS

A. Reports

At a minimum, the Contractor agrees to provide SANDAG and FTA those reports required by the United States DOT grant management rules and any other reports SANDAG or the federal government may require.

B. Record Retention

The Contractor shall, during the course of the Project and for five years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as SANDAG or the federal government may require for the Project.

C. Access to Records

Upon request, the Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Project. In accordance with 49 U.S.C. 5325(a), the Contractor shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

IX. 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 Agreement (including the FTA Master Agreement applicable to the year in question) between SANDAG and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

X. DISADVANTAGED BUSINESS ENTERPRISES

A. FTA Disadvantaged Business Enterprise Program

SANDAG is a subrecipient of FTA funds. In conformance with 49 CFR 26 SANDAG is required to implement a Minority-Conscious DBE program of limited application. The minority-conscious component of the SANDAG FTA DBE program includes all six DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.

B. FTA DBE Commitment

SANDAG set a DBE goal range on the procurement and will be setting DBE goals at the time Task Order proposals are requested when federal funding will be utilized.

C. DBE Procurement and Agreement Requirements

Contractor shall comply with the provisions in the RFP attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

XI. INCORPORATION OF FEDERAL AND STATE GUIDELINES

All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 CFR 18, and FTA Circular 4220.1F, "Third-party Contracting Requirements" and 2 CFR 200.

XII. DRUG AND ALCOHOL PROGRAM

During the performance of this Agreement Contractor agrees to implement a drug and alcohol program that is compliant with 49 CFR 653 - 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States DOT, the Caltrans, or SANDAG to inspect the facilities and records association with the implementation of the drug and alcohol testing program, as required under Parts 653 and 654, and review the testing process.

XIII. EQUIPMENT PURCHASES USING FEDERAL FUNDS

A. Required Prior Authorization

Prior authorization in writing by the Project Manager shall be required before Contractor enters into any non-budgeted purchase order or subcontract exceeding \$3,000 for supplies, equipment, or subcontractor services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from the SANDAG Executive Director also is required. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Payment or Fee Schedule and exceeding \$3,000, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

B. Inventory Records

Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.

C. Disposal of Equipment at Contract Termination

At the conclusion of the Agreement or if the Agreement is terminated, Contractor may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined, at the Contractor's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and Contractor. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.

D. Federal Funds Credit

Title 2, CFR, Part 200 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the Project.

XIV. COMPLIANCE WITH EXECUTIVE ORDER 11246

During the performance of this Agreement, Contractor agrees as follows:

A. Nondiscrimination

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination

B. Equal Consideration

1. Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
2. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order 11246 (Johnson, 1965) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

C. Reports

Contractor will furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

D. Noncompliance

In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

E. Inclusion of Provisions in Subcontracts

Contractor will include the provisions of Paragraphs A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States." (Sec. 202 amended by Executive Order 11375 [Johnson, 1967], 32 FR 14303, 3 CFR 1966-1970 Comp., p. 684, Executive Order 12086 [Carter, 1978], 43 FR 46501, 3 CFR 1978 Comp., p. 230)

XV. COST PRINCIPLES - APPLICABLE TO ALL CONTRACTS IN EXCESS OF \$25,000

Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost, except on negotiated contracts procured under a RFP, which shall instead be governed by 48 CFR 15.

Contractor also agrees to comply with federal procedures in accordance with 2 CFR Part 200.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under application sections of 48 CFR 15, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. and/or 2 CFR 200, are subject to repayment by the Contractor to SANDAG.

XVI. NON-COLLUSION - APPLICABLE TO ALL CONTRACTS IN EXCESS OF \$25,000

Title 23, U.S.C., Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. 1746, is attached.

XVII. DEBARMENT AND SUSPENSION - APPLICABLE TO ALL CONTRACTS EXCEEDING \$25,000

SANDAG and the Contractor shall comply with the requirements of Executive Orders 12549 (Reagan, 1986) and Executive Order (Bush, 1989), "Debarment and Suspension," 31 U.S.C. 6101 note; and United States DOT regulations on Debarment and Suspension at 49 CFR 29. Contractor shall be registered in the SAM.gov website. SAM is an Official United States Government database of awardees of federal funds. There is NO fee for Contractor to register for this site.

Unless otherwise permitted by FTA, SANDAG shall refrain from awarding any third-party contract of any amount to or enter into any subagreement of any amount with a party included in the "United States General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs," implementing Executive Order 12549 and Executive Order 12689, "Debarment and Suspension" and 49 CFR 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order 12549 and Executive Order 12689.

Before entering into any subagreement with a subrecipient, SANDAG shall obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information about the subrecipient and its "principals," as defined at 49 CFR 29.105(p). An example of the appropriate certification is contained in this bid package.

Before entering into any third-party contract exceeding \$25,000, SANDAG shall obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). SANDAG also shall require each third-party contractor to refrain from awarding any third-party subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$100,000. An example of the appropriate certification is contained in this bid package.

SANDAG shall provide FTA a copy of each conditioned debarment or suspension certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. Until FTA approval is obtained, SANDAG shall refrain from awarding a third-party contract or entering into a subagreement with any party that has submitted a conditioned debarment or suspension certification.

XVIII. TECHNICAL RESTRICTIONS ON THE ACQUISITION OF INTELLIGENT TRANSPORTATION SYSTEM PROPERTY AND SERVICES

If this Agreement involves the acquisition of Intelligent Transportation System (ITS) property and/or services, then the ITS property and services must comply with the national ITS architecture and standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 CFR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Third-party contracts involving ITS also must contain provisions to ensure compliance with these, just listed, Federal Requirements (FTA Circular 4220.1F.).

***PART 4 - FEDERAL PROVISIONS FOR FEDERAL
TRANSIT ADMINISTRATION PROCUREMENTS
IN EXCESS OF \$100,000***

Use of the term "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As an FTA grantee, SANDAG is required to inform the Contractor that "Buy America" is applicable to Public Works, Acquisition of Goods, or Rolling Stock Procurements exceeding \$100,000

I. BUY AMERICA REQUIREMENTS

"Buy America" requirements are set forth in Section 165 of the Federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 CFR 661). Information on "Buy America" requirements (49 CFR 661) is available for review at the SANDAG office.

A. Steel or Manufactured Products

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

1. Applying this provision would be inconsistent with the public interest.
2. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this Project.
3. Including domestically produced material will increase the cost of the contract by more than 25 percent.

Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.

B. Rolling Stock

Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 60 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.

C. Exceptions and Adjustments

In reference to the exceptions above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (10% or 25%) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall Project contract." When both "rolling stock" and "non-rolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.

1. Thus, the foreign purchased components of the individual bid items will be adjusted upward, for purposes of determining Buy America compliance only, by 10 percent for rolling stock and 25 percent for non-rolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.

2. The revised bid amount will be the basis for determining the lowest bid.
3. Within five days of written notification, the Contractor shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR 661.

D. Submittals and Waivers

1. In the Buy America Certificate (FTA), Alternative 'A' or 'B,' must be completed and submitted with the proposal. A proposal which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
2. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the Contractor for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

II. ENVIRONMENTAL REQUIREMENTS

A. General Applicability

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[H]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1968), and Environmental Protection Agency (EPA) regulations (40 CFR 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to FTA and to the United States EPA Assistant Administrator for Enforcement (ENO329).

B. Environmental Regulations

The successful Contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq. Contractor recognizes that United States EPA, Federal Highway Administration (FHWA), and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and SANDAG. Contractor acknowledges that this list does not constitute Contractor's entire obligation to meet all federal environmental and resource conservation requirements.

C. Environmental Protection

Contractor shall comply with the applicable requirements of NEPA of 1969, as amended, 42 U.S.C. 4321 et seq., in accordance with Executive Order 12898 (Clinton, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR 771, and 49 CFR 622.

If Contractor will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, the Contractor will be required to submit a statement to SANDAG certifying that the Contractor has no financial or other interest in the outcome of the Project, 40 CFR 1506(c).

D. Air Quality

Contractor 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. Specifically:

1. Contractor shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 CFR 51(T); and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR 93. To support the requisite air quality conformity finding for the Project, Contractor shall implement each air quality mitigation and control measure incorporated in the Project. Contractor agrees that any Project identified in a SIP as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.
2. United States EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to transit operators, particularly operators of large transit bus fleets. Thus, Contractor should be aware that the following United States EPA regulations, among others, may apply to this Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 CFR 86; and "Fuel Economy of Motor Vehicles," 40 CFR 600.
3. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate United States EPA Regional Office.

E. Clean Water

1. Contractor 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.
2. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate United States EPA Regional Office.

F. Use of Public Lands

Contractor agrees that no publicly-owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. 303.

G. Mitigation of Adverse Environmental Effects

Contractor agrees that, if the Project should cause adverse environmental effects, the successful Contractor will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. 5324(b), and all other applicable federal laws and regulations; specifically, the procedures of 23 CFR 771, and 49 CFR 622. Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. As soon as the federal government and Contractor reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. Contractor agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

H. Consultant Certification

If Contractor will be preparing an environmental impact statement on behalf of SANDAG under NEPA, Contractor certifies, as required by 40 CFR 1506.5(c), by signing this Agreement, that it has no financial or other interest in the outcome of the Project.

III. RESTRICTIONS ON LOBBYING

A. No Use of Federal Funds

SANDAG and Contractor shall not use federal assistance funds to support lobbying.

B. Certification

In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 CFR 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has:

1. Received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352.
2. If applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

C. Required Disclosure

The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying (Part 5).

***PART 5 - STANDARD FEDERAL PROVISIONS
FOR FEDERAL HIGHWAY ADMINISTRATION
(NON-CONSTRUCTION)***

I. COMPLIANCE WITH FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

This Agreement is subject to a financial assistance contract between SANDAG and the FHWA. All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement.

II. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement between SANDAG and FHWA in connection with the performance of this Agreement.

Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Consultant or any other third-party contractor.

III. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and United States DOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this contract. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claims, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

IV. TITLE VI COMPLIANCE

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

A. Compliance with Regulations

The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the DOT, 49 CFR 21, as they may be amended from time to time (the Regulations), which are herein incorporated by reference and made a part of this Contract.

B. Nondiscrimination

The Contractor, with regard to the work performed by it during the term of the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor 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 Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color sex, age, or national origin.

D. Information and Reports

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

E. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the recipient shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Agreement until the Contractor complies.
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions

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

V. LABOR

During the performance of this Agreement, the Contractor agrees as follows:

A. Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B. Equal Consideration

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

C. Notice to Worker's Representatives

The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under Section 202 of Executive Order 11246 (Johnson, 1965), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. Compliance with orders of Secretary of Labor

The Contractor will comply with all provisions of Executive Order 11246 and with the rules, regulations, and relevant orders of the Secretary of Labor.

E. Furnishing of Information and Reports

The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the FHWA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F. Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part. The Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

G. Inclusion of Labor Provisions in Subcontracts

The Contractor will include the provisions of paragraphs A through F herein, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246. Such provisions shall be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H. Additional Requirements

Attention also is directed to the requirements of the California Fair Employment and Housing Act (Government Code Sections 12900 through 12996 - Stat. 1980, Chapter 992), to the regulations promulgated by the Fair Employment and Housing Commission to implement said Act, and to the nondiscrimination, affirmative action and equal employment opportunity requirements in this Agreement.

VI. STANDARD EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

A. Equal Employment Opportunity

In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

B. As used in this exhibit:

1. "Director" means the SANDAG Executive Director.
2. "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.
3. "Minority" includes:
 - a. African American (all persons having origins in any of the African American racial groups not of Hispanic origin)
 - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central, or South American or other Spanish Culture or origin, regardless of race)
 - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands [this area includes China, Japan, Korea, the Philippine Islands, and Samoa])
 - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

C. Separate Goals

A single goal for minorities and a separate single goal for women may have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

D. Prohibition on Use of Goals to Discriminate

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

E. Debarred Contractors

The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

The Contractor shall carry out such sanctions and penalties for violation of the provisions in this exhibit and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by SANDAG. If Contractor fails to carry out such sanctions and penalties it shall be in violation of the Agreement and Executive Order 11246 as amended.

If the Contractor fails to comply with the requirements of the Executive Order, the Implementing Regulations, or the Agreement, SANDAG will retain an amount equal to ten percent of the estimated value of the work performed during the previous month (exclusive of mobilization) from the next monthly estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. The retention for failure to comply with this section will be released on a monthly estimate for partial payments following the date that the Contractor fulfills its obligations under the provisions of this exhibit.

F. Monitoring Requirements

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company Equal Employment Opportunity policy is being carried out, to submit reports relating to the provisions hereof and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractor shall not be required to maintain separate records.

G. No Limitation

Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

VII. NONCOLLUSION

Title 23, U.S.C., Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. 1746, is attached.

VIII. LOBBYING

A. No Use of Federal Funds

SANDAG and Contractor shall not use federal assistance funds to support lobbying.

B. Certification

In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 CFR 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has:

1. Received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352.
2. If applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

C. Required Disclosure

The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying (Part 5).

IX. DISADVANTAGED BUSINESS ENTERPRISES

A. FHWA Disadvantaged Business Enterprise Program

SANDAG is a subrecipient of FHWA funds through Caltrans. In conformance with 49 CFR 26, and directives and guidance issued by Caltrans, SANDAG is required to implement a minority-conscious DBE program of limited application. The minority-conscious component of the Caltrans FHWA DBE program includes all six DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.

B. FHWA DBE Commitment

SANDAG set a DBE goal range on the procurement and will be setting DBE goals at the time Task Order proposals are requested when federal funding will be utilized.

C. DBE Procurement and Agreement Requirements

Contractor shall comply with the provisions in the RFP attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

X. MISCELLANEOUS

A. Taxes

SANDAG is not exempt from sales tax.

B. Environmental Violations

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[H]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1967), and EPA regulations (40 CFR 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FHWA and to the United States EPA Assistant Administrator for Enforcement (EN0329).

The Contractor and suppliers shall submit evidence that the governing air pollution criteria will be met. This evidence will be retained for on-site examination by FHWA.

C. Energy Efficiency

The Contractor shall comply with the California State Energy Conservation Act issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

D. Prohibited Interests

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising there from.

E. Buy America

Contractor should be familiar with the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto and set forth in Federal Form 1273. Information on "Buy America" requirements is available for review at the SANDAG office. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance shall be furnished for steel and iron materials. The certificates, 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 above exceptions.

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

F. Cargo Preference - Use of United States Flag Vessels

Contractor agrees:

1. To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whether 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.
2. To furnish within 30 days following the date of loading for shipment originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 above to the Project Manager (through the prime contractor in case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this clause.

G. Statement of Eligibility

Contractor shall execute the Eligibility Certificate for Federally Funded Projects which is Part 1 of the Certifications for Federally Funded Contracts. The Contractor also shall have executed by its subcontractors a Subconsultant's Statement of Eligibility, which is Part 4 of the Certifications for Federally Funded Contracts for each designated subcontractor. All Subcontractor's Statement of Eligibility forms will be made a part of the Agreement.

H. Clean Air and Water Requirements

Contractor shall comply with Section 508 of the federal Clean Water Act and Section 306 of the federal Clean Air Act.

I. Debarred Bidders (49 CFR 29)

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the recipient whether or not it is or has been on any debarred bidder's list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform SANDAG.

Contractor shall include in all contracts with designated subcontractors, an obligation to declare whether or not the subcontractor, including any of its officers or holders of a controlling interest, is or has been on any debarred bidder's list maintained by the United States Government. Should a subcontractor be included on such a debarred bidder's list in the past, is now on such a list, or is placed on such a list during the performance of this Agreement, it shall so inform the Contractor. Contractor shall notify SANDAG of any subcontracts with debarred contractors.

J. Audit and Inspection of Records

Contractor agrees that SANDAG, the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project. Further, Contractor agrees to maintain all required records for at least three years after grantees make final payments and all other pending matters are closed.

K. Privacy

To the extent that Contractor at any tier, any subcontractor at any tier, or their employees administers any system of records on behalf of the federal government, the contractor at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552.

L. Energy Conservation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conversation Act, 42 U.S.C. 6321 et seq.

M. Access Requirements for Persons with Disabilities

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and the following federal regulations, including any amendments thereto:

1. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR 37
2. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR 27
3. DOT regulations, "ADA Accessibility Specifications for transportation Vehicles," 49 CFR 38
4. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR 35
5. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR 36
6. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR 101-119
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR 64(F)

N. Federal Changes

Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in Federal Form 1273 or this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

O. Subletting or Assigning the Contract

1. Contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original Agreement price, excluding any specialty items designated by SANDAG or Caltrans. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by its own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The Agreement amount upon which the requirements set forth in this subsection are computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
3. Contractor shall furnish
 - a. A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Agreement requirements, and is in charge of all construction operations (regardless of who performs the work).
 - b. Such other of its own organizational resources (supervision, management, and engineering services) as the Director determines is necessary to assure the performance of the Agreement.
4. No portion of the Agreement shall be sublet, assigned or otherwise disposed of except with the written consent of the Director, or authorized representative, and such consent when given shall not be construed to relieve Contractor of any responsibility for the fulfillment of the Agreement. Written consent will be given only after the Director has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the Agreement.

P. Safety: Accident Prevention

1. In the performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws governing safety, health, and sanitation (23 CFR 635). Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SANDAG Project Manager may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement.

2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).
3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

Q. False Statements Concerning Highway Projects

To assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on federal-aid highway Projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the Project is a violation of federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the Project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

XI. CERTIFICATIONS

A. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion

By signing and submitting its proposal, Contractor provided the certification set out below and reaffirms it by executing the Agreement. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this Agreement. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the determination of SANDAG whether to enter into this Agreement. Contractor's failure to furnish a certification or an explanation shall disqualify such firm/person from participation in this Agreement.

1. The certification in this subsection is a material representation of fact upon which reliance was placed when SANDAG determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans, or SANDAG may terminate this Agreement for cause of default.
2. Contractor shall provide immediate written notice to SANDAG if at any time Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this subsection and the Debarment and Suspension Certificate, which is Part 3 of the Certifications for Federally Funded Contracts, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (Reagan, 1986). Contractor may contact SANDAG for assistance in obtaining a copy of those regulations.
4. Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Agreement, unless authorized by SANDAG.
5. Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided in this Agreement, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, SANDAG may terminate the Agreement for cause or default.

B. Certification Regarding Debarment, Suspension, Ineligibility, Voluntary Exclusion-Primary Covered Transactions

Consultant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
2. Have not within a three-year period preceding submission of its proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses.
4. Have not within a three-year period preceding submission of its proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
5. Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall provide SANDAG a written explanation prior to execution of the Agreement.

C. Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders, and other lower-tier transactions of \$25,000 or more - 49 CFR 29)

1. The certification in this clause is a material representation of fact upon which reliance was placed when this Agreement or a related contract was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans or SANDAG with which this Agreement originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to which its bid/proposal was submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
4. The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by SANDAG.
5. The prospective lower tier participant further agrees by submitting a bid/proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

8. Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, Caltrans, or SANDAG may pursue available remedies, including suspension and/or debarment.

D. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its bid/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. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its bid/proposal.

***PART 6 - FINAL REPORT – UTILIZATION OF ALL
SUBCONTRACTORS, UNDERUTILIZED/DISADVANTAGED
BUSINESS ENTERPRISES AND SMALL BUSINESSES***

(Caltrans EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS)

Contract No.	County	Location	Project Description				Federal Aid Project No.	Administering Agency				Contract Start/NTP	Contract End Date			
Task/Job Order No.							SANDAG				TO/JO Start/NTP	TO/JO End Date				
Prime Consultant/Contractor (Company Name)		Prime Consultant/Contractor Business Address				Business Ownership by Minority Code						Final Contract or Task/Job Order Paid Amount \$				
Address:						BA - Black American	NA - Native American	APA - Asian Pacific American								
City, State, Zip Code:						W - Woman	HA - Hispanic American	SCA - Subcontinent Asian American				Federal Funding Type (If Applicable)				
SUBCONSULTANT(S)/ SUBCONTRACTOR(S)	SB / DBE CERTIFICATE		CONTRACT/TASK/JOB ORDER PAYMENTS								FTA <input type="checkbox"/>		FHWA <input type="checkbox"/>			
			TOTAL PAYMENTS*				TOTAL PAYMENTS BY MINORITY GROUP									
	SB Cert #	DBE Cert #	SB	DBE	UDBE *** (if applicable)	Non-Certified	APA	BA	HA	NA	SCA	W	Unpaid Retention (if applicable)	Date Work Complete	Date of Final Payment	Work Performed/ Material Provided
Name <small>(Certified PRIME)</small>																
Address																
Description of work																
Name																
Address																
Description of work																
Name																
Address																
Description of work																
Name																
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Description of work																
Name																
Address																
Description of work																
\$ -	\$ -	Total Payments	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	DBE Goal Attainment	0%		
%	%												UDBE Goal Attainment	0%		
Original U/DBE Commitment	Original SB Commitment												SB Participation	0%		

*If Sub is SB, DBE and/or UDBE, enter the total dollar amount in all three fields

***The decision of which column to use for entering the U/DBE dollar value is based on which program was applied to the Contract/TO/JO. For procurements advertised after August 1, 2014, only a DBE program applies and DBE payments only need to be entered in the DBE column. For procurements advertised prior to August 1, 2014, a UDBE (FTA) or DBE (FHWA) program may apply. Under the FTA UDBE program, payments to the Asian-Pacific American (APA) minority group can not be included in the UDBE payment column, only the DBE payment column. Please refer to the instructions for additional details on completing the UDBE payment column.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
CONSULTANT/CONTRACTOR REPRESENTATIVE NAME	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
SANDAG PROJECT MANAGER'S NAME	BUSINESS PHONE NUMBER	DATE

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS:

SANDAG Contract Number and Task/Job Order boxes - Enter the SANDAG contract and Job/Task Order number if applicable.

Location - Enter project location by city and county.

Project Description - Provide description of project.

Federal-Aid Project Number - Enter the Federal-Aid Project Number.

Local Agency - SANDAG name entered as agency that is funding the contract/Job Order/Task Order.

Contract Start and End Dates - Enter the date the contract/Job Order/Task Order was started or Notice to Proceed was issued and then date project completed.

Prime Contractor/Consultant - Enter the contractor/consultant's firm name.

Business Address - Enter the contractor/consultant's business address.

Final Contract Amount - Enter the total final amount for the contract/Job Order/Task Order as applicable.

Federal Funding Type - Mark box for FTA and/or FHWA if applicable.

DBE/SB Company Name and Business Address - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.

Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.

DBE Certification Number - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.

Contract Payments - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.

Date Work Completed - Enter the date the subcontractor/subconsultant's item work was completed.

Date of Final Payment - Enter the date when the prime contractor/consultant made or will make the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.

Original DBE Commitment Amount - Enter the total DBE participation listed in Bidder DBE Commitment Form (Construction) or Consultant Contract DBE Commitment Form.

Total Payments - Enter the sum of the "Contract Payments" Non-DBE and DBE columns. Report total payments, including unpaid retention, made to ALL subconsultants/subcontractors and ALL certified SB, DBE, and/or UDBE firms regardless of tier or whether the firm was originally listed for goal credit. If actual U/DBE utilization (or item of work) was different than that approved at time of award, provide comments on a separate page. If no subconsultants/subcontractors were utilized, enter "N/A" in the Name field. If retention is being withheld at the time of completing this report, enter the total amount in the "Unpaid Retention" column.

Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.

Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.

Phone - Enter the area code and telephone number of the person signing the form.

Date - Enter the date the form is signed by the contractor/consultant's preparer.

SANDAG Representative's Signature - A SANDAG Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.

SANDAG Representative's Name - Enter the name of the SANDAG Representative signing the form.

Phone - Enter the area code and telephone number of the SANDAG representative signing the form.

Date - Enter the date the form is signed by the SANDAG Representative.

***PART 7 - CONSULTANT CONTRACT OR
TASK ORDER COMMITMENT***

(Caltrans Exhibit 10-O2 Consultant Contract DBE Commitment)

(Use to Show Commitment at Time of Task Order Execution)

1. Local Agency: SANDAG 2. Task Order DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
SANDAG to Complete this Section			\$
20. SANDAG Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ SANDAG certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
_____ 23. SANDAG Representative's 24. Date _____ 25. SANDAG Representative's Name 26. Phone _____ 27. SANDAG Representative's Title			14. TOTAL CLAIMED DBE PARTICIPATION IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. _____ 15. Preparer's Signature 16. Date _____ 17. Preparer's Name 18. Phone _____ 19. Preparer's Title

DISTRIBUTION: 1. Original – SANDAG
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of any FHWA funds on contract/task order.

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - SANDAG name entered as agency that is funding the contract or Task Order.
- 2. Contract DBE Goal** - Enter the contract or Task Order DBE goal percentage set by SANDAG.
- 3. Project Description** - Enter the project description.
- 4. Project Location** - Enter the project location.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime consultant is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract or Task Order award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** - Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** - Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date proposals are due to SANDAG.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE.
- 14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, an adequately documented Good Faith Effort (GFE) is required.
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

SANDAG SECTION

- 20. SANDAG Contract Number** - Enter the SANDAG contract and/or Task Order number.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.

22. Contract Execution Date - Enter the date the contract was executed.

23. SANDAG Representative's Signature - The person completing this section of the form for SANDAG must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.

24. Date - Enter the date the DBE commitment form is signed by the SANDAG Representative.

25. SANDAG Representative's Name - Enter the name of the SANDAG Representative certifying the consultant's DBE commitment form.

26. Phone - Enter the area code and phone number of the person signing the consultant's DBE commitment form.

27. SANDAG Representative Title - Enter the position/title of the SANDAG Representative certifying the consultant's DBE commitment form.

PART 8 - SURPLUS DBE UTILIZATION FORM

(List only firms and amounts that exceed the Task Order DBE goal and for which Consultant does not wish to be contractually committed to for purposes of meeting its DBE Commitment.)

Consultant to Complete this Section			
Consultant Name: _____ SANDAG Contract No. _____ SANDAG Task Order No. _____ Date: _____			
DBE Firm Information			
Description of Services to Potentially Be Provided by DBE	DBE Firm Name and Contact Information	DBE Cert. Number	Estimated Surplus DBE Dollar Amount
Estimated Total Dollars for Surplus DBE Utilization			\$ _____
Notes: 			_____ Preparer's Signature _____ Preparer's Name (Print) _____ Preparer's Title _____

PART 9 - DBE CERTIFICATION STATUS CHANGE FORM

(Caltrans Exhibit 17-O DBE Certification Status Change)

1. SANDAG Contract/JO/TO Number:			2. Federal-Aid Project Number:		
3. Local Agency:			4. Contract Completion Date:		
5. Contractor/Consultant:		6. Business Address:		7. Final Contract Amount:	
8. Contract Item Number	9. DBE Contact Information	10. DBE Certification Number	11. Amount Paid While Certified	12. Certification/Decertification Date (Letter Attached)	13. Comments

If there were no changes in the DBE certification of subcontractors/subconsultants, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT			
14. Contractor/Consultant Representative's Signature	15. Contractor/Consultant Representative's	16. Phone	17. Date
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED			
18. SANDAG Representative's Signature	19. SANDAG Representative's Name	20. Phone	21. Date

DISTRIBUTION: Original – SANDAG, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS –DBE CERTIFICATION STATUS CHANGE

1. Local Agency Contract/JO/TO Number - Enter the SANDAG contract number and Job or Task Order number if applicable.
2. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
3. Local Agency - SANDAG name entered as agency that is funding the contract.
4. Contract Completion Date - Enter the date the contract/Job Order or Contractor was completed if applicable.
5. Contractor/Consultant - Enter the contractor/consultant's firm name.
6. Business Address - Enter the contractor/consultant's business address.
7. Final Contract Amount - Enter the total final amount for the contract, Job Order or Task Order.
8. Contract Item Number - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
10. DBE Certification Number - Enter the DBE's Certification Identification Number.
11. Amount Paid While Certified - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
12. Certification/Decertification Date (Letter Attached) - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
13. Comments - If needed, provide any additional information in this section regarding any of the above certification status changes.
14. Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
15. Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.
16. Phone - Enter the area code and telephone number of the person signing the form.
17. Date - Enter the date the form is signed by the contractor/consultant's preparer.
18. SANDAG Representative's Signature - A SANDAG representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
19. SANDAG Representative's Name - Enter the name of the SANDAG representative signing the form.
20. Phone - Enter the area code and telephone number of the person signing the form.
21. Date - Enter the date the form is signed by the SANDAG representative.

***PART 10 - SANDAG ANNUAL EMPLOYMENT
UTILIZATION REPORT***

***PART 11 - REQUEST TO ADD SUBCONSULTANT AND/OR
BENCH FIRM FORM***

SANDAG Contract No.: _____

Prime Consultant Name: _____

This request is to (mark all that apply):

- Add a new subconsultant – **complete Section 1 below**
- Remove an existing subconsultant - **complete Section 2 below**

SECTION 1: ADDITION OF NEW SUBCONSULTANT

1. Subconsultant Name: _____
2. Is this subconsultant a DBE? Yes* No
 *If subconsultant is a DBE, by signing below you confirm that you have checked the CUCP database to ensure the subconsultant will perform work that is covered by their DBE certification.
3. Services required of subconsultant (must be within scope of contract): _____

4. Dollar amount of work (if known): \$ _____

5. Reason for addition:

- Needed to meet U/DBE goal
- Service is not available from current team
- Other (justification required): _____

6. List three firms Prime Consultant contacted for consideration and attach a summary or copies of responses with cost proposal:

Firm Name:			
Contact:			
Phone:			
Email:			
Date of Contact:			

7. Describe why this subconsultant was selected (e.g.: qualifications, experience, price, availability). Price must be a factor.

8. Attach the following required forms:

- Bidder’s List
- Commitment Letter from Subconsultant
- EEO Certification
- Personnel Request Form (as required per contract)
- For Federal Funding Only:
 - Statement of Eligibility
 - Cert. of Restrictions on Lobbying (only if subconsultant contract ≥\$100K)

9. If U/DBE goal/commitment applies (federal funds are involved) attach:

- Local Agency Prime U/DBE Commitment form OR
- Good Faith Effort documentation

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience. Required federal provisions, if applicable, are included in our contract with this subconsultant and the subconsultant is aware it may be subject to audit.

Print Name

Signature

Date

SECTION 2: REMOVAL OF EXISTING SUBCONSULTANT*

1. Subconsultant Name: _____

2. Is this subconsultant a DBE? Yes* No
 *Removal of a U/DBE subconsultant may affect U/DBE commitment
3. Services provided by subconsultant (as listed in contract): _____

4. Dollar amount of work (as listed in contract): _____
5. Reason for removal:
 - Unavailable
 - Unwilling to perform work
 - Unable to perform work
 - Other (justification required): _____

I certify that the removal of this subconsultant is consistent with the terms and conditions of the underlying contract.

Print Name	Signature	Date
------------	-----------	------

THIS SECTION FOR SANDAG STAFF ONLY

Contract Manager

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience.

Print Name	Signature	Date
------------	-----------	------

Manager of Contracts & Procurement

I am satisfied that the addition/removal of this subconsultant is consistent with the terms and conditions of the underlying contract and the rates of this subconsultant are fair and reasonable.

Print Name	Signature	Date
------------	-----------	------

Manager of Small Business Development* (Required only if adding or removing a DBE subconsultant)

The addition/removal of this DBE subconsultant is consistent with the requirements of 49 CFR Part 26.

Print Name	Signature	Date
------------	-----------	------

PART 12 - SANDAG OFFICE SPACE USER AGREEMENT

I, _____, ("Contractor's employee"), am an employee of _____ ("Contractor"). Contractor has been hired by the San Diego Association of Governments (SANDAG) to provide services under SANDAG Contract No. _____ ("Contract"). Contractor intends to have contractor's employee work from SANDAG office space during portions of the Contract term. In order to ensure that the staff and interests of SANDAG are protected, Contractor's employee is required to agree to the following terms:

- A. Contractor's employee is not a SANDAG employee or agent and understands that he/she cannot act as a SANDAG representative or enter into any agreement or contract on behalf of SANDAG.
- B. Contractor's employee is not eligible for any SANDAG benefits. Contractor's employee may contribute to the SANDAG coffee fund if he/she chooses to use SANDAG break room supplies.
- C. Contractor's employee will maintain confidentiality and not disclose confidential information that he/she may have access to while working under the Contract. Contractor's employee may have access to databases and records storage areas that contain confidential information from law enforcement, records that could be used in an investigation or litigation, records containing bank and credit card account numbers, records specifically marked "trade secret" or "confidential," or personnel or identity information.
- D. Contractor's employee agrees that he/she is forbidden from accessing any confidential databases or records storage areas without specific authorization from a SANDAG manager. Contractor's employee may not disclose any confidential or sensitive information to Contractor or any other entity or person who is not a SANDAG employee without first approval from the SANDAG project manager.
- E. Contractor's employee agrees that if at any point during the term of the contract he/she is working for an entity that is in litigation with or has an adversarial position to SANDAG, he/she must immediately notify the SANDAG Office of General Counsel.
- F. Contractor's employee will provide SANDAG with his/her home address and phone number in order to enable SANDAG to contact him/her in the event of an emergency such as a fire or security breach.
- G. Contractor's employee may purchase a parking card if he/she chooses to park in the SANDAG office building. SANDAG will not validate parking for contractor's employee or his/her guests.
- H. Contractor's employee may receive an ACCESS card and door security codes to the offices of SANDAG to be used only for the purposes of fulfilling his/her SANDAG-related business purposes on SANDAG premises. Contractor's employee has a duty to ensure that nonauthorized persons do not gain access through use by Contractor's employee of his/her access privileges.
- I. Contractor's employee's access to SANDAG premises or other premises he/she may need to access to perform work under the contract is limited to the areas where he/she has official business and the common areas, such as break rooms.
- J. Contractor's employee will comply with SANDAG policies forbidding unlawful harassment and discrimination and acknowledges receiving training on harassment and discrimination prevention from Contractor.
- K. Contractor's employee will comply with SANDAG policy prohibiting workplace violence.

- L. Contractor's employee will comply with the SANDAG policy prohibiting use of drugs or alcohol while performing work under the Contract.
- M. Contractor's employee will report and seek to avoid any possible conflict of interest that may be presented by access to information because of his/her use of SANDAG office space. Contractor's employee acknowledges that he/she has received training from contractor regarding ethical business practices and avoidance of financial or organization conflicts of interest in accordance with the terms of the contract.
- N. Contractor's employee agrees that access to and use of SANDAG computer systems and other data may be restricted and will be monitored by SANDAG. Contractor's employee agrees to such monitoring.
- O. Contractor's employee will not use any SANDAG stationary, business cards, Email address signatures, or any other practice or methodology that may mislead the public into believing contractor's employee has an employment relationship with SANDAG or has authority to act on behalf of SANDAG. Contractor's employees that wear clothing displaying one or more SANDAG-owned logos also shall wear a prominent nametag that clearly designates the person as an employee of the Consultant in order to not mislead the public.

By signing below I agree to all of the terms set forth in this agreement, which is effective this:

_____ day of _____ 20 _____

Contractor's Employee

***PART 13 - CONSULTANT EMPLOYEE IN PROJECT
MANAGEMENT ROLE - CONFLICT OF INTEREST AND
CONFIDENTIALITY STATEMENT***

PROCUREMENT/CONTRACT NUMBER: _____

PROJECT NAME: _____

CONSULTANT NAME: _____

APPLICABILITY: Applicable to employees of the Consultant identified above who are in project management roles that make recommendations or influence/make decisions involving the SANDAG contracting process at any stage. This includes, but is not limited to, Consultant employees involved in drafting scopes of work, independent cost estimates, procurement evaluation criteria or specifications; selection of vendors or equipment on behalf of SANDAG; approval of invoices or payments to third parties, oversight of a third parties work product, or any other project management activity on behalf of SANDAG that requires the Consultant's employee to be free of financial bias, compromised loyalty to the best interests of SANDAG, or organizational conflict of interest.

- I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant/vendor contracts pursuant to my employer's contract with SANDAG.
- I have project management responsibilities for SANDAG as an employee of Consultant and my title is listed below.
- I hereby certify as follows:
 1. I will not directly or indirectly participate in, manage, or oversee any consultant/vendor selection procurement process in which the consulting firm of which I am employed is competing as a consultant or subconsultant.
 2. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or subconsultant.
 3. I will not directly or indirectly participate in, manage, or oversee any SANDAG contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or subconsultant. Among other things, this includes my not being involved in managing the work; and not approving changes in the schedule, scope, deliverables or invoices.
 4. I understand that if I am involved in any SANDAG contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that SANDAG will no longer be eligible for Federal or State reimbursement because of my involvement.
 5. I understand that I am not allowed to accept gifts (tickets, meals, travel, etc.) with an aggregate value of more than \$50 per year from a third-party consultant/vendor that may compete for or be paid SANDAG public funds if I had any project management role pursuant to the procurement/contract(s) identified above relating thereto.
 6. I understand that I will be required to file a Disclosure of Financial Interests (Form 700) in accordance with requirements in Government Code Section 1090

- I certify that I have read 2 CFR 200.112 and 23 CFR 1.33 and I agree not to participate in selection, or in the award or administration of a SANDAG contract if a conflict of interest, real or apparent, would be involved. Note: SANDAG is a Caltrans subgrantee and a Federal Transit Administration grantee.

49 CFR 18.36(b)(3)

- (3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - (i) The employee, officer, or agent,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or
 - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- I fully understand that it is unlawful for a person to utilize any SANDAG information, which is not a matter of public record, for private gain.
- I fully understand that any violation of the above could be a basis for ineligibility of reimbursement of State or Federal project funds and agree that I will immediately report any potential or actual violation of the above to the SANDAG Office of General Counsel.

Name of Firm: _____

Signature _____ Date _____

Printed Name: _____

Title: _____

Distribution: 1 copy to Contract File

***PART 14 - POLICY ON USE OF TECHNOLOGY AND
ELECTRONIC RESOURCES BY SANDAG "NON-
EMPLOYEES" AND POLICY ACKNOWLEDGEMENT***

I. SCOPE OF POLICY

The policy applies to individuals who are not employees of SANDAG, or “non-employees.” For purposes of this policy the term “non-employee” includes business or project partners, consultants, independent contractors, and staffing agency employees. This policy is intended to apply to all SANDAG technology and electronic resources, including, but not limited to: computer systems, software, hardware, servers, networks, electronic mail, cell phones, and computing devices paid for, in whole or in part (including reimbursement of expenses), by SANDAG, Internet services, Intranet, voicemail system, facsimile machines, and photocopiers. The term “computing devices” includes, but is not limited to smart phones, PDAs, electronic tablets, and other similar devices. This policy applies to all non-employee users of SANDAG technology and electronic resources whether or not they are using SANDAG technology or electronic resources during or after work hours; or whether or not they access the technology or resources from SANDAG premises or some other location.

II. NO EXPECTATION OF PRIVACY

Non-employee users should not expect that the information placed on or through SANDAG electronic resources is private. By using SANDAG technology and electronic resources, users consent to the monitoring discussed in this policy, without any additional notice. SANDAG may not require or request a non-employee to (1) disclose a username or password to access personal email/social media; (2) access his or her personal email/social media in the presence of a SANDAG representative or other non-employee; or (3) divulge any personal email/social media unless it is reasonably believed that content on the email/social media is relevant to an investigation of allegations of a non-employee’s misconduct or violation of law, or to access a SANDAG-issued electronic device.

Following is a list of some, but not all, circumstances under which a user’s activities may be disclosed to others. Note that with regard to computers, information on all drives may be accessed or monitored, not just data on the shared drives.

- In order to ensure SANDAG technology and electronic resources are not misused, SANDAG may monitor or investigate computer files, electronic messages, voicemail, Internet use, and all other information kept or accessed by users on its technology or electronic resources (collectively referred to as ‘information’) to determine whether a user has misused these resources. Users should not expect information stored on or accessed from SANDAG electronic resources to be private, even if passwords, account codes, or other security measures are utilized. Information may be monitored regardless of its origin or content.
- Any information retained on or accessed from SANDAG property may be disclosed to outside parties, including law enforcement authorities, in the event of an investigation, request for public records, or legal process.
- When a non-employee user is absent, unavailable, or their relationship with SANDAG has ended, another user may need to access information kept on the unavailable user’s or former user’s computer or voicemail.
- Scans by law enforcement agencies and SANDAG Information Systems (IS) staff are made on an ongoing basis to check for malware, viruses, or other illegal access or use of SANDAG information or equipment that may have been initiated by persons inside or outside SANDAG.

III. UNACCEPTABLE USE

The use of SANDAG technology and electronic resources is a privilege that may be revoked at any time. SANDAG will not tolerate misuse of its property. Nothing in this policy is meant to prohibit use of electronic resources for labor activities or First Amendment speech permitted by law. Conduct that may result in breach of a consultant, independent contractor, or staffing agency's contract with SANDAG and/or revocation of privileges includes, but is not limited to:

- Damage, theft, duplication, or unauthorized alteration of hardware or software.
- Placement of unlawful information, computer viruses, or harmful programs on or through an electronic resource.
- Obtaining, downloading, viewing, or otherwise gaining access to information or materials which may be deemed unlawful, harmful, abusive, obscene, pornographic, descriptive of destructive devices, or which are harmful matter as defined in California Penal Code Section 313(a), or which are otherwise objectionable under current SANDAG policies or applicable laws.
- Violation of the federal Communications Decency Act or any other federal or state law applicable to computer and/or telecommunications systems.
- Use of SANDAG electronic resources for personal gain, commercial purpose outside of SANDAG business purposes, or political or religious activity.
- Use of SANDAG electronic resources to unlawfully harass other persons. Examples: display or transmission of messages containing ethnic slurs, racial comments, off-color jokes, cartoons with sexual content, or anything that may conflict with the SANDAG policy of providing a workplace sensitive to diversity and free of discrimination, harassment, and disrespect.
- Unauthorized use, review, duplication, dissemination, removal, damage, or alteration of files, passwords, computer systems, or programs, or other property of SANDAG, a business, or any governmental agency to conduct improper activities, including but not limited to "hacking."
- Use of copyrighted, trademarked, or patented data, software or other materials without permission from the owner, including, but not limited to, use of data downloaded from the Internet and the creation or maintenance of archival copies of materials obtained through the Internet, unless such materials are in the public domain. This includes use of SANDAG owned logos or trademarks without approval from the Director of Communications or a member of the Executive Team.
- Placing confidential, sensitive, or proprietary information in electronic messages or on the Internet.
- Creating or utilizing chain letters, chat rooms, or other Multiple User Dimensions ("MUDs"), with the exception of those bulletin boards or electronic mail groups that may be used for specific work-related communications.
- Use of social networking sites such as Facebook, Twitter, or Linked-In, or other Internet blogging sites during work hours for non-SANDAG business is forbidden if the time taken to do so or the content of the posting could be disruptive to SANDAG business. Posting to SANDAG social networking sites may only be authorized by SANDAG management.

- Posting information on the Internet or in electronic mail or electronic mail attachments that does not reflect the standards and policies of SANDAG. Non-employees are expected to be respectful of SANDAG, SANDAG employees, and other non-employees, member agencies, and the public. If a non-employee represents himself or herself on the Internet as a SANDAG consultant or independent contractor, he/she is expected to ensure the page content complies with professional standards of conduct. Non-employees are prohibited from accessing, posting, or placing any content using SANDAG property that associates SANDAG with illegal, unethical, or unprofessional activity.
- Establishing Internet or other external network connections that could allow unauthorized persons to gain access to SANDAG systems and information. These connections include, but are not limited to, the establishment of hosts with public modem dial-ins, World Wide Web home pages, File Transfer Protocol sites, and peer-to-peer networking (file-sharing) nodes.
- Downloading information or visiting websites that are likely to contain computer viruses or other malware.
- Spending excessive time browsing the Internet for non-SANDAG-work related information or sending personal e mail during work periods. This includes time spent texting, instant-messaging, blogging, tweeting, or viewing Facebook, Linked-In, or similar social networking sites.
- Use of SANDAG resources for non-SANDAG- work related matters that take up too much disk or memory space on an electronic resource, slow down the electronic resource's ability to process data, or deplete SANDAG office supplies.

IV. USE OF TECHNOLOGY WHILE OPERATING A VEHICLE

SANDAG non-employees are prohibited from utilizing an electronic device such as a cell phone without hands-free equipment while operating a vehicle to conduct SANDAG business. Non-employees also are prohibited from sending text messages or emails while operating a vehicle if they are using the vehicle to conduct SANDAG business.

V. DISCLOSURE OF SANDAG INFORMATION OR DATA

SANDAG non-employees who transfer or copy information or data from SANDAG technology or electronic resources to devices that are not owned or controlled by SANDAG must exercise caution to prevent SANDAG information or data from being hacked or otherwise disclosed. In the event any SANDAG information or data is disclosed to unauthorized persons, or electronic resources containing SANDAG information or data is hacked, lost or stolen, the non-employee must notify the SANDAG Information Systems Manager within 24 hours.

VI. CONSEQUENCES OF VIOLATING THIS POLICY

The consequences for violating this policy include, but are not limited to, termination of the non-employee's contract between SANDAG and the non-employee's employer, termination of the non-employee's services for SANDAG, and/or referral to legal authorities for prosecution under California Penal Code Section 502 or other applicable laws.

VII. REPORTING OF ABNORMALITIES OR MISUSE

Users should report any misuse, abnormality, or security breach as soon they observe it. Abnormalities or breaches of security should be reported to the Information Systems Manager within 24 hours, preferably immediately. If any user observes a misuse, such as an electronic communication containing obscene or harassing language, or unauthorized access to electronic resources by a consultant or independent contractor, the user should report the misuse to the SANDAG Information Systems Manager.

VIII. FOR FURTHER INFORMATION

For additional guidance on the use of technology and electronic resources by non-employees at SANDAG, please consult with a member of the SANDAG Information Systems team.



Acknowledgement

use of technology and electronic resources

by SANDAG "Non-Employees"

I understand that the Use of Technology and Electronic Resources by SANDAG "Non-Employees" policy covers me as a "non-employee" per the definition stated in the policy. I further understand that the policy is applicable to, but not limited to, computer systems, software, hardware, servers, networks, electronic mail, cell phones, computing devices, paid for, in whole or in part (including reimbursement of expenses) by SANDAG. Collectively, these devices are referred to in the policy as "technology and electronic resources." In addition, the policy covers Internet services, Intranet, voicemail systems, facsimile machines, scanners and photocopiers on SANDAG premises and/or within SANDAG control.

I understand that the technology and electronic resources provided by SANDAG are to be used for official SANDAG business. These resources shall only be used for legal purposes and shall not be used in any manner or for any purpose that is illegal, dishonest, threatening, or inconsistent with law, any contract between SANDAG and me or my employer, or SANDAG policy.

I understand that by using the technology and electronic resources provided by SANDAG I should not have an expectation of privacy. Any information placed on, created on, or transmitted in or through these resources belongs to SANDAG, and that information, as well as any information accessed from these resources, may be monitored, searched, accessed, used, disclosed, and/or preserved by SANDAG. The assignment or use of a User ID and/or password is not an indicator of privacy.

I understand that in the event any SANDAG information or data is disclosed to unauthorized persons, or equipment containing SANDAG information or data is hacked, lost or stolen, I must notify the SANDAG Information Systems Manager within 24 hours.

I have read the policy, will comply with all of the terms and conditions set forth therein, avoid activities described in the Unacceptable Uses section, and will ensure that my use of SANDAG technology resources complies with the policy.

Questions regarding the policy, or reports of abnormalities or misuse, should be directed to the SANDAG Information Systems Manager.

Print Name: _____

Title/Employer: _____

Signature: _____ Date: _____



PART 15 - GLOSSARY

A&E: Architecture and Engineering.

Agreement: The contract between SANDAG and Contractor or Consultant awarded pursuant to this RFP.

BAFO: Best and Final Offer, which can be requested from one or more proposers by SANDAG during the negotiations process for a contract document.

Bench: Small Business and/or Disadvantaged Business Enterprises that have provided SANDAG with their rates and requested that prime contractors be notified of their interest in working as subcontractors on SANDAG projects in stated areas of specific expertise.

Business Day: Monday through Friday except for the following holidays as they are observed per the California Government Code: New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day.

Caltrans: The California Department of Transportation.

Contractor or Consultant: Interchangeable terms that when started with an uppercase "C" refer to the prime consultant or prime contractor that will provide the services either directly or through the use of Subcontractors or Subconsultants pursuant to the Agreement.

CFR: Code of Federal Regulations.

CGL: Commercial General Liability.

CIS: Compliance Information System.

CM: Construction Management.

COI: Certificate of Insurance.

Confidential Information: information in any form that is not generally known and that is treated as confidential by a party, including business, financial, statistical, and non-public personal information, trade secrets, know-how, applications, documentation, schematics, procedures, as well as PII, information covered by legal privilege, and other proprietary information that may be disclosed or incorporated in materials or products provided to one party by the other, whether or not intentionally or unintentionally disclosed, and whether or not such information is subject to legal protections or restrictions.

CPR: Certified Payroll Records.

CUCP: California Unified Certification Program; a State-run program that certifies firms as DBEs, eliminating the need for firms to obtain certifications from multiple agencies.

DBE: Disadvantaged Business Enterprise; a for-profit small business concern owned and controlled by a socially and economically disadvantaged person as defined in 49 CFR 26.5 and as certified by the CUCP.

Deliverables: Services and work products required to be provided to SANDAG under the Agreement.

DGS: Department of General Services

DIR: The State of California's Department of Industrial Relations

DISCO: Diversity in Small Contractor Opportunities

DOL: Department of Labor

DOT: The federal Department of Transportation.

DUNS Number: The 9-digit number assigned by Dun and Bradstreet, Inc. to identify unique business entities.

DVBE: Disabled Veteran Business Enterprise

ECI: Employment Cost Index

EEO: Equal Employment Opportunity

Engineer: The person designated by SANDAG to have responsibility for planning and supervising all technical aspects of the work under this Agreement, including development of specifications, acceptance of goods, and approval of payment. Notice to Proceed: a document from SANDAG instructing a Contractor that the Agreement has been executed and to commence delivery of the goods and services to be provided.

EPA: Environmental Protection Agency.

FPR: Final Proposal Revisions.

FHWA: Federal Highway Administration.

FRA: Federal Railroad Administration.

FTA: Federal Transit Administration.

FUR: Final Utilization Report – Utilization of All Subconsultants/Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses

GFE: Good Faith Effort - the effort that must be made by a Proposer to utilize a sufficient number of DBEs. GFE documentation must be submitted by a Proposer when it is unable to meet the DBE goal on federally-funded work.

LCMS: Labor Compliance Monitoring System.

Maximum Aggregate Amount: Aggregate of all Task Orders and Work Orders

MTS: Metropolitan Transit System.

NAICS: North American Industry Classification System.

NCTD: North County Transit District.

NEPA: National Environmental Policy Act.

Notice to Proceed: A document from SANDAG instructing a Contractor that the Agreement has been executed and that work under the Agreement is to commence

PCI: Personal Credit Information.

PII (Personally Identifiable Information): information that can be used to identify a specific individual, either alone or when combined with other private or public information that can be linked in some way to a specific individual.

Project Manager: The individual identified by SANDAG as SANDAG primary contact for the receipt and management of the goods and services required under the Agreement.

Proposer: The company or entity submitting a proposal to supply SANDAG with services in response to this solicitation and which, if selected for award, will be known as the Contractor or Consultant.

Repair Work: Tasks required to return a facility or infrastructure to proper operating condition.

RFP: Request for Proposals.

SaaS: Software as a Service.

SANDAG: San Diego Association of Governments.

SANDAG Data: All information, data, and other content, including Confidential Information and other information whether or not made available by SANDAG or SANDAG agents, representatives or users, to a Contractor or potential Contractor or their employees, agents, representatives or Subcontractors, and any information, data and content directly derived from the foregoing, including data reflecting user access or use.

SAM: System for Award Management.

SB: A Small Business or Small Business Enterprise as defined in 13 CFR 121.

SIP: State Implementation Plan.

Subcontractor or Subconsultant: Interchangeable terms that refer to a firm contracted by the prime consultant to perform a portion of the scope of work for the prime consultant.

Task Order: A contract document from SANDAG authorizing Contractor to provide goods and/or services in excess of \$10,000 that is issued under the terms and conditions of an established Agreement.

Technical Specification: Part of the overall design documents for a project, setting forth the features, characteristics, standards, quantities and other criteria for products and services to be used by the Contractor in undertaking work and completing a project.

Work Order: A contract document from SANDAG authorizing Contractor to provide goods and/or services for \$10,000 or less in value that is issued under the terms and conditions of an established Agreement.

U.S.C.: United States Code

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the “City Data”). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR’S** discovery or reasonable belief of any unauthorized access of City Data (a “Data Breach”), or of any incident affecting, or potentially affecting City Data related to cyber security (a “Security Incident”), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY’S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY’S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR’S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY’S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR’S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network (“BAVN”) at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR’S** principals, and **CONTRACTOR’S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the “Restricted Persons”)

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act (“FACTA”), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards (“PCI DSS”). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR’S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively “Confidential Information”) are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

	Limits
<p>___ Workers' Compensation (WC) and Employer's Liability (EL)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 10px;"> <div style="width: 45%;"> <p><input type="checkbox"/> Waiver of Subrogation in favor of City</p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Longshore & Harbor Workers <input type="checkbox"/> Jones Act</p> </div> </div>	<p style="text-align: center;">WC <u>Statutory</u></p> <p style="text-align: center;">EL _____</p>
<p>___ General Liability</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 10px;"> <div style="width: 45%;"> <p><input type="checkbox"/> Products/Completed Operations</p> <p><input type="checkbox"/> Fire Legal Liability</p> <p><input type="checkbox"/> _____</p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Sexual Misconduct</p> </div> </div>	
<p>___ Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)</p>	
<p>___ Professional Liability (Errors and Omissions)</p> <p style="margin-left: 20px;">Discovery Period _____</p>	
<p>___ Property Insurance (to cover replacement cost of building - as determined by insurance company)</p> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 10px;"> <div style="width: 45%;"> <p><input type="checkbox"/> All Risk Coverage</p> <p><input type="checkbox"/> Flood</p> <p><input type="checkbox"/> Earthquake</p> </div> <div style="width: 45%;"> <p><input type="checkbox"/> Boiler and Machinery</p> <p><input type="checkbox"/> Builder's Risk</p> <p><input type="checkbox"/> _____</p> </div> </div>	
<p>___ Pollution Liability</p> <p><input type="checkbox"/> _____</p>	
<p>___ Surety Bonds - Performance and Payment (Labor and Materials) Bonds</p>	
<p>___ Crime Insurance</p>	

Other: _____



CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

COMPLIANCE DOCUMENTS

Finance Branch, Concessions Unit
221 North Figueroa Street, Suite
180 Mail Stop 625-26
Los Angeles, CA 90012 Telephone:
(213) 202-3280

Fax: (213) 202-2678
Web: www.laparks.org

January 2020



CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

COMPLIANCE DOCUMENTS

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CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS

SECTION I

Compliance Documents to be Submitted by Contractor

Section A

**NONDISCRIMINATION, EQUAL EMPLOYMENT PRACTICES,
AND AFFIRMATIVE ACTION PROGRAM**

SECTION A

NONDISCRIMINATION, EQUAL EMPLOYMENT PRACTICES, AND AFFIRMATIVE ACTION PROGRAM

Proposers are advised that any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Los Angeles Administrative Code Section 10.8.2., Non-discrimination Clause.

All contracts for which the consideration is One Thousand Dollars (\$1,000.00) or more shall comply with the provisions of Los Angeles Administrative Code Sections 10.8.3., Equal Employment Practices Provisions. By affixing its signature on a contract that is subject to the Equal Employment Practices Provisions, the Contractor shall agree to adhere to the provisions in the Equal Employment Practices Provisions for the duration of the contract.

All contracts for which the consideration is Twenty Five Thousand Dollars (\$25,000.00) or more shall comply with the provisions of Los Angeles Administrative Code Sections 10.8.4., Affirmative Action Program Provisions. By affixing its signature on a contract that is subject to the Affirmative Action Program Provisions, the Contractor shall agree to adhere to the provisions in the Affirmative Action Program Provisions for the duration of the contract.

Furthermore, contractors shall include similar provisions in all subcontracts awarded for work to be performed under the contract with the City and shall impose the same obligations. The contract with the subcontractor that contains similar language shall be made available to the Office of Contract Compliance upon request.

The City no longer requires separate affidavits to confirm compliance with any of these programs. Contractors agree to adhere to the abovementioned programs by affixing its signature on a contract resulting from this RFP process.

Proposers seeking additional information regarding the requirements of the City's Non-Discrimination Clause, Equal Employment Practices and Affirmative Action Program may visit the Bureau of Contract Administration's web site at <http://bca.lacity.org>.

INSTRUCTIONS:

- a. No action required. By affixing a signature to a contract that results from this RFP process, the contractor agrees to adhere to these programs.

Section B

CONTRACTOR RESPONSIBILITY ORDINANCE STATEMENT

SECTION B

CONTRACTOR RESPONSIBILITY ORDINANCE STATEMENT

The Contractor Responsibility Ordinance (CRO) requires a determination, via the CRO questionnaire, that prospective contractors are responsible and capable of fully performing the work before a contract is awarded by the City of Los Angeles. Additional information may be found at the following website: bca.lacity.org

INSTRUCTIONS:

- a. The questionnaire must be completed, appropriately signed, and submitted with the proposal (Pages 1 through 9).

CITY OF LOS ANGELES
CONTRACTOR RESPONSIBILITY ORDINANCE
(Los Angeles Administrative Code Section 10.40 et seq.)

1. What is the Contractor Responsibility Ordinance?

The Contractor Responsibility Ordinance (CRO) requires that each department make a determination as to whether prospective contractors are responsible and capable of fully performing the work before being awarded a City contract. The Ordinance also requires prospective contractors to complete a Responsibility Questionnaire that will be posted on the internet for 14 calendar days for public review.

2. When was the Ordinance adopted?

The City Council adopted the CRO on November 21, 2000. Regulations implementing the Ordinance were adopted on June 19, 2001.

3. Who is responsible for the administration and enforcement of the Ordinance?

Three departments were named as administrative agencies responsible for the administration of the CRO. Each Designated Administrative Agency (DAA) administers the Ordinance for a specific type of agreement. The three DAA's, the type of agreement each DAA is responsible for, and contact information for each DAA is provided in the table below.

Administrative Agency	Agreement Type	Contact Information
Public Works, BCA	Service	Russ Strazella (213) 580-5012
Public Works, BCA	Construction	Russ Struzella (213) 580-5012
General Services	Procurement	Raymond Richards (213) 485-4591

4. Are all service, procurement, and construction agreements subject to the CRO?

Generally, an agreement, including one processed as an Authorization for Expenditure (AFE) with a Letter of Agreement, is covered by the CRO if it meets one of the definitions below.

Service agreements: Agreements covered under the general category of a "service agreement" include:

- An agreement for \$25,000.00 or more and for at least three months in which a contractor will provide services to or for the City.
- An agreement for a lease or license of City property if the service to be performed on the property is something that City employees could perform.
- An agreement for the lease or license of City property that is in a location where a substantial number of the general public might visit.
- An agreement for the grant of City financial assistance for \$100,000 or more if the agreement is for the purpose of economic development or job growth. City financial

assistance may also include loans if certain conditions are met. (Refer to Sec. 10.40.0(b) of the CRO.)

Purchase agreements: Purchase agreements are covered if they are for \$100,000 or more. Agreements to purchase garments are covered if they are for \$25,000 or more.

Construction agreements: All construction agreements are covered, regardless of amount or term.

5. When did the Ordinance become applicable?

The Ordinance is being applied to Invitations for Bids (IFB) (including Requests for Proposals, Requests for Qualifications, “sole-sourced” contracts, and any other procurement process) released to the public **on or after September 4, 2001**. An agreement entered into as a result of an IFB released prior to that date is not subject to the CRO unless it is amended after September 4, 2001, and the amended agreement meets the definitions stated in the answer to Question #4 above.

6. If an IFB is subject to the CRO, what must a department do?

The department must inform prospective bidders/proposers that the CRO is applicable to the IFB. The department must also include the appropriate Responsibility Questionnaire for bidders/proposers to fill out. Depending on the type of contract to be awarded, one of three Questionnaires may be included in the IFB: Service; Procurement; and Construction.

7. What is a Responsibility Questionnaire?

The Responsibility Questionnaire asks for information about the bidder/proposer: business organization or structure; financial resources and responsibility; performance history; prior disputes; and history in complying with laws. Before a department awards a contract, the department will consider information contained in the Questionnaire as part of the review of a bidder/proposer’s responsibility, as well as any information contained in the Office of Contract Compliance’s Contractor Evaluation database [<http://caodocs.ci.la.ca.us/ContEval/>] regarding the proposer’s prior performance on City contracts.

8. What must a bidder/proposer do when responding to an IFB?

If the IFB is subject to the CRO, the bidder/proposer must complete the Responsibility Questionnaire and return it to the City department with the bid/proposal. If a bidder/proposer does not submit a completed Questionnaire with the bid/proposal, the City department may consider the bidder/proposer to be non-responsive to the IFB and may disqualify the bidder/proposer from the rest of the IFB process.

9. Is a separate Questionnaire required for each IFB?

Unless the IFB is exempt, a separate Questionnaire must be submitted for each IFB to which a bidder/proposer responds.

10. What will the City do with the Questionnaire?

The department responsible for awarding the agreement will review the information contained in the submitted questionnaires, and if necessary, follow up with the bidder/proposer to clarify any information contained in the Questionnaire. The awarding authority will send the completed Questionnaires to the appropriate DAA. The DAA will post the Questionnaires on the City's Bidder/Contractor Responsibility website: www.lacity.org/bidresp. This posting also applies to "sole-sourced" contracts, so the completed Questionnaire from a proposed "sole-sourced" contractor must be forwarded to the appropriate DAA for posting.

11. How long will the Questionnaires be posted?

The Questionnaires will be posted on the internet for 14 calendar days. Unless an exemption applies, a department cannot award an agreement until the posting requirement has been met.

12. What happens during the 14 calendar-day posting period?

The general public will be able to review the Questionnaires posted. If, during the 14 calendar-day posting period, the DAA receives information that calls into question a bidder/proposer's responsibility, the DAA will investigate the matter. In that case, no agreement may be awarded until the DAA finishes its investigation. Information obtained during the investigation will be provided to the department to consider in its determination of a bidder/proposer's responsibility.

13. How does a department know that the posting requirement has been met?

The awarding department should complete the top portion of the Posting Verification Form and forward it to the DAA along with the Questionnaires. The DAA will complete the bottom portion of the Posting Verification Form and return it to the department when the posting requirement has been met.

14. Are contract amendments subject to the CRO?

If an agreement is amended after September 4, 2001, and the amended agreement meets the definitions stated in the answer to Question #4 above, it is subject to the CRO. Contractors do not have to submit a Questionnaire; however, the CRO Contract Language must be incorporated into the amended agreement.

15. After the agreement is awarded, or the agreement is amended, what does the CRO require the contractor to do?

The CRO requires a contractor to:

- Comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.

- Notify the awarding authority within 30 calendar days after receiving notice that any governmental agency has started an investigation into violations of, or has found that the contractor has violated, any federal, state, or local law in the performance of the contract..
- When applicable, provide the awarding authority, within 30 calendar days, updated responses to the Questionnaire if a change occurs that would affect the contractor's responsibility and ability to continue the agreement.
- Ensure that subcontractors working on the City agreement comply with all federal, state, and local laws in the performance of the agreement.
- Ensure that subcontractors working on the City agreement submit a Pledge of Compliance to comply with the CRO.

16. What happens if a contractor is found to be in violation of the Ordinance?

The DAA will notify the contractor that a violation has been found and give the contractor 10 calendar days to correct the violation. If the contractor fails to do so, the City may terminate the agreement and pursue all available contractual remedies. The City may also hold a non-responsibility hearing and debar the contractor from doing business with the City for five (5) years.

17. What about subcontractors?

Subcontractors are subject to the CRO, and the contractor must ensure that each of its subcontractors complies with the CRO. Subcontractors do not need to complete a Questionnaire, but they must submit to the awarding department a Pledge of Compliance with the Ordinance before they can start work on a City agreement.

18. What if a subcontractor is found to be in violation of the Ordinance?

Because the prime contractor is responsible for ensuring that all its subcontractors comply with the CRO, the sanctions listed in the answer to Question #16 may be applied to the prime contractor if the subcontractor does not correct the violation(s).

19. Are there any exemptions under the Ordinance?

Generally, two categories of exemptions exist under the CRO:

(1) Agreements exempt from all the CRO requirements:

- Contracts with a governmental entity such as the United States of America, the State of California, a county, city or public agency of such entities, or a public or quasi-public corporation located therein and declared by law to have such status.
- Contracts for the investment of trust moneys or agreements relating to the management of trust assets.
- Banking contracts entered into by the Treasurer pursuant to California Government Code Section 53630 et seq.

(2) Agreements that are only exempt from the requirement that a bidder/proposer submit a Questionnaire. The contractor must still comply with all other CRO provisions.

- Agreements awarded on the basis of emergency circumstances when the awarding authority finds that the City would suffer a financial loss or that City operations would be adversely impacted. This exemption is subject to approval by the DAA.
- Agreements for goods or services that are proprietary or available from only one source. This exemption is subject to approval by the DAA.
- Agreements awarded under the authority of Charter Sections 371(e)(5), (6), (7) or (8). The awarding authority must certify in writing that the contract is entered into in compliance with the requirements of those Charter sections.

20. Where can I obtain a copy of the Contractor Responsibility Ordinance and the Rules and Regulations?

All CRO-related information and documents can be found on the CRO website:
<http://www.lacity.org/bidresp>.

**CITY OF LOS ANGELES
RESPONSIBILITY QUESTIONNAIRE**

RESPONSES TO THE QUESTIONS CONTAINED IN THIS QUESTIONNAIRE MUST BE SUBMITTED ON THIS FORM. In responding to the Questionnaire, neither the City form, nor any of the questions contained therein, may be retyped, recreated, modified, altered, or changed in any way, in whole or in part. Bidders or Proposers that submit responses on a form that has been retyped, recreated, modified, altered, or changed in any way shall be deemed non-responsive.

The signatory of this Questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein. Failure to complete and return this questionnaire, any false statements, or failure to answer (a) question(s) when required, may render the bid/proposal non-responsive. All responses must be typewritten or printed in ink. Where an explanation is required or where additional space is needed to explain an answer, use the Responsibility Questionnaire Attachments. Submit the completed form and all attachments to the awarding authority. Retain a copy of this completed form for future reference. Contractors must submit updated information to the awarding authority if changes have occurred that would render any of the responses inaccurate in any way. Updates must be submitted to the awarding authority within 30 days of the change(s).

A. CONTACT INFORMATION

CITY DEPARTMENT INFORMATION

City Department/Division Awarding Contract	City Contact Person	Phone
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City Bid or Contract Number (if applicable) and Project Title

BIDDER/CONTRACTOR INFORMATION

Bidder/Proposer Business Name

Street Address	City	State	Zip
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Contact Person, Title	Phone	Fax
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TYPE OF SUBMISSION:

The Questionnaire being submitted is:

- An initial submission of a completed Questionnaire.
- An update of a prior Questionnaire dated ____/____/____.
- No change. I certify under penalty of perjury under the laws of the State of California that there has been no change to any of the responses since the last Responsibility Questionnaire dated ____/____/____ was submitted by the firm. Attach a copy of that Questionnaire and sign below.

Print Name, Title	Signature	Date
-------------------	-----------	------

TOTAL NUMBER OF PAGES SUBMITTED, INCLUDING ALL ATTACHMENTS: _____

B. BUSINESS ORGANIZATION/STRUCTURE

Indicate the organizational structure of your firm. "Firm" includes a sole proprietorship, corporation, joint venture, consortium, association, or any combination thereof.

Corporation: Date incorporated: ____/____/____ State of incorporation: _____

List the corporation's current officers.

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Check the box only if your firm is a publicly traded corporation.

List those who own 5% or more of the corporation's stocks. Use Attachment A if more space is needed. Publicly traded corporations need not list the owners of 5% or more of the corporation's stocks.

Limited Liability Company: Date of formation: ____/____/____ State of formation: _____

List members who own 5% or more of the company. Use Attachment A if more space is needed.

Partnership: Date formed: ____/____/____ State of formation: _____

List all partners in your firm. Use Attachment A if more space is needed.

Sole Proprietorship: Date started: ____/____/____

List any firm(s) that you have been associated with as an owner, partner, or officer for the last five years. Use Attachment A if more space is needed. Do not include ownership of stock in a publicly traded company in your response to this question.

Joint Venture: Date formed: ____/____/____

List: (1) each firm that is a member of the joint venture and (2) the percentage of ownership the firm will have in the joint venture. Use Attachment A if more space is needed. **Each member of the Joint Venture must complete a separate Questionnaire for the Joint Venture's submission to be considered as responsive to the invitation.**

C. OWNERSHIP AND NAME CHANGES

1. Is your firm a subsidiary, parent, holding company, or affiliate of another firm?

Yes **No**

If **Yes**, explain on Attachment A the relationship between your firm and the associated firms. Include information about an affiliated firm only if one firm owns 50% or more of another firm, or if an owner, partner or officer of your firm holds a similar position in another firm.

2. Has any of the firm's owners, partners, or officers operated a similar business in the past five years?

Yes **No**

If **Yes**, list on Attachment A the names and addresses of all such businesses, and the person who operated the business. Include information about a similar business only if an owner, partner or officer of your firm holds a similar position in another firm.

3. Has the firm changed names in the past five years?

Yes **No**

If **Yes**, list on Attachment A all prior names, addresses, and the dates they were used. Explain the reason for each name change in the last five years.

4. Are any of your firm's licenses held in the name of a corporation or partnership?

Yes **No**

If Yes, list on Attachment A the name of the corporation or partnership that actually holds the license.

Bidders/Contractors must continue on to Section D and answer all remaining questions contained in this Questionnaire.

The responses in this Questionnaire will not be made available to the public for review. This is not a public document. [CPCC §20101(a)]

D. FINANCIAL RESOURCES AND RESPONSIBILITY

5. Is your firm now, or has it ever been at any time in the last five years, the debtor in a bankruptcy case?
 Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

6. Is your company in the process of, or in negotiations toward, being sold?
 Yes No

If **Yes**, explain the circumstances on Attachment B.

E. PERFORMANCE HISTORY

7. How many years has your firm been in business? _____ Years.

8. Has your firm ever held any contracts with the City of Los Angeles or any of its departments?
 Yes No

If, **Yes**, list on an Attachment B all contracts your firm has had with the City of Los Angeles for the last 10 years. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

9. List on Attachment B all contracts your firm has had with any private or governmental entity (other than the City of Los Angeles) over the last five years that are similar to the work to be performed on the contract for which you are bidding or proposing. For each contract listed in response to this question, include: (a) entity name; (b) purpose of contract; (c) total cost; (d) starting date; and (e) ending date.

Check the box if you have not had any similar contracts in the last five years

10. In the past five years, has a governmental or private entity or individual terminated your firm's contract prior to completion of the contract?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

11. In the past five years, has your firm used any subcontractor to perform work on a government contract when you knew that the subcontractor had been debarred by a governmental entity?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

12. In the past five years, has your firm been debarred or determined to be a non-responsible bidder or contractor?

Yes No

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

F. DISPUTES

13. In the past five years, has your firm been the defendant in court on a matter related to any of the following issues? For parts (a) and (b) below, check **Yes** even if the matter proceeded to arbitration without court litigation. For part (c), check **Yes** only if the matter proceeded to court litigation. If you answer **Yes** to any of the questions below, explain the circumstances surrounding each instance on Attachment B. You must include the following in your response: the name of the plaintiffs in each court case, the specific causes of action in each case; the date each case was filed; and the disposition/current status of each case.

(a) Payment to subcontractors?

Yes **No**

(b) Work performance on a contract?

Yes **No**

(c) Employment-related litigation brought by an employee?

Yes **No**

14. Does your firm have any outstanding judgements pending against it?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

15. In the past five years, has your firm been assessed liquidated damages on a contract?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance and identify all such projects, the amount assessed and paid, and the name and address of the project owner.

G. COMPLIANCE

16. In the past five years, has your firm or any of its owners, partners or officers, ever been investigated, cited, assessed any penalties, or been found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed on Attachment C (Page 9)? For this question, the term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation.

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance, including the entity that was involved, the dates of such instances, and the outcome.

17. If a license is required to perform any services provided by your firm, in the past five years, has your firm, or any person employed by your firm, been investigated, cited, assessed any penalties, subject to any disciplinary action by a licensing agency, or found to have violated any licensing laws?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

18. In the past five years, has your firm, any of its owners, partners, or officers, ever been penalized or given a letter of warning by the City of Los Angeles for failing to obtain authorization from the City for the substitution of a Minority-owned (MBE), Women-owned (WBE), or Other (OBE) business enterprise?

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance in the last five years.

H. BUSINESS INTEGRITY

19. For questions (a), (b), and (c) below, check **Yes** if the situation applies to your firm. For these questions, the term “firm” includes any owners, partners, or officers in the firm. The term “owner” does not include owners of stock in your firm if the firm is a publicly traded corporation. If you check **Yes** to any of the questions below, explain on Attachment B the circumstances surrounding each instance.

(a) Is a governmental entity or public utility currently investigating your firm for making (a) false claim(s) or material misrepresentation(s)?

Yes **No**

(b) In the past five years, has a governmental entity or public utility alleged or determined that your firm made (a) false claim(s) or material misrepresentation(s)?

Yes **No**

(c) In the past five years, has your firm been convicted or found liable in a civil suit for, making (a) false claim(s) or material misrepresentation(s) to any governmental entity or public utility?

Yes **No**

20. In the past five years, has your firm or any of its owners or officers been convicted of a crime involving the bidding of a government contract, the awarding of a government contract, the performance of a government contract, or the crime of fraud, theft, embezzlement, perjury, bribery? For this question, the term “owner” does not include those who own stock in a publicly traded corporation.

Yes **No**

If **Yes**, explain on Attachment B the circumstances surrounding each instance.

CERTIFICATION UNDER PENALTY OF PERJURY

I certify under penalty of perjury under the laws of the State of California that I have read and understand the questions contained in this questionnaire and the responses contained on all Attachments. I further certify that I have provided full and complete answers to each question, and that all information provided in response to this Questionnaire is true and accurate to the best of my knowledge and belief.

Print Name, Title

Signature

Date

ATTACHMENT A FOR SECTIONS A THROUGH C

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page _____

ATTACHMENT B FOR SECTIONS D THROUGH H

Where additional information or an explanation is required, use the space below to provide the information or explanation. Information submitted on this sheet must be typewritten or printed in ink. Include the number of the question for which you are submitting additional information. Make copies of this Attachment if additional pages are needed.

Page _____

ATTACHMENT C: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term “owner” does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation on Attachment B of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

FEDERAL ENTITIES

Federal Department of Labor

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

Federal Department of Justice

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

Federal Department of Housing and Urban Development (HUD)

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

Federal Environmental Protection Agency

- Environmental Protection Act

National Labor Relations Board

- National Labor Relations Act

Federal Equal Employment Opportunity Commission

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

STATE ENTITIES

California's Department of Industrial Relations

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

California's Department of Fair Employment and Housing

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

California Department of Consumer Affairs

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractors' State Licensing Board

California's Department of Justice

LOCAL ENTITIES

City of Los Angeles or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

OTHERS

Any other federal, state, local governmental entity for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.

Section C

**EQUAL BENEFITS ORDINANCE AFFIDAVIT AND FIRST
SOURCE HIRING ORDINANCE (FSHO)**

SECTION C
EQUAL BENEFITS ORDINANCE AFFIDAVIT
AND
FIRST SOURCE HIRING ORDINANCE (FSHO)

Any contract awarded pursuant to this procurement process shall be subject to the applicable provisions of Los Angeles Administrative Code Section 10.8.2.1, Equal Benefits Ordinance (EBO).

All Proposers shall complete and submit the Equal Benefits Ordinance Compliance Affidavit, available on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at www.labavn.org, prior to award of a City contract that exceeds Twenty Five Thousand Dollars (\$25,000.00). The affidavit shall be valid for a period of three (3) years from the date it is first **uploaded** onto the City's BAVN. Proposers do not need to submit supporting documentation with their bids or proposals. However, the City may request supporting documentation to verify that the benefits are provided equally as specified on the EBO Affidavit.

Proposers seeking additional information regarding the requirements of the Equal Benefits Ordinance may visit the Bureau of Contract Administration's web site at <http://bca.lacity.org>.

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the City, the value of which exceeds Twenty Five Thousand Dollars (\$25,000.00) with a term of at least three (3) months, and certain recipients of City Loans or Grants, shall comply with the provisions of Los Angeles Administrative Code Sections 10.44 et seq., First Source Hiring Ordinance (FSHO).

All Proposers shall complete and electronically sign the FSHO Compliance Affidavit available on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at www.labavn.org prior to award of a City contract. The affidavit shall be valid for a period of three (3) years from the date it is first uploaded on the City's BAVN.

Proposers seeking additional information regarding the requirements of the First Source Hiring Ordinance may visit the Bureau of Contract Administration's web site at <http://bca.lacity.org>.

INSTRUCTIONS:

- a. All proposers shall complete and electronically sign the EBO/FSHO Compliance Affidavit web application form located on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at www.labavn.org.

Section D

**LIVING WAGE ORDINANCE AND SERVICE CONTRACT
WORKER RETENTION ORDINANCE**

SECTION D
LIVING WAGE ORDINANCE
AND
SERVICE CONTRACT WORKER RETENTION ORDINANCE

Unless approved for an exemption, contractors under contracts primarily for the furnishing of services to or for the City and that involve an expenditure in excess of Twenty Five Thousand Dollars (\$25,000.00) and a contract term of at least three (3) months, lessees and licensees of City property, and certain recipients of City financial assistance, shall comply with the provisions of Los Angeles Administrative Code Sections 10.37 et seq., Living Wage Ordinance (LWO) and 10.36 et seq., Service Contract Worker Retention Ordinance (SCWRO). Additional information may be found at <http://bca.lacity.org/index.cfm>.

INSTRUCTIONS:

Proposers who believe that they meet the qualifications for one of the exemptions described in the LWO List of Statutory Exemptions shall apply for exemption from the LWO by submitting with their proposal the Bidder/Contractor Application for Non-Coverage or Exemption (Form OCC/LW-10), the Non-Profit/One-Person Contractor Certification of Exemption (Form OCC/LW-13), or the Small Business Exemption Application (Form OCC/LW-26A). These exemption forms are available on the Bureau of Contract Administration website at <http://bca.lacity.org/index.cfm>.

If no exemption is claimed, do not submit the abovementioned forms with the proposal.

**CITY OF LOS ANGELES
LIVING WAGE ORDINANCE
(Los Angeles Administrative Code Section 10.37 et seq.)**

1. What is the Living Wage Ordinance?

The Living Wage Ordinance (LWO) requires employers who have agreements with the City to pay their employees at least a minimum “living wage” and to provide certain benefits. If the agreement is subject to the LWO, the employer must do the following:

- Pay employees working on the subject agreement a wage rate that is at least equal to the “living wage” rate. The “living wage” is adjusted annually and becomes effective July 1 of each year. Employers can obtain information about the living wage rate currently in effect by going to Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) website at www.lacity.org/bca/OCCmain.html.
- Provide employees with at least 12 paid days off per year for sick leave, vacation, or personal necessity; and at least 10 unpaid sick days off per year.
- Tell employees who make less than \$12.00 per hour that they may qualify for the federal Earned Income Tax Credit and provide them with the forms required to apply for the credit.
- Cooperate with the City by providing access to the work site and to payroll and related documents so that the City can determine if the employer is complying with the LWO.
- Pledge to comply with federal laws prohibiting an employer from retaliating against employees for union organizing.
- Not retaliate against any employee who makes claims about non-compliance with the LWO.

2. When was the Ordinance adopted?

The LWO was adopted in May, 1997 and amended in January, 1999.

3. What types of agreements are subject to the Ordinance?

Generally, the LWO covers the following types of agreements:

- An agreement in an amount over \$25,000.00 and for at least three months in which an employer will provide services to or for the City.
- An agreement for the lease or license of City property if the service being performed on the property is something that City employees would otherwise do.
- An agreement for the lease or license of City property that is in a location where a substantial number of the general public might visit.
- An agreement in which the City gives financial assistance for the purpose of promoting economic development or job growth.
- An agreement in which the City determines that applying the LWO would be in the best interest of the City.

4. Is an agreement subject to the LWO if it was entered into before May, 1997?

Agreements executed after May, 1997 are subject to the LWO. An agreement entered into before May, 1997 may become subject to LWO if it is later amended or modified in order to add time or money to the original agreement.

5. Are there any requirements that would apply to an employer who does not have an agreement with City that is subject to the LWO?

All employers are required to comply with the LWO's prohibition against retaliation, even if the employer does not have an agreement with the City that is subject to the Ordinance.

6. Are all employees covered by the Ordinance?

Intentionally left blank 8/18/06

7. Are an employer's subcontractors subject to the requirements of the Ordinance?

A subcontractor may be covered by the Ordinance if the subcontractor performs work on the subject agreement. If so, the subcontractor must also comply with the requirements of the LWO, including all reporting requirements. The prime contractor is responsible for the making sure that the subcontractor complies with the LWO.

8. What happens if an employer is found to be in violation of the Ordinance?

Payments due may be withheld. Also, the employer may be deemed to be in material breach of the agreement. When that happens, the City may take the following steps:

- Terminate the agreement and pursue all available contractual remedies.
- Debar the employer from doing business with the City for three (3) years or until all penalties and restitution have been fully paid, whichever occurs last.
- Bring a lawsuit against the employer for all unpaid wages and health benefit premiums and/or seek a fine of up to one hundred dollars (\$100.00) for each day the violation remains uncorrected.

9. What if a subcontractor is found to be in violation of the Ordinance?

Because the prime contractor is responsible for making sure that all its subcontractors comply with the LWO, the sanctions listed in answer #8 may be applied to the prime contractor if the subcontractor does not correct the violation(s).

10. What can an employee do if an employer is in violation of the Ordinance?

The employee can submit a complaint to the Office Contract Compliance which will investigate the complaint. Also, the employee can bring his or her own lawsuit against the employer for:

- Back pay for failing to pay the correct wages or correct health benefit premiums.
- Reinstatement and back pay for retaliation.
- Triple the amount of the back pay that is owed if the violation was found by the court to be willful.

11. Are there any exemptions available under the Ordinance?

An employer may apply for an exemption based on the following categories:

- Service agreements that are less than 3 months or \$25,000 or less.

- Agreements for the purchase of goods, property, or the leasing of property (with City as the lessee).
- Construction contracts that do not meet the definition of a service agreement.
- Employees who are required to have an occupational license in order to provide services to or for the City are exempt.
- Employers who are party to a collective bargaining agreement (CBA) that has language stating that the CBA shall supersede the LWO.
- Financial assistance recipients who meet the requirements stated in Section 10.37.1(c) of the LWO.
- Employers (contractors, subcontractors, financial assistance recipients) organized under IRS Code, Section 501(c)(3) whose chief executive officer's hourly wage rate is less than eight times the hourly wage rate of the lowest paid worker are be exempt. However, this exemption does not apply to child care workers.
- Lessees or licensees who have no more than a total of seven employees and who have annual gross revenue of less than \$471,870 (effective July 1, 2012). The qualifying annual gross revenue is adjusted every July.
- One-person contractors, lessees, licensees or financial assistance recipients who employ no workers.
- Agreements that involve other governmental entities.

12. Who is responsible for the administration and enforcement of the Ordinance?

The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance, located at 1149 S. Broadway, Suite 300, and Los Angeles, CA 90015. For additional information, please call (213) 847-2625, send an e-mail inquiry to bca.eeoe@lacity.org, or go to the Office of Contract Compliance website at <http://bca.lacity.org>.

LIVING WAGE ORDINANCE STATUTORY EXEMPTIONS

Living Wage Ordinance (LWO) statutory exemptions are now divided into the following three categories:

1. Exemptions that do not require approval from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC).
2. Exemptions that do not require OCC approval but require a Contractor Certification of Exemption.
3. Exemptions that require submission of an Application for Exemption and OCC approval of the Application.

1. **The following exemptions do not require OCC approval or any Contractor Certification:** Departments only need to indicate the exemption in the appropriate category on the LWO Departmental Determination of Coverage Form.

- a. **Less than three months OR less than \$25,000 (LAAC 10.37.1(j)).** Service contracts or Authority for Expenditures that do not meet these thresholds are not covered by the LWO.
- b. **Other governmental entities (LAAC 10.37.1(g)).** Agreements with other governmental entities such as Los Angeles County, the State of California, or the University of California, are not covered by the LWO. Subcontractors to these entities are also not covered by the LWO.
- c. **Purchase of goods, property, or the leasing of property, with the City as lessee (LAAC 10.37.1(j)).** Such contracts are categorically exempt from the LWO unless they include a service component that is more than just incidental (regular and recurring services is required). Examples of such categorically exempt contracts include contracts to purchase office supplies or to lease space to be occupied by City departments.
- d. **Construction contracts, not conforming to the definition of a service contract (LAAC 10.37.1(j)).** Such contracts are categorically exempt from the LWO. Examples include construction of buildings and infrastructure.
- e. **City financial assistance not meeting thresholds (LAAC 10.37.1(c)).** Agreements to provide a contractor with City financial assistance (which typically mean grants or loans provided at interest rates that are lower than the Applicable Federal Rate) are categorically exempt from the LWO if they meet both of the following:
 - (1) The assistance given in a 12-month period is below \$1,000,000 AND less than \$100,000 per year.
 - (2) The assistance is not for economic development or job growth.
- f. **Business Improvement Districts (BID) (LWO Regulation #11).** Service agreements are categorically exempt from the LWO if the services are funded with the BID's assessment money collected by the City after the formation of the BID. Service contracts in which City money is used to hire firms to help in forming the BID remain subject to the LWO unless the contractor otherwise qualifies for an exemption.

2. **The following exemption categories do not require OCC approval, but the contractor must still submit a Contractor Certification of Exemption from Living Wage (OCC/LW-13).** No OCC approval is required for the exemption to be valid. However, the department must include the Contractor Certification of Exemption with the contract.

- a. **501(c)(3) Non-profit organizations (LAAC 10.37.1(g)):** Employers (contractors, subcontractors, financial assistance recipients) organized under IRS Code Section 501(c)(3) are exempt from the LWO if the hourly wage rate of the corporation's highest paid employee is less than eight times the hourly wage rate of the corporation's lowest paid worker. However, the exemption does not extend to Child Care Workers as defined in the LWO Rules and Regulations (an employee "whose work on an agreement involves the care or supervision of children 12 years of age and under."). A copy of the IRS 501(c)(3) Exemption Letter will be required.
 - b. **One-person contractors with no employees (LAAC 10.37.1(f)):** Contractors, lessees, licensees or financial assistance recipients who employ no workers are exempt from the LWO.
3. **The following exemption categories require submission of an application for exemption and OCC approval of the application to be valid.**
- a. **Collective bargaining agreements (CBA) that supersede the LWO (LAAC 10.37.12):** Contractors whose employees are covered by a CBA that supersede the requirements of the LWO are not subject to the LWO. A copy of the CBA with the superseding language or a letter from the union indicating that the union has agreed to allow the CBA to supersede the LWO will be required to be submitted. Example: Labor agreement between parking contractor and a labor union with language that wages and benefits in the CBA shall supersede the LWO. Contractors must use the LWO Application for Non-Coverage or Exemption form (Form OCC/LW-10) and submit a copy of the CBA or a letter from the union.
 - b. **Occupational license (LAAC 10.37.1(f)):** Employees required to possess an occupational license in order to provide the services under the City agreement are not subject to the LWO. However, only the individual employees who are required to possess an occupational license are exempt. Employees who work on the City contract and are not required to possess an occupational license remain subject to the LWO. Example: Under California Labor Code Sections 7375 – 7380, a person must be licensed by the State of California in order to inspect and certify cranes and derricks used in lifting services. Contractors must use the LWO Application for Non-Coverage or Exemption form (Form OCC/LW-10) and submit a listing of the employees who possess occupational licenses and a copy of the licenses.
 - c. **Small business exemptions for Public Lessees/Licensees (LAAC 10.37.1(i)):** Small businesses that lease property from the City may apply for OCC approval for LWO exemption if the lessee or licensee: (1) employs no more than a total of seven employees; and (2) has annual gross revenues of less than \$471,870 (adjusted July 1, 2012). This applies only to lessees with lease agreements executed after February 24, 2001, and to amendments executed after February 24, 2001 that add monies or extend term. Use the Application for "Small Business" Exemption (Form OCC/LW-26a) and submit the application with the documents requested on that form.
 - d. **City financial assistance agreements that exceed the LWO monetary thresholds may apply for one of the exemptions below.** Applicants and departments should refer to Regulation #3(c) for the requirements and the documents that must be submitted with the LWO Application for Non-Coverage or Exemption (OCC/LWO-10).
 - (1) The City financial assistance recipient (CFAR) is in its first year of operation (LAAC 10.37.1(c)).
 - (2) The CFAR employs fewer than five employees (LAAC 10.37.1(c)).

(3) The CFAR would face undue hardship because it employs the long-term unemployed or provides trainee positions to prepare employees for permanent positions (LAAC 10.37.1(c)). REQUIRES COUNCIL APPROVAL.

LWO – OCC NON-COVERAGE/EXEMPTION APPLICATION**OCC DETERMINATION/APPROVAL REQUIRED**

This application for non-coverage/exemption must be submitted by the Contractor along with its bid or proposal to the AWARDING DEPARTMENT. Awarding Departments may also apply for an exemption for OCC approval. **INCOMPLETE SUBMISSIONS WILL BE RETURNED.**

Los Angeles Administrative Code 10.37, the Living Wage Ordinance (LWO), presumes all City contractors (including service contractors, subcontractors, financial assistance recipients, lessees, licensees, sublessees and sublicensees) are subject to the LWO unless an exemption applies.

CONTRACTOR INFORMATION:

1. Company Name: _____	Phone Number: _____
2. Company Address: _____	
3. Are you a Subcontractor? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the name of your Prime Contractor: _____	
4. Type of Service Provided: _____	

NON-COVERAGE INFORMATION:**TO BE REQUESTED BY AWARDING DEPARTMENTS OR CONTRACTORS**

REQUEST FOR NON-COVERAGE DETERMINATION	SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> Per Section 10.37.13 of the LWO, contractors may request a determination of non-coverage on any basis allowed by this article, including, but not limited to: non-coverage, for failure to satisfy definition of "City financial assistance recipient", "public lease/license", or "service contract".	A <i>detailed</i> memorandum explaining the basis of the request, which may include, but is not limited to: the terms of a city financial assistance agreement, purpose of the contract, location, and work performed. OCC may request further information to issue a determination.

EXEMPTION INFORMATION:

CHECK OFF ONE BOX BELOW THAT BEST DESCRIBES THE TYPE OF EXEMPTION YOU ARE APPLYING FOR AND ATTACH THE SUPPORTING DOCUMENTATION LISTED ON THE RIGHT:

TO BE REQUESTED BY AWARDING DEPARTMENTS ONLY

EXEMPTION	SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> Grant Funded Services, provided that the grant funding agency indicates in writing that the provisions of the Ordinances should not apply.	Provide a copy of grant-funding agency's determination to the OCC.

TO BE REQUESTED BY CONTRACTORS ONLY

EXEMPTION	SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> Collective bargaining agreement with supersession language - (LAAC 10.37.12): Contractors who are party to a collective bargaining agreement (CBA) which contains specific language indicating that the CBA will supersede the LWO may receive an exemption as to the employees covered under the CBA.	A copy of the CBA with the superseding language clearly marked OR A letter from the union stating that the union has agreed to allow the CBA to supersede the LWO.
<input type="checkbox"/> Occupational license required - (LAAC 10.37.1(f)): Only the individual employees who are required to possess an Occupational license to provide services to or for the City are exempt.	A listing of the employees required to possess occupational licenses to perform services to or for the City AND Copies of each of these employees' occupational licenses.

By signing, the contractor certifies under penalty of perjury under the laws of the State of California that the information submitted in support of this application is true and correct to the best of the contractor's knowledge.

Print Name of Person (Contractor) Completing This Form _____

Signature of Person (Contractor) Completing This Form _____

Title _____

Phone # _____

Date _____

ANY DETERMINATION/APPROVAL IS APPLICABLE ONLY TO THE LISTED CONTRACTOR FROM THE LWO DURING THE PERFORMANCE OF THIS CONTRACT. A SUBCONTRACTOR PERFORMING WORK ON THIS CONTRACT IS NOT EXEMPT UNLESS THE OFFICE OF CONTRACT COMPLIANCE HAS APPROVED A SEPARATE APPLICATION FOR THE INDIVIDUAL SUBCONTRACTOR.

AWARDING DEPARTMENT USE ONLY:

Dept: _____ Dept Contact: _____ Contact Phone: _____ Contract #: _____

OCC USE ONLY:

Approved / Not Approved – Reason: _____

By OCC Analyst: _____ Date: _____

LWO –DEPARTMENTAL EXEMPTION APPLICATION

EXEMPTIONS THAT REQUIRE AWARDING DEPARTMENT APPROVAL

This application for exemption must be submitted along with your bid or proposal to the AWARDING DEPARTMENT. INCOMPLETE SUBMISSIONS WILL BE RETURNED.

Los Angeles Administrative Code 10.37, the Living Wage Ordinance (LWO), presumes all City contractors (including service contractors, subcontractors, financial assistance recipients, lessees, licensees, sublessees and sublicensees) are subject to the LWO unless an exemption applies.

TO BE FILLED OUT BY THE CONTRACTOR:	
1. Company Name: _____	Phone Number: _____
2. Company Address: _____	
3. Are you a Subcontractor? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the name of your Prime Contractor: _____	
4. Type of Service Provided: _____	

EXEMPTION INFORMATION:

CHECK OFF ONE BOX BELOW THAT BEST DESCRIBES THE TYPE OF EXEMPTION YOU ARE APPLYING FOR AND ATTACH THE SUPPORTING DOCUMENTATION LISTED ON THE RIGHT:

EXEMPTION	SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> 501(c)(3) Non-Profit Organizations: <ul style="list-style-type: none"> ▪ A corporation organized under 501(c)(3) of the IRS Code qualifies for an exemption from the LWO if the highest paid employee makes less than eight times the hourly wage of the lowest paid employee. ▪ The exemption is valid for all employees except Child Care Workers. ▪ Therefore, even if a 501(c)(3) organization meets the salary test, Child Care Workers performing work on the City agreement must still be provided with the LWO required wage and time off benefits. ▪ Under the LWO’s Rules and Regulations, a Child Care Worker is an employee “whose work on an agreement involves the care or supervision of children 12 years of age and under.” ▪ This is read broadly so that the term would include, for example, tutors working with children 12 or under. 	<ol style="list-style-type: none"> 1. ATTACH a copy of your 501(c)(3) letter from the IRS. 2. ANSWER the following questions: <ol style="list-style-type: none"> A. STATE the hourly wage of HIGHEST paid employee in the organization: \$ _____ B. STATE the hourly wage of LOWEST paid employee in the organization: \$ _____ C. MULTIPLY B by 8: \$ <u>0</u> _____ 3. Based on Question 2 above, is A less than C? <input type="checkbox"/> YES <input type="checkbox"/> NO If NO, your company is NOT eligible for an exemption. If YES, sign and submit this application for final approval. 4. Will there be any Child Care Workers (as defined by the LWO Regulations) working on this Agreement? <input type="checkbox"/> YES <input type="checkbox"/> NO 5. Fill & Submit LW-18 Subcontractor Information Form.
<input type="checkbox"/> One-Person Contractors: Contractors that have no employees are exempt from the LWO. If you have employees in the future, you must comply with the Ordinance.	Fill and Submit the LW-18 Form.

I declare under penalty of perjury under the laws of the State of California that: (1) I am authorized to bind the entity listed above; (2) the information provided on this form is true and correct to the best of my knowledge; and (3) the entity qualifies for exemption from the LWO on the basis indicated above. By signing below, I further agree that should the entity listed above cease to qualify for an exemption because of a change in salary structure, non-profit status, the hiring of employees, or any other reason, the entity will notify the Awarding Department and the OCC of such change and comply with the LWO’s wage and time off requirements.

Print Name of Person Completing This Form	Signature of Person Completing This Form
Title	Date
Phone #	

ANY APPROVAL OF THIS APPLICATION EXEMPTS ONLY THE LISTED CONTRACTOR FROM THE LWO DURING THE PERFORMANCE OF THIS CONTRACT. A SUBCONTRACTOR PERFORMING WORK ON THIS CONTRACT IS NOT EXEMPT UNLESS THE OFFICE OF CONTRACT COMPLIANCE HAS APPROVED A SEPARATE EXEMPTION FOR THE INDIVIDUAL SUBCONTRACTOR.

AWARDING DEPARTMENT USE ONLY:			
Dept: _____	Dept Contact: _____	Contact Phone: _____	Contract #: _____
Approved / Not Approved – Reason: _____			
By Analyst: _____		Date: _____	

LWO – OCC SMALL BUSINESS EXEMPTION APPLICATION

EXEMPTION THAT REQUIRES OCC APPROVAL

This application for exemption is for lessees and licensees only and must be submitted along with your bid or proposal to the AWARDDING DEPARTMENT. If approved, it will EXPIRE TWO (2) YEARS from the date of approval. This may be renewable in two (2) year increments upon meeting the requirements.

INCOMPLETE SUBMISSIONS WILL BE RETURNED.

Los Angeles Administrative Code 10.37, the Living Wage Ordinance (LWO), presumes all City contractors (including service contractors, subcontractors, financial assistance recipients, lessees, licensees, sublessees and sublicensees) are subject to the LWO unless an exemption applies.

TO BE FILLED OUT BY THE CONTRACTOR:	
1. Company Name: _____ Phone Number: _____	
2. Company Address: _____	
3. Are you a Subcontractor? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, state the name of your Prime Contractor: _____	
4. STATE the total number of businesses you have (inside and outside the City of Los Angeles premises): _____	
5. STATE the total number of businesses you have inside the City of Los Angeles premises only: _____	
SECTION I: BUSINESS INFORMATION	
CHECK OFF ONE BOX IN PART A THAT BEST DESCRIBES YOUR BUSINESS AND ATTACH DOCUMENTATION LISTED IN PART B:	
PART A	PART B: SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> I am a lessee or licensee beginning my first year of operation as a business.	None Required.
<input type="checkbox"/> I have other businesses, but this is my first year of operation on City premises. Effective July 1, 2016, my gross annual revenues for all of my businesses are less than \$497,363 for the 2015 calendar year.	ATTACH 2015 IRS Tax Returns listing gross revenues for ALL of your business(es).
<input type="checkbox"/> I have (a) business(es) on City premises, and effective July 1, 2016, my gross annual revenues from all my business(es) on City premises are less than \$497,363 for the 2015 calendar year.	ATTACH 2015 IRS Tax Returns listing gross revenues for ALL of your business(es) ON CITY PREMISES.
If you DID NOT check off ANY boxes in PART A, your company IS NOT ELIGIBLE FOR AN EXEMPTION. If you checked off ANY boxes in PART A, continue to Section II.	
SECTION II: EMPLOYEE INFORMATION	
CHECK OFF ANY BOX(ES) IN PART C THAT BEST DESCRIBE YOUR BUSINESS AND ATTACH DOCUMENTATION LISTED IN PART D:	
PART C	PART D: SUPPORTING DOCUMENTATION REQUIRED
<input type="checkbox"/> I have Seven (7) employees or LESS in the entire company (inside AND outside the City of Los Angeles premises).	Submit a completed Employee Worksheet for Small Business Exemption (Form OCC/LW-26B). Information on the Employee Worksheet may subsequently require verification through payroll records. OR Payrolls for the nine (9) months you would like to have reviewed.
<input type="checkbox"/> My company's workforce worked an average of no more than 1,214 hours per month for at least three-fourths of the calendar year.	
If you DID NOT check off ANY boxes in PART C, your company IS NOT ELIGIBLE FOR AN EXEMPTION. If you checked off ANY box in PART C, ATTACH supporting documentation, SIGN , AND SUBMIT EXEMPTION FORM.	
By signing, the contractor certifies under penalty of perjury under the laws of the State of California that the information submitted in support of this application is true and correct to the best of the contractor's knowledge.	
Print Name of Person Completing This Form _____	Signature of Person Completing This Form _____
Title _____	Phone # _____
_____	Date _____
ANY APPROVAL OF THIS APPLICATION EXEMPTS ONLY THE LISTED CONTRACTOR FROM THE LWO DURING THE PERFORMANCE OF THIS CONTRACT. A SUBCONTRACTOR PERFORMING WORK ON THIS CONTRACT IS NOT EXEMPT UNLESS THE OFFICE OF CONTRACT COMPLIANCE HAS APPROVED A SEPARATE EXEMPTION FOR THE INDIVIDUAL SUBCONTRACTOR.	
AWARDDING DEPARTMENT USE ONLY:	
Dept: _____	Dept Contact: _____
Contact Phone: _____	Contract #: _____
OCC USE ONLY:	
Approved / Not Approved – Reason: _____	
By OCC Analyst: _____	Date: _____

LWO – OCC SMALL BUSINESS EXEMPTION EMPLOYEE WORKSHEET

EXEMPTION THAT REQUIRES OCC APPROVAL TO BE VALID

This worksheet must be completed for **EACH** company or business for which you have a controlling interest, **whether or not it is on City premises**. You may **COPY THIS FORM** as necessary for **EACH** company. Include the names of **ALL PERSONS** employed by **EACH** company, and the number of hours worked each month for the current year. **ATTACH this form(s) to LW-26A.**

1. Company Name: _____ Company Phone: _____

2. Company Address: _____

3. Enter # of Hours worked:

EMPLOYEE NAME	HOURS WORKED												TOTAL	
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC		
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
														0.00
4. TOTAL HOURS	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

5. Check each box indicating which nine (9) months you would like be reviewed:

	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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6a. TOTAL HOURS for the nine (9) months selected in 5 above : _____ 6b. DIVIDE 6a by 9: _____ 6c. Is 6b less than 1,214? YES NO

7. If 6c is NO, then this contract IS NOT ELIGIBLE FOR AN EXEMPTION. If 6c is YES, SIGN and ATTACH this form to LW-26A.

I certify under penalty of perjury that the information herein is true and correct to the best of my knowledge. I will provide further documentation and proof upon request. I understand that the submission of false information may lead to the revocation of any approved exemption.

Print Name of Person Completing this Form	Signature of Person Completing this Form
Title	Date
Phone #	

ANY APPROVAL OF THIS APPLICATION EXEMPTS ONLY THE LISTED CONTRACTOR FROM THE LWO DURING THE PERFORMANCE OF THIS CONTRACT. A SUBCONTRACTOR PERFORMING WORK ON THIS CONTRACT IS NOT EXEMPT UNLESS THE OFFICE OF CONTRACT COMPLIANCE HAS APPROVED A SEPARATE EXEMPTION FOR THE INDIVIDUAL SUBCONTRACTOR.

CITY OF LOS ANGELES

Service Contractor Worker Retention Ordinance (Los Angeles Administrative Code Section 10.36 et seq.)

1. What is the Service Contract Worker Retention Ordinance?

The Service Contract Worker Retention Ordinance (SCWRO), effective May, 1996, requires a successor contractor and its subcontractors to retain for a 90-day period certain employees who worked for the terminated contractor or its subcontractors for at least 12 months. (See also Question #7 regarding which employees are covered.)

2. What is a successor contractor?

A successor contractor is one who has been awarded an agreement to provide services to or for the City that are similar to those that were provided under a recently terminated agreement.

3. What types of agreements are covered by the Ordinance?

The SCWRO covers the following types of agreements:

- For services in an amount over \$25,000.00 and for at least three months.
- In which the primary purpose is to provide services to or for the City (including leases and licenses).
- In which the City provides financial assistance for the purpose of promoting economic development or job growth.

4. What does the Ordinance require a terminated contractor to do?

The SCWRO requires the terminated contractor to provide the awarding authority with the names, addresses, dates of hire, hourly wage, and job classes of each employee who worked on the City agreement for that terminated contractor or its subcontractor. The awarding authority will provide the information to the successor contractor.

5. What does the Ordinance require a successor contractor to do?

The Ordinance requires the successor contractor to:

- Offer employment and retain for a 90-day period the employees who worked for at least 12 months for the terminated contractor or its subcontractors.
- Not discharge the employees retained under the SCWRO without cause during the 90-day period.
- Perform a written performance evaluation of each employee retained under the SCWRO at the end of the 90-day period.

6. Do the employees retained under the Ordinance receive any additional protection?

Employees retained under the SCWRO are employed under the terms and conditions of the successor contractor or as required by law. However, if the agreement the employees are working under is subject to Living Wage Ordinance (LWO), the employees must be paid the wage rate and be provided the benefits required by LWO.

7. Does the successor contractor have to retain all the prior contractor's employees?

The SCWRO covers only employees who meet all of the following requirements:

- Earn less than \$15.00 per hour.
- Primary job is in the City working on or under the City agreement.
- Worked for the terminated contractor or its subcontractor for the preceding 12 months or longer.
- Not a managerial, supervisory, or confidential employee; or an employee required to possess an occupational license.

8. What if the successor contractor determines that fewer employees are required to provide the services than were required by the prior contractor?

The names of the affected employees will be placed in order by seniority within each job classification. The successor contractor is required to retain employees based on seniority. The names of employees not retained will be placed on a preferential hiring list from which the successor contractor must use for subsequent hires.

9. What happens if an employee is discharged in violation of the Ordinance?

The employee may bring a lawsuit against the successor contractor. The employee can also submit a complaint to the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance which will investigate the complaint.

10. What if a contractor is found to be in violation of the Ordinance?

The City may terminate the agreement or pursue other legal remedies.

11. Who is responsible for administering and enforcing the Ordinance?

The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance, located at 1149 S. Broadway, 3rd Floor, Los Angeles, CA 90015. For additional information, please call (213) 847-2625, send an e-mail inquiry to bca.eeoe@lacity.org, or go to the Office of Contract Compliance website at <http://bca.lacity.org>.

Section E

MUNICIPAL LOBBYING ORDINANCE (MLO)

SECTION E

MUNICIPAL LOBBYING ORDINANCE (MLO)

The City's Municipal Lobbying Ordinance (Ord No. 169916) requires certain individuals and entities to register with the City Ethics Commission and requires public disclosure of certain lobbying activities, including money received and spent. Additionally, for all construction contracts, public leases, or licenses of any value and duration; goods or service contracts with a value greater than Twenty-Five Thousand Dollars (\$25,000.00) and a term of at least three (3) months, each bidder/proposer must submit with its bid a certification, on a form (CEC Form 50) prescribed by the City Ethics Commission, that the bidder acknowledges and agrees to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance, if the bidder qualifies as a lobbying entity. A copy of the ordinance can be found at: http://ethics.lacity.org/pdf/laws/law_mlo.pdf

INSTRUCTIONS:

- a. All proposers must complete the enclosed Bidder Certification form (CEC Form 50) and submit with the proposal.



City Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 Mail Stop 129
 (213) 978-1960

Bidder Certification CEC Form 50

This form must be submitted to the awarding authority with your bid or proposal for the contract noted below. Please write legibly.

Original filing Amended filing (original signed on _____; last amendment signed on _____)

Bid/Contract/BAVN Number:	Awarding Authority (Department):
----------------------------------	---

Name of Bidder:	Phone:
------------------------	---------------

Address:

Email:

CERTIFICATION

I certify the following on my own behalf or on behalf of the entity named above, which I am authorized to represent:

- A. I am a person or entity that is applying for a contract with the City of Los Angeles.
- B. The contract for which I am applying is an agreement for one of the following:
 - 1. The performance of work or service to the City or the public;
 - 2. The provision of goods, equipment, materials, or supplies;
 - 3. Receipt of a grant of City financial assistance for economic development or job growth, as further described in Los Angeles Administrative Code § 10.40.1(h); or
 - 4. A public lease or license of City property where both of the following apply, as further described in Los Angeles Administrative Code § 10.37.1(l):
 - a. I provide services on the City property through employees, sublessees, sublicensees, contractors, or subcontractors, and those services:
 - i. Are provided on premises that are visited frequently by substantial numbers of the public; or
 - ii. Could be provided by City employees if the awarding authority had the resources; or
 - iii. Further the proprietary interests of the City, as determined in writing by the awarding authority.
 - b. I am not eligible for exemption from the City's living wage ordinance, as eligibility is described in Los Angeles Administrative Code § 10.37.1(l)(b).
- C. The value and duration of the contract for which I am applying is one of the following:
 - 1. For goods or services contracts—a value of more than \$25,000 and a term of at least three months;
 - 2. For financial assistance contracts—a value of at least \$100,000 and a term of any duration; or
 - 3. For construction contracts, public leases, or licenses—any value and duration.
- D. I acknowledge and agree to comply with the disclosure requirements and prohibitions established in the Los Angeles Municipal Lobbying Ordinance if I qualify as a lobbying entity under Los Angeles Municipal Code § 48.02.

I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information in this form is true and complete.

Date: _____ Signature: _____
 Name: _____
 Title: _____

Los Angeles Administrative Code § 10.40.1

- (h) **"City Financial Assistance Recipient"** means any person who receives from the City discrete financial assistance in the amount of One Hundred Thousand Dollars (\$100,000.00) or more for economic development or job growth expressly articulated and identified by the City, as contrasted with generalized financial assistance such as through tax legislation.

Categories of such assistance shall include, but are not limited to, bond financing, planning assistance, tax increment financing exclusively by the City, and tax credits, and shall not include assistance provided by the Community Development Bank. City staff assistance shall not be regarded as financial assistance for purposes of this article. A loan shall not be regarded as financial assistance. The forgiveness of a loan shall be regarded as financial assistance. A loan shall be regarded as financial assistance to the extent of any differential between the amount of the loan and the present value of the payments thereunder, discounted over the life of the loan by the applicable federal rate as used in 26 U.S.C. Sections 1274(d), 7872(f). A recipient shall not be deemed to include lessees and sublessees.

Los Angeles Administrative Code § 10.37.1

- (l) **"Public lease or license"**.

- (a) Except as provided in (l)(b), "Public lease or license" means a lease or license of City property on which services are rendered by employees of the public lessee or licensee or sublessee or sublicensee, or of a contractor or subcontractor, but only where any of the following applies:
- (1) The services are rendered on premises at least a portion of which is visited by substantial numbers of the public on a frequent basis (including, but not limited to, airport passenger terminals, parking lots, golf courses, recreational facilities); or
 - (2) Any of the services could feasibly be performed by City employees if the awarding authority had the requisite financial and staffing resources; or
 - (3) The DAA has determined in writing that coverage would further the proprietary interests of the City.
- (b) A public lessee or licensee will be exempt from the requirements of this article subject to the following limitations:
- (1) The lessee or licensee has annual gross revenues of less than the annual gross revenue threshold, three hundred fifty thousand dollars (\$350,000), from business conducted on City property;
 - (2) The lessee or licensee employs no more than seven (7) people total in the company on and off City property;
 - (3) To qualify for this exemption, the lessee or licensee must provide proof of its gross revenues and number of people it employs in the company's entire workforce to the awarding authority as required by regulation;
 - (4) Whether annual gross revenues are less than three hundred fifty thousand dollars (\$350,000) shall be determined based on the gross revenues for the last tax year prior to application or such other period as may be established by regulation;
 - (5) The annual gross revenue threshold shall be adjusted annually at the same rate and at the same time as the living wage is adjusted under section 10.37.2 (a);
 - (6) A lessee or licensee shall be deemed to employ no more than seven (7) people if the company's entire workforce worked an average of no more than one thousand two-hundred fourteen (1,214) hours per month for at least three-fourths (3/4) of the time period that the revenue limitation is measured;
 - (7) Public leases and licenses shall be deemed to include public subleases and sublicenses;
 - (8) If a public lease or license has a term of more than two (2) years, the exemption granted pursuant to this section shall expire after two (2) years but shall be renewable in two-year increments upon meeting the requirements therefor at the time of the renewal application or such period established by regulation.

Section F

PROHIBITED CONTRIBUTORS – CEC FORM 55

SECTION I
PROHIBITED CONTRIBUTORS – CEC FORM 55

The Los Angeles City Charter section 470(c)(12) prohibits proposers of contracts projected to be worth One Hundred Thousand Dollars (\$100,000.00) or more and that require City Council approval, from making campaign contributions to any elected City official, candidate for elected City office, or City committee controlled by an elected City official or candidate. Contributions are prohibited throughout the bidding process and the resulting contract.

Proposers and their principals must register with the City Ethics Commission. To do so, each proposer must submit with its bid a certification, on a form (CEC Form 55) prescribed by the City Ethics Commission. By doing so, the proposer acknowledges and agrees to comply with the requirements and prohibitions established in the Los Angeles City Charter.

In addition, any subcontractors who are projected to perform One Hundred Thousand Dollars (\$100,000.00) worth of work or more on the contract are required to adhere to the same requirements. Said subcontractors and their principles must be notified of the City Charter requirements and prohibitions and must be included on CEC Form 55 (Schedule B). A copy of the charter section can be found at <https://www.lacity.org/your-government/government-information/city-charter-rules-and-codes>.

INSTRUCTIONS:

- a. All proposers must complete the enclosed Prohibited Contributors form (CEC Form 55) and submit with the proposal.
- b. All of the proposer's subcontractors who are projected to perform One Hundred Thousand Dollars (\$100,000.00) worth of work or more must be included on CEC Form 55 (Schedule B).



Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 (213) 978-1960
 ethics.lacity.org

Prohibited Contributors (Bidders) Form 55

This form must be completed in its entirety and submitted with your bid or proposal to the City department that is awarding the contract. Failure to submit a completed form may affect your bid or proposal. If you have questions about this form, please contact the Ethics Commission.

Original filing Amended filing (original signed on _____; last amendment signed on _____)

Reference Number (bid or contract number, if applicable): _____

Date Bid Submitted: _____

Description of Contract (title of RFP and services to be provided): _____

City Department Awarding the Contract: _____

BIDDER INFORMATION

Name: _____

Address: _____

Email: _____ Phone: _____

SCHEDULE SUMMARY

Please complete all three of the following:

1. SCHEDULE A — Bidder's Principals (check one)

- The bidder is the individual listed above and has no other principals (Schedule A is not required).
- The bidder is the individual listed above or an entity and has other principals, who are listed on the attached Schedule A pages.

2. SCHEDULE B — Subcontractors and Their Principals (check one)

- The bidder has no subcontractors on this bid or proposal whose subcontracts are worth \$100,000 or more (Schedule B is not required).
- The bidder has one or more subcontractors on this bid or proposal with subcontracts worth \$100,000 or more, and those subcontractors and their principals are listed on the attached Schedule B pages.

3. TOTAL NUMBER OF PAGES SUBMITTED (including this cover page): _____

BIDDER'S CERTIFICATION

I certify that I understand, will comply with, and have notified my principals and subcontractors of the requirements and restrictions in Los Angeles City Charter section 470(c)(12) and any related ordinances. I certify under penalty of perjury under the laws of the City of Los Angeles and the state of California that the information provided on this form and the attached pages is true and complete to the best of my knowledge and belief.

Date: _____ Signature: _____

Name: _____

Title: _____



Ethics Commission
200 N Spring Street
City Hall — 24th Floor
Los Angeles, CA 90012
(213) 978-1960
ethics.lacity.org

Prohibited Contributors (Bidders) Form 55

SCHEDULE A — BIDDER'S PRINCIPALS

Please identify the names and titles of all of the bidder's principals (attach additional sheets if necessary). Principals include a bidder's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the bidder of at least 20 percent and employees of the bidder who are authorized by the bid or proposal to represent the bidder before the City.

Check this box if additional Schedule A pages are attached.

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____



Ethics Commission
 200 N Spring Street
 City Hall — 24th Floor
 Los Angeles, CA 90012
 (213) 978-1960
 ethics.lacity.org

Prohibited Contributors (Bidders) Form 55

SCHEDULE B — SUBCONTRACTORS AND THEIR PRINCIPALS

Please identify all subcontractors whose subcontracts are worth \$100,000 or more. Separate Schedule B pages are required for each subcontractor who meets that threshold.

Subcontractor: _____

Address: _____

Check one of the following:

- The subcontractor listed above is an individual and has no other principals.
- The subcontractor listed above is an individual or an entity and has principals, and their names and titles are identified below (attach additional sheets if necessary). Principals include a subcontractor's board chair, president, chief executive officer, chief operating officer, and individuals who serve in the functional equivalent of one or more of those positions. Principals also include individuals who hold an ownership interest in the subcontractor of at least 20 percent and employees of the subcontractor who are authorized by the bid or proposal to represent the subcontractor before the City.

Check this box if additional Schedule B pages are attached.

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Name: _____ Title: _____

Address: _____

Section G

**FORM W-9, REQUEST FOR TAXPAYER IDENTIFICATION
NUMBER (TIN) AND CERTIFICATION**

SECTION G
FORM W-9
REQUEST FOR TAXPAYER IDENTIFICATION
NUMBER (TIN) AND CERTIFICATION

RAP requires Form W-9, "Request for Taxpayer Identification Number (TIN) and Certification" from all entities (vendors, operators, concessionaires, etc.) doing business with RAP in order for RAP to conduct financial transactions with said entities, such as returning proposal deposits or processing payments.

INSTRUCTIONS:

- a. All proposers must submit Form W-9 with the proposal. The name listed on Form W-9 must match the proposer's legal business name as listed on the Proposer's Signature Declaration and Affidavit. The most recent Form W-9, along with instructions for completing the form, can be found at <http://www.irs.gov/Forms-&-Pubs>.

Section H

IRAN CONTRACTING ACT OF 2010 COMPLIANCE
AFFIDAVIT

SECTION H
IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

In accordance with California Public Contract Code Sections 2200-2208, all proposers submitting proposals for, entering into, or renewing contracts with the City of Los Angeles for goods and services estimated at One Million Dollars (\$1,000,000.00) or more are required to complete, sign, and submit the Iran Contracting Act of 2010 Compliance Affidavit.

For more information, proposers can visit the State of California, Department of General Services, Office of Policies, Procedures, and Legislation (OPPL) website at www.dgs.ca.gov/pd/Resources/PDLegislation.aspx.

INSTRUCTIONS:

- a. All proposers to contracts that apply to the Iran Contracting Act of 2010 must sign and submit the affidavit with their proposal.
- b. If the proposed contract is not estimated to be worth One Million Dollars (\$1,000,000.00) or more, proposers are not required to submit this form.

IRAN CONTRACTING ACT OF 2010 COMPLIANCE AFFIDAVIT

(California Public Contract Code Sections 2200-2208)

The California Legislature adopted the Iran Contracting Act of 2010 to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The Iran Contracting Act prohibits bidders engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars (\$1,000,000) or more (PCC § 2203(a)). A bidder who “engages in investment activities in Iran” is defined as either:

1. A bidder providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including provision of oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; **or**
2. A bidder that is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2203(b) as a person engaging in the investment activities in Iran.

The bidder shall certify that at the time of submitting a bid for new contract or renewal of an existing contract, the bidder is **not** identified on the DGS list of ineligible businesses or persons and that the bidder is **not** engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

California law establishes penalties for providing false certifications, including civil penalties equal to the greater of \$250,000 or twice the amount of the contract for which the false certification was made; contract termination; and three-year ineligibility to bid on contracts (PCC § 2205).

To comply with the Iran Contracting Act of 2010, the bidder shall provide its vendor or financial institution name, and City Business Tax Registration Certificate (BTRC) if available, in completing **ONE** of the options shown below.

OPTION #1: CERTIFICATION

I, the official named below, certify that I am duly authorized to execute this certification on behalf of the bidder or financial institution identified below, and that the bidder or financial institution identified below is **not** on the current DGS list of persons engaged in investment activities in Iran and is **not** a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person or vendor, for 45 days or more, if that other person or vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current DSG list of persons engaged in investment activities in Iran.

<i>Vendor Name/Financial Institution (printed)</i>		<i>BTRC (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Print Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>City Approval (Signature)</i>	<i>(Print Name)</i>

OPTION #2: EXEMPTION

Pursuant to PCC § 2203(c) and (d), a public entity may permit a bidder or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit a proposal for, or enter into, or renew, a contract for goods and services. If the bidder or financial institution identified below has obtained an exemption from the certification requirement under the Iran Contracting Act of 2010, the bidder or financial institution shall complete and sign below and attach documentation demonstrating the exemption approval.

<i>Vendor Name/Financial Institution (printed)</i>		<i>BTRC (or n/a)</i>
<i>By (Authorized Signature)</i>		
<i>Print Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>City Approval (Signature)</i>	<i>(Print Name)</i>

Section I

AMERICANS WITH DISABILITIES ACT CERTIFICATION

Section I
Americans with Disabilities Act Certification

Both Federal and State law prohibit discrimination against people with disabilities. The Americans with Disabilities Act (ADA) is a Federal civil rights law designed to ensure equal access, full inclusion and participation for people with disabilities or impairments. In addition, the State of California has its own disability rights laws, codes, and regulations. Under both Federal and State law, people with disabilities are entitled to full and equal access to places of public accommodation, transportation carriers, lodging places, recreation and amusement facilities, and other business establishments where the general public is invited.

INSTRUCTIONS:

- a. All selected proposers must submit a completed and signed Certification Regarding Compliance With The Americans With Disabilities Act form.

**CERTIFICATION REGARDING COMPLIANCE WITH THE
AMERICANS WITH DISABILITIES ACT**

The undersigned certifies, that to the best of his/her knowledge and belief, that:

1. The Contractor/Borrower/Agency (hereafter Contractor) is in compliance with and will continue to comply with the Americans with Disabilities Act 42 U.S.C. 12101 et. seq. and its implementing regulations.
2. The Contractor will provide for reasonable accommodations to allow qualified individuals with disabilities to have access and participate in its programs, services and activities in accordance with the provisions of the Americans With Disabilities Act.
3. The Contractor will not discriminate against persons with disabilities nor against persons due to their relationship or association with a person with a disability.
4. The Contractor will 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.
5. This Certification is a material representation of fact upon which the City relied when entering into this agreement.

AGREEMENT NUMBER: _____

CONTRACTOR: _____

NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

Section J

BUSINESS TAX REGISTRATION CERTIFICATE

Section J
Business Tax Registration Certificate

Pursuant to Los Angeles Municipal Code (LAMC), Chapter 2, Art. 1, Sec. 21.03 (Imposition of Tax), persons engaged in any business or occupation within the City of Los Angeles are required to register and pay the required tax. All individuals or entities conducting business activities within the City of Los Angeles are required to apply for and obtain a Business Tax Registration Certificate with the City of Los Angeles, Office of Finance. Certain organizations, which are conducted solely for charitable or religious purposes, may be entitled to receive tax-exempt registration certificates upon application and qualification.

Additional information can be found at <http://finance.lacity.org>.

INSTRUCTIONS:

- a. All selected proposers must submit a completed Business Tax Registration Certificate Number Or Business Tax Exemption Number form.

**BUSINESS TAX REGISTRATION CERTIFICATE NUMBER
OR BUSINESS TAX EXEMPTION NUMBER FORM**

All persons who do business with or within the City of Los Angeles, must first file with the Department of Finance (Tax/Permit Division), and obtain from that office a Business Tax Registration Certificate account number (BTRC) or Vendor Registration Number (VRN). Registration is renewable annually. For further information, contact the Tax and Permit Division located at 200 N. Spring St., Rm 101, Los Angeles, CA 90012 (213) 473-5901.

(Authority: Article 1, Chapter 2, Section 21.00 et seq. – LAMC)

Company Name: _____

Enter your current Business Tax Registration or Vendor Registration Number:

Old format:

ACCOUNT NUMBER										LINE		TYPE				
										-						

New format:

ACCOUNT NUMBER														LINE		TYPE				
														-						

State effective dates here: _____ to _____

If you have an application pending in the Department of Finance, and have not as yet received your number, a copy of your application must be submitted with your bid, proposal or agreement.

If you have received an exemption from the Department of Finance, provide an explanation for the exemption and the exemption number.

Exemption Number:

								-	
--	--	--	--	--	--	--	--	---	--

Explanation:

Section K

CHILD SUPPORT OBLIGATIONS

Section K
Certification of Compliance with Child Support Obligations

Pursuant to the Los Angeles Administrative Code, Division 10, Chapter 1, Article 1, Section 10.10 et seq., contractors and subcontractors performing work for the City must comply with all federal employment reporting requirements and Wage and Earning Assignment Orders and acknowledge the City's practice of cooperation with the District Attorney's enforcement efforts to collect child support owed by City employees.

INSTRUCTIONS:

- a. All selected proposers must submit a completed and signed Certification of Compliance With Child Support Obligations form.

City of Los Angeles
CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS

The undersigned hereby agrees that _____ will:
Name of Business

1. Fully comply with all applicable State and Federal employment reporting requirements for it employees.
2. Fully comply with and implement all lawfully served Wage and Earnings Assignment Order and Notices of Assignment.
3. Certify that the principal owner(s) of the business are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally.
4. Certify that the business will maintain such compliance throughout the term of the contract.
5. This certification is a material representation of fact upon which reliance was placed when the parties entered into this transaction.
6. The undersigned shall require that the language of this Certification be included in all subcontractors and that subcontractors shall certify and disclose accordingly.

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State

Date

Name of Business

Address

Signature of Authorized Office or Representative

Print Name

Title

Telephone Number

Section L

CRO PLEDGE OF COMPLIANCE

**CITY OF LOS ANGELES
PLEDGE OF COMPLIANCE WITH CONTRACTOR RESPONSIBILITY ORDINANCE**

Los Angeles Administrative Code (LAAC) Section 10.40 et seq. (Contractor Responsibility Ordinance) provides that, unless specifically exempt, City contractors working under service contracts of at least \$25,000 and three months, contracts for services and for purchasing goods and products that involve a value in excess of twenty-five thousand dollars (\$25,000) and a term in excess of three months are covered by this Article; and construction contracts of any amount; public lessees; public licensees; and certain recipients of City financial assistance or City grant funds, shall comply with all applicable provisions of the Ordinance. Upon award of a City contract, public lease, public license, financial assistance or grant, the contractor, public lessee, public licensee, City financial assistance recipient, or grant recipient, and any its subcontractor(s), shall submit this Pledge of Compliance to the awarding authority.

The contractor agrees to comply with the Contractor Responsibility Ordinance and the following provisions:

- (a) To comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (b) To notify the awarding authority within 30 calendar days after receiving notification that any governmental agency has initiated an investigation which may result in a finding that the contractor did not comply with any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (c) To notify the awarding authority within 30 calendar days of all findings by a governmental agency or court of competent jurisdiction that the contractor has violated any federal, state, or local law in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.
- (d) If applicable, to provide the awarding authority, within 30 calendar days, updated responses to the Responsibility Questionnaire if any change occurs which would change any response contained within the Responsibility Questionnaire and such change would affect the contractor's fitness and ability to continue the contract.
- (e) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with all federal, state, and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws, which affect employees.
- (f) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, sublicensee that perform or assist in performing services on the leased or licensed premises) submit a Pledge of Compliance.
- (g) To ensure that subcontractors working on the City agreement (including contractors or subcontractors of a public lessee, licensee, sublessee, or sublicensee that perform or assist in performing services on the leased or licensed premises) shall comply with paragraphs (b) and (c).

Failure to complete and submit this form to the Awarding Authority may result in withholding of payments by the City Controller, or contract termination.

Company Name, Address and Phone Number

Signature of Officer or Authorized Representative

Date

Print Name and Title of Officer or Authorized Representative

Awarding City Department

Contract Number

Section M

LOS ANGELES RESIDENCE INFORMATION

LOS ANGELES RESIDENCE INFORMATION

The City Council in consideration of the importance of preserving and enhancing the economic base and well-being of the City encourages businesses to locate or remain within the City of Los Angeles. This is important because of the jobs businesses generate and for the businesses taxes they remit. The City Council, January 7, 1992, adopted a motion that requires proposers to state their headquarter address as well as the percentage of their workforce residing in the City of Los Angeles.

Organization: _____

I. Corporate or Main Office Address

II. Total Number of Employees in the Organization: _____

III. Percentage of the Proposer's Total Workforce Employed within the City Of Los Angeles:

_____ ; Percentage Residing in the City: _____

IV. Address of any Branch Offices Located within the City of Los Angeles and Total Number Employed in each Los Angeles Branch:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

V. Percentage of the Workforce in each Los Angeles Branch Office that is Employed within the City: _____ ; Percentage Residing in the City: _____

Section N

LIVING WAGE ORDINANCE

Additional forms related to Section D

LWO – SUBCONTRACTOR DECLARATION OF COMPLIANCE FORM

REQUIRED DOCUMENTATION FOR ALL SUBCONTRACTS SUBJECT TO LWO

This form must be signed within 90 DAYS of the execution of the subcontract and **RETAINED by the **PRIME CONTRACTOR**.**

TO BE FILLED OUT BY THE PRIME CONTRACTOR:

1. Company Name: _____ Company Phone Number: _____
 2. Company Address: _____
 3. Awarding Department: _____
 4. Project Name: _____

IF A SUBCONTRACTOR FAILS TO COMPLETE AND SUBMIT THIS FORM TO PRIME CONTRACTOR ON THE CITY CONTRACT, THE PRIME CONTRACTOR MAY BE DEEMED TO BE IN VIOLATION OF THE LWO AND SCWRO FOR FAILING TO ENSURE ITS SUBCONTRACTOR'S COMPLIANCE WITH THE ORDINANCES. THIS MAY RESULT IN WITHHOLDING OF PAYMENTS DUE THE PRIME CONTRACTOR, OR TERMINATION OF THE PRIME CONTRACTOR'S AGREEMENT WITH THE CITY.

THE PRIME CONTRACTOR MUST INFORM THEIR SUBCONTRACTORS OF THE FOLLOWING:

THE LIVING WAGE ORDINANCE (LWO) REQUIRES:

That a subcontractor (including a sublessee, a sublicensee, or a service contractor to a City financial assistance recipient) that works on or under the authority of an agreement subject to Living Wage Ordinance (LWO) **must comply with all applicable provisions of the Ordinance unless specifically approved for an exemption.**

THE LIVING WAGE ORDINANCE (LWO) REQUIRES THAT SUBJECT EMPLOYERS PROVIDE TO EMPLOYEES:

- As of July 1, 2016, a wage of at least **\$11.27 per hour with health benefits** of \$1.25 per hour, or **\$12.52 per hour without health benefits** (to be adjusted annually on July 1) (Regulation #4);
- At least **12 compensated days off per year** for sick leave, vacation or personal necessity at the employee's request (pro-rated for part-time employees) (Regulation #4);
- At least **10 additional days off per year of uncompensated time off** for sick leave (pro-rated for part-time employees) (Regulation #4); and
- Making **less than \$12.00 per hour** information of their possible **right to the federal Earned Income Tax Credit (EITC)** and make available the forms required to secure advance EITC payments from the employer (Regulation #4).

THE LIVING WAGE ORDINANCE (LWO) ALSO REQUIRES EMPLOYERS:

- To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City.
- **Not to retaliate** against any employee claiming non-compliance with the provisions of these Ordinances and to **comply with federal law** prohibiting retaliation for union organizing (Regulation #4). Refer to the LWO Rules and Regulations, available from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) website - <http://bca.lacity.org>, for details regarding the wage and benefit requirements of the Ordinance.

TO BE FILLED OUT BY THE SUBCONTRACTOR:

1. Company Name: _____ Company Phone Number: _____
 2. Company Address: _____
 3. Type of Service Provided by Subcontractor to Prime: _____
 4. Amount of Subcontract: _____ Subcontract Start Date: ___/___/___ End Date: ___/___/___

By signing this Declaration of Compliance, the subcontractor certifies that it will comply with all applicable provisions of the SCWRO, LWO, and their implementing Rules and Regulations, including any amendments or revisions to the Ordinances and Regulations.

 Print Name of Person Completing This Form

 Signature of Person Completing This Form

 Title

 Phone #

 Date

LWO – EMPLOYEE INFORMATION FORM

REQUIRED DOCUMENTATION FOR ALL CONTRACTS SUBJECT TO LWO

This form must be submitted to the AWARDING DEPARTMENT within 30 DAYS of contract execution. **INCOMPLETE SUBMISSIONS WILL BE RETURNED.**

THE LIVING WAGE ORDINANCE (LWO) REQUIRES THAT SUBJECT EMPLOYERS PROVIDE TO EMPLOYEES:

- As of July 1, 2016 a wage of at least **\$11.27 per hour with health benefits** of \$1.25 per hour, or **\$12.52 per hour without health benefits** (to be adjusted annually on July 1) (Regulation #4);
- At least **12 compensated days off per year** for sick leave, vacation or personal necessity at the employee's request (pro-rated for part-time employees) (Regulation #4); and
- At least **10 additional days off per year of uncompensated time off** for personal or immediate illness only (pro-rated for part-time employees) (Regulation #4). Refer to the LWO Rules and Regulations, available from the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance (OCC) website, for details regarding the wage and benefit requirements of the Ordinance.
- Making **less than \$12.00 per hour** information of their possible **right to the federal Earned Income Tax Credit (EITC)** and make available the forms required to secure advance EITC payments from the employer (Regulation #4).

THE LIVING WAGE ORDINANCE (LWO) ALSO REQUIRES EMPLOYERS:

- **Not to retaliate** against any employee claiming non-compliance with the provisions of these Ordinances and to **comply with federal law** prohibiting retaliation for union organizing (Regulation #4).

TO BE FILLED OUT BY THE CONTRACTOR:

1. Company Name: _____ Email Address: _____
2. **STATE** the number of employees working ON THIS CITY CONTRACT: _____
3. **ATTACH** a copy of your company's 1st PAYROLL under THIS CITY CONTRACT.
4. **INDICATE** (highlight, underline) on the payroll which employees are working ON THIS CITY CONTRACT.
5. Do you provide health benefits (such as medical, dental, vision, mental health, and disability insurance) to your employees? Yes No
 If YES, **STATE** how much, if any, employees pay for co-premiums: \$ _____

FAILURE TO COMPLY WITH THESE REQUIREMENTS WILL RESULT IN WITHHOLDING OF PAYMENTS BY THE CITY CONTROLLER, OR A RECOMMENDATION TO THE AWARDING AUTHORITY FOR CONTRACT TERMINATION. ALL INFORMATION SUBMITTED IS SUBJECT TO VERIFICATION, AND FALSE INFORMATION MAY RESULT IN CONTRACT TERMINATION.

I understand that the employee information provided herein is confidential and will be used by the City of Los Angeles, Office of Contract Compliance for the purpose of monitoring the Living Wage Ordinance.

Print Name of Person Completing This Form

Signature of Person Completing This Form

Title

Phone #

Date

AWARDING DEPARTMENT USE ONLY:

Dept: _____ Dept Contact: _____ Contact Phone: _____ Contract #: _____

LWO – SUBCONTRACTOR INFORMATION FORM

REQUIRED DOCUMENTATION FOR ALL CONTRACTS SUBJECT TO LWO

This form must be submitted to the AWARDED DEPARTMENT within 30 DAYS of contract execution. **INCOMPLETE SUBMISSIONS WILL BE RETURNED.**

SECTION I: CONTRACTOR INFORMATION

- 1) Company Name: _____ Contact Person: _____ Phone Number: _____
- 2) Do you have subcontractors working on this City contract? Yes No
 If NO, **This form is now complete – SIGN THE BOTTOM OF PAGE 2 AND SUBMIT TO THE AWARDED DEPARTMENT.**
 If YES, a) **STATE** the number of your subcontractors ON THIS CITY CONTRACT: _____
 b) Fill in PART A for EACH subcontractor in Section II, continue to Section III & IV (if applicable), AND SIGN Section V.

SECTION II: SUBCONTRACTOR INFORMATION

PART A	PART B					
	CHECK OFF ONLY ONE BOX (I-VI) FOR EACH SUBCONTRACTOR (IF APPLICABLE) THEN CONTINUE ONTO SECTION III:					
	I 501 (c)(3) ¹	II One- Person Contractor ²	III CBA ³	IV Occupational License ⁴	V Small Business ⁵	VI Gov. entity ⁶
1. Subcontractor Name: _____ 2. Contact Person: _____ Phone #: _____ 3. Address: _____ 4. Purpose of Subcontract: _____ 5. Amount of Subcontract: \$ _____ 6. Term: Start Date ____/____/____ End Date ____/____/____ 7. Does the subcontract exceed \$25,000? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the length of the subcontract at least three (3) months? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked off YES for Questions 7 AND 8, this subcontract IS SUBJECT TO THE LWO. Continue onto Part B. If you checked off NO for any questions 7 OR 8, this subcontract IS NOT SUBJECT TO THE LWO. Continue to fill in Part A for additional subs below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1. Subcontractor Name: _____ 2. Contact Person: _____ Phone #: _____ 3. Address: _____ 4. Purpose of Subcontract: _____ 5. Amount of Subcontract: \$ _____ 6. Term: Start Date ____/____/____ End Date ____/____/____ 7. Does the subcontract exceed \$25,000? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the length of the subcontract at least three (3) months? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked off YES for Questions 7 AND 8, this subcontract IS SUBJECT TO THE LWO. Continue onto Part B. If you checked off NO for any questions 7 OR 8, this subcontract is NOT SUBJECT TO THE LWO. Continue to fill in Part A for additional subs below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1. Subcontractor Name: _____ 2. Contact Person: _____ Phone #: _____ 3. Address: _____ 4. Purpose of Subcontract: _____ 5. Amount of Subcontract: \$ _____ 6. Term: Start Date ____/____/____ End Date ____/____/____ 7. Does the subcontract exceed \$25,000? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the length of the subcontract at least three (3) months? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked off YES for Questions 7 AND 8, this subcontract IS SUBJECT TO THE LWO. Continue onto Part B. If you checked off NO for any questions 7 OR 8, this subcontract is NOT SUBJECT TO THE LWO. Continue to fill in Part A for additional subs below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION II: SUBCONTRACTOR INFORMATION (continued)

PART A	PART B					
	I 501 (c)(3) ¹	II One- Person Contractor ²	III CBA ³	IV Occupational License ⁴	V Small Business ⁵	VI Gov. entity ⁶
1. Subcontractor Name: _____ 2. Contact Person: _____ Phone #: _____ 3. Address: _____ 4. Purpose of Subcontract: _____ 5. Amount of Subcontract: \$ _____ 6. Term: Start Date ____/____/____ End Date ____/____/____ 7. Does the subcontract exceed \$25,000? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the length of the subcontract at least three (3) months? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked off YES for Questions 7 AND 8, this subcontract IS SUBJECT TO THE LWO . Continue onto Part B . If you checked off NO for any questions 7 OR 8, this subcontract is NOT SUBJECT TO THE LWO . Continue to fill in Part A for additional subs below.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1. Subcontractor Name: _____ 2. Contact Person: _____ Phone #: _____ 3. Address: _____ 4. Purpose of Subcontract: _____ 5. Amount of Subcontract: \$ _____ 6. Term: Start Date ____/____/____ End Date ____/____/____ 7. Does the subcontract exceed \$25,000? <input type="checkbox"/> Yes <input type="checkbox"/> No 8. Is the length of the subcontract at least three (3) months? <input type="checkbox"/> Yes <input type="checkbox"/> No If you checked off YES for Questions 7 AND 8, this subcontract IS SUBJECT TO THE LWO . Continue onto Part B . If you checked off NO for any questions 7 OR 8, this subcontract is NOT SUBJECT TO THE LWO .	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SECTION III: SUBCONTRACTS SUBJECT TO THE LWO (AND MAY BE ELIGIBLE FOR EXEMPTIONS)

- 1) If you checked off any boxes in Part B, your Subcontractor(s) is subject to the LWO, but may qualify for an LWO exemption. Review the exemptions below, and have your subcontractor fill out the form in the corresponding right-hand column. **Continue to Section V**, and submit this form and all supporting documentation to the Awarding Department for approval.
- 2) If you did NOT check any boxes in Part B or your subs DO NOT qualify for an exemption, **Continue to Section IV**.

EXEMPTION	SUPPORTING DOCUMENTATION REQUIRED
One-person contractors, lessee, licensee 501(c)(3) non-profit organization	LW 13 – Departmental Exemption Form http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm
Occupational license required Collective bargaining agreement w/supersession language	LW 10 – OCC Exemption Form http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm
Small Business	LW 26 – Small Business Exemption Form (English & Spanish) http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm
Governmental Entity	NONE REQUIRED.

SECTION IV: SUBCONTRACTS SUBJECT TO THE LWO (AND NOT ELIGIBLE FOR EXEMPTIONS)

Please have EACH of your Subcontractors that ARE SUBJECT to the LWO fill out the three forms below. Submit LW-6 and LW-18 ONLY to the Awarding Department (and supporting documentation, where applicable) and RETAIN LW-5 in your office.

- | | |
|--|---|
| 1) Employee Information Form | LW 6 - http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm |
| 2) Subcontractor Information Form | LW 18 - http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm |
| 3) Subcontractor Declaration of Compliance Form (retain) | LW 5 - http://bca.lacity.org/index.cfm?nxt=ee&nxt_body=div_occ_lwo_forms.cfm |

SECTION V: SIGNATURE

I understand that the Subcontractor Information provided herein is confidential and will be used by the City of Los Angeles, Office of Contract Compliance for the purpose of monitoring the Living Wage Ordinance.

Print Name of Person Completing This Form _____	Signature of Person Completing This Form _____
Title _____	Date _____

AWARDING DEPARTMENT USE ONLY:

Dept: _____ Dept Contact: _____ Contact Phone: _____ Contract #: _____

ENDNOTES FOR LWO SUBCONTRACTOR INFORMATION FORM

¹ **Non-Profit 501(c)(3) Organizations:** A corporation claiming exemption under Section 10.37.1(g) of the LWO as a corporation organized under Section 501 (c)(3) of the United States Internal Revenue Code must provide the following additional documents in support of the application for exemption:

(A) A copy of the most recent IRS letter indicating that the contractor has been recognized as a non-profit corporation organized under section 501 (c)(3) of the United States Internal Revenue Code.

(B) An application for non-coverage or exemption, including the non-profit salary certification on the form referred to in Appendix A. The salary certification must list the salary of the corporation's chief executive officer (CEO), computed on an hourly basis, and the hourly wage rate of the lowest paid worker in the corporation. The salary of the CEO, when computed on an hourly basis, must be less than 8 times what the lowest paid worker is paid on an hourly basis. For purposes of this exemption, the "chief executive officer (CEO)" means the CEO of the 501(c)(3) corporation that entered into the agreement

² **One-Person Contractor:** A contractor may apply for exemption under Section 10.37.1(f) of the LWO if that contractor has no employees. The one-person contractor shall submit an application for non-coverage or exemption to the awarding authority on the form referred to in Appendix A with the appropriate one-person contractor certification. If, subsequent to the approval of the exemption application, the contractor hires any employees, the exemption is no longer valid. Any employee the contractor hires becomes covered by the LWO to the extent that the employee performs work on the City agreement. In such cases, the contractor shall notify the awarding authority of the change in circumstances and submit to the awarding authority all the necessary forms to comply with the LWO reporting requirements, including the employee and subcontractor information forms.

³ **Exemption by Collective Bargaining Agreement – LAAC 10.37.12:** An employer subject to provisions of the LWO may, by collective bargaining agreement (CBA), provide that the CBA, during its term, shall supersede the requirements of the LWO for those employees covered by the CBA. The provisions of the LWO should not be interpreted to require an employer to reduce the wages and benefits required by a collective bargaining agreement. All parties to the CBA must specifically waive in full or in part the benefits required by the LWO. An employer applying for this exemption shall submit a copy of the CBA. If the CBA does not specifically indicate that the LWO has been superseded, the employer shall submit written confirmation from the union representing the employees working on the agreement that the union and the employer have agreed to let the CBA supersede the LWO.

(A) **Provisional Exemption from LWO during negotiation of CBA:** An employer subject to the LWO may apply for Provisional Exemption from the LWO if the employer can document that: (1) the union and the employer are currently engaged in negotiations regarding the terms of the CBA; and (2) the issue of allowing the CBA to supersede the LWO has been proposed as an issue to be addressed during the negotiations. If granted, Provisional Exemption status is valid until the end of the negotiation process, including, if applicable, impasse resolution proceedings. During the negotiation process, the employer shall provide, upon request from the OCC, status reports on the progress of negotiations. At the end of the negotiation process, the employer shall provide the OCC with a copy of the final CBA to verify whether the LWO has been superseded, and the effective dates of the CBA.

(i) If the final CBA signed by the employer and the union supersedes the LWO, the employer shall be considered to be exempt from the LWO's wage and benefits provisions for the time period covered by the effective dates of the superseding CBA. The employer remains subject to all applicable provisions of the LWO for the time period not covered by the superseding CBA. If the employer has not complied with the LWO requirements during the time period not covered by the superseding CBA, the employer shall be required to make retroactive corrections for any period of non-compliance, which may include making retroactive payments to affected employees for the relevant periods of non compliance.

(ii) If the final CBA signed by the employer and the union does not supersede the LWO, the employer shall be required to comply with all applicable LWO requirements, including the wage and benefits provisions. Compliance shall also be required retroactively to the date that the employer first became subject to the LWO. If necessary, the employer shall provide retroactive payments to affected employees for any time period during which the employer did not comply with the LWO.

⁴ **Occupational license - LAAC 10.37.1(f): Exemptions for Employees Requiring Occupational Licenses:** If an employer claims that the LWO does not apply to an employee pursuant to section 10.37.1(f) because an occupational license is required of the employee to perform the work, the employer shall submit to the awarding authority, along with the application for non-coverage or exemption, a list of the employees required to possess an occupational license, the type of occupational license required, and a copy of the occupational license itself. An exemption granted under this provision exempts only the employee who must possess an occupational license to perform work on the City agreement. If an occupational license is not required of an employee to perform the work, the employee remains covered by the LWO.

⁵ **Small Business Exemptions for Public Lessees and Licensees – LAAC 10.37.1(i):** A public lessee or licensee claiming exemption from the LWO under section 10.37.1(i) shall submit the small business application for exemption form referred to in Appendix A along with supporting documentation to verify that it meets both of the following requirements:

(A) The lessee's or licensee's gross revenues from all business(es) conducted on the City premises for the calendar year prior to the date of the application for exemption do not exceed the gross annual revenue amount set by the LWO in Section 10.37.1(i). That gross revenue amount shall be adjusted annually according to the requirements of the LWO. The gross revenue amount used in evaluating whether the lessee or licensee qualifies for this exemption shall be the gross revenue amount in effect at the time the OCC receives the application for exemption.

A public lessee or licensee beginning its first year of operation on a specific City property will have no records of gross annual revenue on the City property. Under such circumstances, the lessee or licensee may qualify for a small business exemption by submitting proof of its annual gross revenues for the last tax year prior to application no matter where the business was located, and by satisfying all other requirements pursuant to these regulations and the LWO.

A lessee or licensee beginning its first year of operation as a business will have no records of gross annual revenue. Under such circumstances, the lessee or licensee may qualify for a small business exemption by satisfying all other requirements pursuant to these regulations and the LWO.

(B) The lessee or licensee employs no more than seven (7) employees.

(i) For purposes of this exemption, a lessee or licensee shall be deemed to employ a worker if the worker is an employee of a company or entity that is owned or controlled by the lessee or licensee, regardless of where the company or entity is located; or if the worker is an employee of a company or entity that owns or controls the lessee or licensee, regardless of where the company or entity is located.

Whether the lessee or licensee meets the seven (7) employee limit provided for in Section 10.37.1(i) of the LWO shall be determined using the total number of workers employed by all companies or businesses which the lessee or licensee owns or controls, or which own or control the lessee or licensee. Control means that one company owns a controlling interest in another company.

(ii) If a business operated by the lessee or licensee is part of a chain of businesses, the total number of employees shall include all workers employed by the entire chain of businesses unless the business operated by the lessee or licensee is an independently owned and operated franchise.

(iii) A public lessee or licensee shall be deemed to employ no more than seven (7) employees if its entire workforce (inclusive of those employees falling within the guidelines stated in subsections (i) and (ii) immediately above) worked an average of no more than 1,214 hours per month for at least three-fourths of the time period that the revenue limitation provided for in section 10.37.1(i) is measured.

Until the OCC approves the application for exemption, the lessee or licensee shall be subject to the LWO and shall comply with its requirements. If the OCC approves the application, the lessee or licensee shall be exempt from the requirements of the LWO for a period of two years from the date of the approval. The exemption will expire two years from the date of approval, but may be renewable in two-year increments upon meeting the requirements.

⁶ **Governmental Entities – LAAC 10.37.1(g):** Agreements with governmental entities are exempt from the requirements of the LWO. If an agreement is exempt from the LWO because the contractor is a governmental entity, subcontractors performing work for the governmental entity on the agreement are also exempt.

Section O

DISCLOSURE ORDINANCE AFFIDAVIT

SECTION O
DISCLOSURE ORDINANCE (DO) AFFIDAVIT

Effective April 1, 2019, the Disclosure Ordinance (DO) Affidavit will include the Disclosure of Border Wall Contracting Ordinance, the Slavery Disclosure Ordinance, and the new NRA Disclosure Ordinance.

Unless otherwise exempt, in accordance with the provisions of the Disclosure of Border Wall Contracting Ordinance (Ordinance No. 185600), any contract awarded pursuant to the RFP will be subject to the Disclosure of Border Wall Contracting Ordinance, Section 10.50 of the Los Angeles Administrative Code.

Unless otherwise exempt, in accordance with the provisions of the Slavery Disclosure Ordinance (Ordinance No. 175346), any contract awarded pursuant to the RFP will be subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code.

Unless otherwise exempt, in accordance with the provisions of the Disclosure of Contracts and Sponsorship of the National Rifle Association Ordinance (Ordinance No. 186000), any contract awarded pursuant to the RFP will be subject to the Disclosure of Contracts and Sponsorship of the National Rifle Association Ordinance, Section 10.52 of the Los Angeles Administrative Code.

Contractors seeking additional information regarding the requirements of the Disclosure of Border Wall Contracting Ordinance, the Slavery Disclosure Ordinance, and the NRA Disclosure Ordinance, may visit the Bureau of Contract Administration's website at www.bca.lacity.org.

INSTRUCTIONS:

- a. All Contractors shall complete and electronically sign the Disclosure Ordinance (DO) Affidavit available on the City of Los Angeles' Business Assistance Virtual Network (BAVN) residing at www.labavn.org prior to award of the City contract.

Exhibit 1

Proposed Contract Between

City of Los Angeles, Department of Recreation and Parks

And

Pastilla, Inc.

For

As-Needed Marketing and Communication Services

AGREEMENT BETWEEN
THE CITY OF LOS ANGELES
DEPARTMENT OF RECREATION AND PARKS
AND
PASTILLA, INC.
FOR AS-NEEDED MARKETING AND COMMUNICATION SERVICES

This Agreement (“AGREEMENT” or “CONTRACT”) is entered into this _____ day of _____, 2020, by and between the City of Los Angeles, (herein referred to as “CITY”) a municipal corporation, Department of Recreation and Parks (hereinafter referred to as “RAP”), acting by and through its Board of Recreation and Park Commissioners (hereinafter referred to as “BOARD”), and Pastilla, Inc. (hereinafter referred to as “CONTRACTOR”). CITY and CONTRACTOR shall be referred to hereinafter as the “PARTY or PARTIES”.

WHEREAS, the CONTRACTOR has been awarded a competitively bid contract by the San Diego Association of Governments (hereinafter referred to as “SANDAG”) to provide marketing and communication services on an as-needed, non-exclusive basis pursuant to a Contract (hereinafter referred to as “SANDAG Contract”) which expires on March 31, 2024 (SANDAG Contract #5005375), attached hereto and incorporated herein by reference as Appendix A);

WHEREAS, RAP has determined that, pursuant to Charter Section 371(e)(2), the professional, scientific, expert, technical or other special services to be provided by CONTRACTOR are of a temporary and occasional character for which competitive bidding is not practicable or advantageous;

WHEREAS, RAP has determined that, pursuant to Charter Section 371(e)(8), the CITY may piggyback on the SANDAG Contract with CONTRACTOR, because contracts for cooperative arrangements with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements, are an exception to the CITY’S competitive bidding requirements;

WHEREAS, RAP has determined that, pursuant to Charter Section 371(e)(10), the services to be provided by CONTRACTOR are for the performance of professional, scientific, expert or technical services and the use of competitive bidding would be undesirable, impractical or impossible or is otherwise excused by common law;

WHEREAS, RAP has an ongoing need for marketing and communication services throughout the CITY on an as-needed basis;

WHEREAS, RAP desires to secure the technical, expert and professional services of a qualified contractor on an occasional and as-needed basis for marketing and communication services in order to promote RAP's various recreation programs to the public;

WHEREAS, pursuant to Charter Section 1022 RAP does not have available in its employ personnel with the necessary expertise to undertake the specialized professional tasks sought and the work can be performed more economically or feasibly by an independent contractor;

WHEREAS, CONTRACTOR is experienced in providing the services of the type required, is willing to perform such service, and can provide such services to RAP; and

WHEREAS, it is in RAP's best interest to secure these services from CONTRACTOR;

WHEREAS, the CONTRACTOR has agreed to provide such marketing and communication services to RAP, including the services set forth in the aforementioned SANDAG Contract referenced and incorporated as Appendix A hereto;

NOW THEREFORE, RAP and the CONTRACTOR hereby agrees as follows:

SECTION 1 – PARTIES TO THE AGREEMENT, REPRESENTATIVES AND NOTIFICATION.

1.1 Parties

The PARTIES to this AGREEMENT are:

CITY – The City of Los Angeles, a municipal corporation, acting by and through its BOARD OF RECREATION AND PARK COMMISSIONERS on behalf of RAP, having its principal office at 221 North Figueroa Street, Suite 300, Los Angeles, CA 90012.

CONTRACTOR – Pastilla, Inc. having its principal office at 84 Bronze Leaf, Irvine, CA 92620

1.2 Representatives

The City's representative will be (or any other RAP Management or City designee):

Anthony-Paul Diaz, Executive Officer & Chief of Staff (or his designee)
City of Los Angeles, Department of Recreation and Parks
221 N. Figueroa Street, Suite 300
Los Angeles, CA 90012

Email: ap.diaz@lacity.org
Telephone Number: (213) 202 - 2633
Fax Number: (213) 202-4311

The CONTRACTOR'S representative will be:

Rudy Manning, Co-Founder and Chief Creative Officer
Pastilla, Inc.
84 Bronze Leaf
Irvine, CA 92620

Email: rmanning@pastilla.co
Telephone: (626) 415-4480

1.3 Notices

Formal notices, demands and communications to be given hereunder by either PARTY will be made in writing and may be effect by personal delivery or certified mail, return receipt requested, and will be deemed communicated as of the date of receipt.

If the person designated to receive the notices, demands or communications or if the address of such person is changed, written notice of such changes shall be given, in accordance with this Section, within five (5) working days of the change.

CONTRACTOR shall address all questions and correspondence concerning project scope to (or any other RAP Management designee) the representatives identified in Section 1.2 above.

SECTION 2 – TERMS OF THE AGREEMENT

2.1 Term

The term of this AGREEMENT shall commence on the date of execution and shall expire on March 31, 2024, and is subject to early termination by RAP as provided in the "Termination" (PSC-9) section of the Standard Provisions for City Contracts (Rev. 10/17) [v.3], or most current, which is attached to this Agreement as Appendix B and incorporated herein by this reference ("Term"). Per the terms of the SANDAG Contract, CITY shall have one option exercisable at its sole

discretion to extend TERM for up to six calendar months if SANDAG exercises its option to extend its SANDAG Contract with Pastilla for up to six months, with a corresponding expiration date of September 30, 2024.

2.2 Contract Compliance

CONTRACTOR agrees to comply with the Standard Provisions for CITY Contracts (Rev. 10/17) [v.3], or most current, attached hereto and incorporated herein by reference (“Standard Provisions”), and CONTRACTOR also agrees to comply with all CITY codes, Ordinances (as published), and CITY Compliance Documents and forms, as required by CITY that were submitted by CONTRACTOR, and which are attached to this Agreement as Appendices B and C and incorporated herein by this reference. CONTRACTOR acknowledges and agrees that this AGREEMENT, along with the terms and conditions set forth in the Standard Provisions and Appendices B and C, shall supersede and replace the terms and conditions set forth in the SANDAG Contract, except for the Scopes of Work and the Rate and Rate Escalation Schedule set forth in the SANDAG Contract, which is hereby incorporated into this AGREEMENT as set forth in Section 3 and Section 4 below.

SECTION 3 - SCOPE OF SERVICES

3.1 Services to Be Provided by CONTRACTOR

CONTRACTOR shall provide the scope of services set forth and identified as “Category E – Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic Services” in the section entitled “Scopes of Work” in Part 2 of the SANDAG Contract (“Services”). The Services provided shall be on an occasional, as-needed basis as may be determined in the sole discretion of RAP. Upon receipt from RAP of a Request for Quote for a task/project, CONTRACTOR will provide RAP with a proposal for the requested work. All quotes submitted by CONTRACTOR, and all costs for work performed by CONTRACTOR under this Agreement, shall be based on the Rate and Rate Escalation Schedule included in the SANDAG Contract. When the task/project is approved, RAP will issue a Notice to Proceed (NTP) and CONTRACTOR will perform the services approved in the NTP. For each task/project for which RAP desires to use CONTRACTOR’s services under this Agreement, CONTRACTOR shall work with RAP’s designated project manager for such task/project to determine appropriate milestones and deliverables.

3.2 Services to Be Provided by CITY

RAP’s authorized agent (or other RAP management designee) will issue a NTP to the CONTRACTOR prior the start of any work under this Agreement.

RAP personnel will work cooperatively with CONTRACTOR to ensure timely review of all services provided by CONTRACTOR under this AGREEMENT.

RAP will promptly act, review and make decision as necessary to permit the orderly progress of CONTRACTOR's work under this AGREEMENT.

3.3 Services to Be Work Product

CONTRACTOR acknowledges and agrees that all Services provided by CONTRACTOR under this AGREEMENT shall be provided on a "work for hire" basis, and that any intellectual property rights created during the provision of the Services, including any intellectual property rights of any finished or unfinished works created under this AGREEMENT, shall be governed by the terms of PSC-21 "Ownership and License" of the Standard Provisions and shall be owned by the CITY.

SECTION 4 – COMPENSATION AND INVOICING

4.1 Compensation

CITY will pay CONTRACTOR an amount for services outlined in each individual NTP. All quotes submitted by CONTRACTOR, and all costs for work performed by CONTRACTOR under this Agreement shall be based on the Rate and Rate Escalation Schedule included in the SANDAG Contract. All quotes shall clearly identify the number of hours estimated for each task/project and the corresponding hourly rate charged and the total estimated costs of the task/project. In no event shall CONTRACTOR charge, or CITY pay, for services at an hourly rate in excess of those stipulated in the Rate and Rate Escalation Schedule included in the SANDAG Contract. The total compensation amount for this CONTRACT shall not exceed Five Million Dollars (\$5,000,000). The CONTRACT amount is an estimate, and RAP does not guarantee that the CONTRACT maximum amount will be reached. The professional services that RAP is requesting shall be on an occasional and as-needed basis and the CITY, by entering into this CONTRACT, guarantees no minimum amount of business or compensation. RAP staff will monitor this not-to-exceed aggregate total.

4.2 Invoicing

Prior to the start of any work, CONTRACTOR must receive a NTP from an authorized agent of RAP. CONTRACTOR shall submit invoices to RAP for all work performed. Once work has been completed to the satisfaction of RAP, CONTRACTOR may submit an invoice for the agreed amount on the NTP.

The invoice shall conform to City standards and include, at a minimum, the following information:

1. Name and address of CONTRACTOR
2. Date of invoice and period covered
3. Task Order or Notice to Proceed
4. Description of completed task and amount due for task, including:
 - a. Hours spent on task and timesheet supporting charges (if applicable)
 - b. Rate per hour and total due
5. Certification by a duly authorized officer
6. Remittance address (if different from CONTRACTOR address)

All invoices shall be submitted on CONTRACTOR'S letterhead, containing CONTRACTOR'S official logo, or other unique and identifying information such as the name and address of CONTRACTOR.

Invoices and supporting documentation shall be prepared at the sole expense and responsibility of CONTRACTOR. The City will not compensate CONTRACTOR for costs incurred in invoice preparation. The City may request changes to the content and format of the invoice and supporting documentation at any time. The City reserves the right to request additional supporting documentation to substantiate costs at any time.

Tasks that are completed by subcontractors shall be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.

Failure to adhere to these policies may result in nonpayment pursuant to Charter Section 262(a), which requires the City Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on the Treasury.

4.3 Compensation and Schedule of Payments

The CONTRACTOR'S invoice will be reviewed and approved for payment by RAP'S representative. Once signed off by RAP'S representative, payment will be processed by RAP'S Finance Division. RAP may take up to thirty (30) days after RAP'S representative's approval for payment of invoice, unless CONTRACTOR offers a discount for early payment.

SECTION 5 - NON-EXCLUSIVITY

RAP and the CONTRACTOR understand and agree that this is a non-exclusive AGREEMENT to provide services to RAP and that RAP may contract with other contractors to provide similar services during the term of this AGREEMENT.

SECTION 6 - RATIFICATION

At the request of RAP, and because of the urgent need therefore, CONTRACTOR may have commenced performance of services required hereunder prior to the execution of this Agreement. By its execution hereof, RAP hereby accepts such services from CONTRACTOR subject to all of the terms, covenants and conditions of this Agreement, and CONTRACTOR's performance of such services.

SECTION 7 - INCORPORATION OF DOCUMENTS

This AGREEMENT, appendices and incorporated documents represents the entire agreement of the PARTIES and supersedes all prior written or oral representations, discussions, and agreements. This AGREEMENT may not be changed or modified in any manner except by formal, written amendment fully executed by both CITY and CONTRACTOR, The following documents are incorporated and made a part hereof by reference:

- Appendix A. SANDAG Contract #5005375, executed on April 11, 2019 between SANDAG and Pastilla, Inc.
- Appendix B. Standard Provisions for City Contracts. (REV. 10/17) [v.3].
- Appendix C. CITY Compliance Documents
- Appendix D. Insurance Contractual Requirements

The order of precedence in resolving conflicting language, if any, in the documents shall be: (1) This Agreement, (2) Appendix B; (3) Exhibit C; (4) Exhibit B and (5) Exhibit D.

IN WITNESS THEREOF, the parties hereto have executed this AGREEMENT to be executed by their duly authorized representatives on the dates indicated:

Executed this _____ day
of _____, 2020

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

By _____
PRESIDENT

By _____
SECRETARY

Executed this _____ day
of _____, 2020

Pastilla, Inc.

By _____
Co-Founder and Chief Creative Officer

By _____
[TITLE]

Approved as to Form:

Date: _____

Michael N. Feuer
City Attorney

By _____
DEPUTY CITY ATTORNEY

AGREEMENT NO.: _____

BUSINESS TAX REGISTRATION CERTIFICATE NO.: _____

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

___ **Workers' Compensation (WC) and Employer's Liability (EL)**

WC Statutory

EL _____

Waiver of Subrogation in favor of City

Longshore & Harbor Workers

Jones Act

___ **General Liability**

Products/Completed Operations

Sexual Misconduct _____

Fire Legal Liability _____

___ **Automobile Liability** (for any and all vehicles used for this contract, other than commuting to/from work)

___ **Professional Liability** (Errors and Omissions)

Discovery Period _____

___ **Property Insurance** (to cover replacement cost of building - as determined by insurance company)

All Risk Coverage

Boiler and Machinery

Flood _____

Builder's Risk

Earthquake _____

___ _____

___ **Surety Bonds** - Performance and Payment (Labor and Materials) Bonds

___ **Crime Insurance**

Other:

CITY OF LOS ANGELES

INSTRUCTIONS AND INFORMATION
ON COMPLYING WITH CITY INSURANCE REQUIREMENTS

(Share this information with your insurance agent or broker)

1. **Agreement/Reference** All evidence of insurance should identify the nature of your business with the CITY. Clearly show any assigned number of a bid, contract, lease, permit, etc. or give the project name and the job site or street address to ensure that your submission will be properly credited. Provide the **types of coverage and minimum dollar amounts** specified on the Required Insurance and Minimum Limits sheet (Form Gen. 146) included in your CITY documents.

2. **When to Submit** Normally, no work may begin until a CITY insurance certificate approval number ("CA number") has been obtained, so insurance documents should be submitted as early as practicable. For **As-needed Contracts**, insurance need not be submitted until a specific job has been awarded. **Design Professionals** coverage for new construction work may be submitted simultaneously with final plans and drawings, but before construction commences.

3. **Acceptable Evidence and Approval** Electronic submission is the required method of submitting your documents. **KwikComply** is the CITY's online insurance compliance system and is designed to make the experience of submitting and retrieving insurance information quick and easy. The system is designed to be used by insurance brokers and agents as they submit client insurance certificates directly to the City. It uses the standard insurance industry form known as the **ACORD 25 Certificate of Liability Insurance** in electronic format. **KwikComply** advantages include standardized, universally accepted forms, paperless approval transactions (24 hours, 7 days per week), and security checks and balances. The easiest and quickest way to obtain approval of your insurance is to have your insurance broker or agent access **KwikComply** at <https://kwikcomply.org/> and follow the instructions to register and submit the appropriate proof of insurance on your behalf.

Contractor must provide City a thirty (30) day notice of cancellation (ten (10) days for non-payment of premium) AND an Additional Insured Endorsement naming the CITY an additional insured completed by your insurance company or its designee. If the policy includes an automatic or blanket additional insured endorsement, the Certificate must state the CITY is an automatic or blanket additional insured. An endorsement naming the CITY an Additional Named Insured and Loss Payee as Its Interests May Appear is required on property policies. All evidence of insurance must be authorized by a person with authority to bind coverage, whether that is the authorized agent/broker or insurance underwriter.

Additional Insured Endorsements DO NOT apply to the following:

- Indication of compliance with statute, such as Workers' Compensation Law.
- Professional Liability insurance.

Verification of approved insurance and bonds may be obtained by checking **KwikComply**, the CITY's online insurance compliance system, at <https://kwikcomply.org/>.

4. **Renewal** When an existing policy is renewed, have your insurance broker or agent submit a new Acord 25 Certificate or edit the existing Acord 25 Certificate through **KwikComply** at <https://kwikcomply.org/>.

5. **Alternative Programs/Self-Insurance** Risk financing mechanisms such as Risk Retention Groups, Risk Purchasing Groups, off-shore carriers, captive insurance programs and self-insurance programs are subject to separate approval after the CITY has reviewed the relevant audited financial statements. To initiate a review of your program, you should complete the

Applicant's Declaration of Self Insurance form (<http://cao.lacity.org/risk/InsuranceForms.htm>) to the Office of the City Administrative Officer, Risk Management for consideration.

6. **General Liability** insurance covering your operations (and products, where applicable) is required whenever the CITY is at risk of third-party claims which may arise out of your work or your presence or special event on City premises. **Sexual Misconduct** coverage is a required coverage when the work performed involves minors. **Fire Legal Liability** is required for persons occupying a portion of CITY premises. Information on two CITY insurance programs, the SPARTA program, an optional source of low-cost insurance which meets the most minimum requirements, and the Special Events Liability Insurance Program, which provides liability coverage for short-term special events on CITY premises or streets, is available at (www.2sparta.com), or by calling (800) 420-0555.

7. **Automobile Liability** insurance is required only when vehicles are used in performing the work of your Contract or when they are driven off-road on CITY premises; it is not required for simple commuting unless CITY is paying mileage. However, compliance with California law requiring auto liability insurance is a contractual requirement.

8. **Errors and Omissions** coverage will be specified on a project-by-project basis if you are working as a licensed or other professional. The length of the claims discovery period required will vary with the circumstances of the individual job.

9. **Workers' Compensation and Employer's Liability** insurance are not required for single-person contractors. However, under state law these coverages (or a copy of the state's Consent To Self Insure) must be provided if you have any employees at any time during the period of this contract. Contractors with no employees must complete a Request for Waiver of Workers' Compensation Insurance Requirement (<http://cao.lacity.org/risk/InsuranceForms.htm>). A **Waiver of Subrogation** on the coverage is required only for jobs where your employees are working on CITY premises under hazardous conditions, e.g., uneven terrain, scaffolding, caustic chemicals, toxic materials, power tools, etc. The Waiver of Subrogation waives the insurer's right to recover (from the CITY) any workers' compensation paid to an injured employee of the contractor.

10. **Property** Insurance is required for persons having exclusive use of premises or equipment owned or controlled by the CITY. **Builder's Risk/Course of Construction** is required during construction projects and should include building materials in transit and stored at the project site.

11. **Surety** coverage may be required to guarantee performance of work and payment to vendors and suppliers. A **Crime Policy** may be required to handle CITY funds or securities, and under certain other conditions. **Specialty coverages** may be needed for certain operations. For assistance in obtaining the CITY required bid, performance and payment surety bonds, please see the City of Los Angeles Contractor Development and Bond Assistance Program website address at <http://cao.lacity.org/risk/BondAssistanceProgram.pdf> or call (213) 258-3000 for more information.

12. **Cyber Liability & Privacy** coverage may be required to cover technology services or products for both liability and property losses that may result when a CITY contractor engages in various electronic activities, such as selling on the Internet or collecting data within its internal electronic network. Contractor's policies shall cover liability for a data breach in which the CITY employees' and/or CITY customers' confidential or personal information, such as but not limited to, Social Security or credit card information are exposed or stolen by a hacker or other criminal who has gained access to the CITY's or contractor's electronic network. The policies shall cover a variety of expenses associated with data breaches, including: notification costs, credit monitoring, costs to defend claims by state regulators, fines and penalties, and loss resulting from identity theft. The policies are required to cover liability arising from website media content, as well as property exposures from: (a) business interruption, (b) data loss/destruction, (c) computer fraud, (d) funds transfer loss, and (e) cyber extortion.

**SAN DIEGO ASSOCIATION OF GOVERNMENTS
REQUEST FOR PROPOSALS**

SOLICITATION NUMBER: 5005360
SOLICITATION TITLE: ON-CALL MARKETING AND COMMUNICATIONS SERVICES

REQUEST FOR PROPOSALS SUMMARY

RFP Release Date: August 3, 2018
Service Requested: On-Call Marketing and Communications
Contract Type: Project specific Task or Work Orders
Number of Contracts: Multiple
Estimated Range: The maximum amount of work assigned under the resulting contracts of this RFP shall not exceed \$5,000,000 aggregate, depending on the number of contracts awarded and the San Diego Association of Governments (SANDAG) needs
Duration: Five years for each contract
DBE Goal Range: 0-25%
Payment Method: Firm fixed fees based upon deliverables
Time and materials or fixed fee basis at negotiated specific rates of compensation
Pre-proposal Meeting: August 13, 2018
Deadline for Questions Regarding this RFP: August 16, 2018 at 5:00 p.m. (PDT)

PROPOSAL DUE DATE AND TIME:

2:00 p.m. (PDT)

August 27, 2018

*****WARNING*****

PROPOSALS WILL BE DEEMED NONRESPONSIVE AND WILL BE DISQUALIFIED FROM FURTHER CONSIDERATION IF THEY DO NOT INCLUDE REQUIRED DBE DOCUMENTATION SHOWING THE PROPOSER HAS EITHER MET/EXCEEDED THE DBE GOAL OR MADE A GOOD FAITH EFFORT TO DO SO.



401 B Street, Suite 800 • San Diego, CA 92101-4231 • (619) 699-1900

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PART 1 - REQUEST FOR PROPOSALS

I. INTRODUCTION

Thank you for your interest in contracting opportunities with SANDAG. SANDAG is seeking proposals from qualified firms for On-Call Communications and Marketing Services ("Project"). Consultants will be selected on an as-needed, category specific basis. The intent of this RFP is to establish a list of qualified firms for each of 11 separate categories as outlined in the Scope of Work.

This RFP describes the Project, the required scope of services, the proposer selection process, and the minimum information that must be included in the proposal. Failure to submit information in accordance with the RFP requirements and procedures may be cause for disqualification.

SANDAG intends to award multiple contracts to qualified proposers in order to meet its objective of creating a group of on-call firms that will be used to provide services to SANDAG on an as-needed basis. It is anticipated that approximately 20 contracts will be awarded as a result of this RFP.

II. BACKGROUND

SANDAG is a legislatively created regional government agency that provides technical and informational resources as well as planning and development of regional infrastructure for the area's 18 incorporated cities and the county government, who collectively formed the "Association of Governments." SANDAG also serves as the federally designated metropolitan planning organization and Regional Transportation Commission for the region. Through SANDAG, local governments work together to solve current problems and plan for the future. SANDAG builds consensus, makes strategic plans, obtains and allocates resources, constructs infrastructure and provides information on a broad range of topics pertinent to the San Diego region's quality of life. Additional information regarding SANDAG and its projects can be found at www.sandag.org.

III. PROJECT SUMMARY

A. Brief Project Description

SANDAG is seeking Proposals from firms able to provide professional on-call expertise in one or more of the following 11 categories: A firm can bid on one or more of the following eleven categories. For each category of interest, describe your methodology and approach to work. The firm or firms selected for each category must have demonstrated expertise doing the type of work contemplated under that category. Provide examples of prior engagements doing such work, indicating the scope and complexity of the projects.

Category A: Marketing Communications Plans

Category B: Public Outreach and Stakeholder Involvement Plans and Programs

Category C: Special Event Planning and Support

Category D: Collateral Materials

Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic Services

Category F: Copywriting/Editing

Category G: Media Buying, Sponsorship, and Advertising

Category H: Social Media and Other Electronic Outreach Tools

Category I: Survey, Focus Group, and Other Survey Research

Category J: Facilitation and Facilitator Training

Category K: Media and Presentation Training

It is the intent of SANDAG to engage one or more proposers for services in each category should that be in SANDAG's best interest. Proposers must indicate which category(ies) they are responding to in their proposal. Proposers may be awarded a contract in more than one category.

B. Project Budget

The estimated budget for the completion of the Project is \$4,555,000 across all categories over the five-year period. This Project is included in the SANDAG annual Budget.

The budget for this procurement allows for SANDAG to award multiple contracts. A range of categories are being offered so Proposers can choose based upon their level of expertise and responsibility; . SANDAG does not guarantee, either expressly or by implication, any specific amount of work that will be awarded under an Agreement resulting from this RFP. Any Agreement awarded, however, will include at least \$50 in Task or Work Order work.

C. Duration of Agreement

The Proposer(s) who is awarded an Agreement for this Project will be authorized to perform work pursuant to individually negotiated Task or Work Orders issued and in accordance with the terms of the SANDAG Standard Services Agreement. The Agreement awarded will be for a period of five years.

D. Payment Methods

The selected proposer(s) will be paid on a time and materials or fixed fee basis at negotiated specific rates of compensation. The contracting parties may agree in some cases to a firm fixed fee for a particular Task or Work Order or task; in which case the fixed fee will be based upon deliverables or portion of work completed.

E. Multiple Contracts and Issuance of Task And Work Orders

SANDAG intends to award one or more contracts in each of the 11 categories as a result of this RFP. Authorization of work among the on-call firms will be determined through an additional qualifications and cost- based selection process, resulting in issuance of a Task or Work Order with the selected firm.

For any work to be performed in excess of \$10,000 a Task Order will be issued. For work less than \$10,000 a Work Order will be issued .

The Proposer(s) that will provide the best value to SANDAG will be selected based on factors such as the contracted on-call firm's ability to accomplish the particular scope of work, special expertise of proposer's team, proposed cost or level of effort, availability of staff to

complete the work in a timely manner, performance on prior Task or Work Orders, and other relevant factors in the discretion of SANDAG. SANDAG will document its selection of the awarded Proposer(s) by utilizing the On-Call Task Order Firm Recommendation Form.

The resulting Task or Work Order will set forth the scope of work, any contractual terms, and conditions specific to the Task Order scope of work, and set forth whether fixed hourly rates and direct costs or a firm fixed price will be applicable to the assigned project. SANDAG will negotiate with the selected firm for level-of-effort and direct costs for each service or item and include the maximum negotiated amounts in the Task or Work Order. Notwithstanding the foregoing, the maximum amount authorized in each Task or Work Order shall not be exceeded without an amendment to such Task or Work Order.

IV. PROCUREMENT SCHEDULE

SANDAG anticipates the process for nominating and selecting a Proposer and awarding the Agreement will be according to the following tentative schedule:

Advertise and Issue RFP	August 3, 2018
Pre-Proposal Meeting (Non-Mandatory)	August 13, 2018
Last Day to Submit Questions Regarding RFP	August 16, 2018
Proposal Due Date.....	August 27, 2018
Short List Meeting	September 19 & 20, 2018
Oral Interviews.....	October 3 & 4, 2018
Selection and Notification of Intent to Negotiate.....	October 12, 2018
Contract Negotiations Complete.....	November 9, 2018
Approval of Agreement.....	December 14, 2018
Notice of Award/Notice to Proceed	December 21, 2018

*Note: If your firm is selected for oral interviews, the interview team must be available for onsite interviews to be held at 401 B Street-Suite 800 San Diego, CA and based on the schedule listed above. SANDAG will provide as much notice as possible for firms to coordinate any travel arrangements.

V. PROPOSAL CONTENT REQUIREMENTS

Proposals submitted in response to this RFP shall be in the following order and shall include the following information. Please tab and label each section of your proposal as follows:

A. Executive Summary

Include a one- to two-page overview of the entire proposal describing the most important elements of the proposal.

B. Identification of the Proposer and Establishment of Proposer’s Fiscal Responsibility

Please provide the following information:

1. Legal name and address of proposer’s company.
2. Number of years the proposer’s company has been in business.
3. Legal form of proposer (partnership, corporation, LLC, joint venture, etc.). If joint venture, identify the members of the joint venture and provide all information required within this section for each member. If a corporation, include documentation certifying that the corporation is in good standing with the California Secretary of State.
4. If company is a wholly-owned subsidiary of a “parent company,” provide the legal name and form of the parent company.
5. Tax Identification Number
6. Dunn and Bradstreet Number
7. Address of offices that will work on this Project.
8. If DBE certified, identify certifying agency, as well as gender and ethnicity.
9. If Small Business certified, identify the certificate number provided by the California Department of General Services’ Office of Small Business and DVBE Services and the expiration date.
10. Name, title, address, email address, and telephone number of the person to contact concerning the proposal.
11. State whether the Proposer has filed bankruptcy in the last ten years and provide any other relevant information concerning whether the Proposer is financially capable of completing this Project.
12. Provide all license numbers for licenses relevant to or required for this Project, the names of the holders of those licenses, and the names of the agencies issuing those licenses.

C. Proposed Method to Accomplish the Work

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support; Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

A firm can bid on one or more of the eleven categories. For each category of interest, describe your methodology and approach to work. The firm or firms selected for each category must have demonstrated expertise doing the type of work contemplated under that category. Provide examples of prior engagements doing such work, indicating the scope and complexity of the projects.

Describe the Proposer's technical and management approach to the Project and how the Proposer will plan for and incorporate each into the Project effort. Discuss how and what lines of communication will be implemented to maintain a Project schedule. This section of the proposal should contain a discussion tailored to the Project and the needs of SANDAG. Boilerplate proposals that do not include discussion specific to SANDAG structure, policies, business methods, and Project requirements will receive lower scores. Demonstrated understanding of SANDAG and the Project, with the inclusion of innovative approaches and articulate analyses, will receive higher scores.

D. Project Organization and Key Personnel

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support; Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

1. Describe proposed Project team organization, including identification and responsibilities of key personnel. Indicate role and responsibility of prime proposer and all subconsultants, including DBE subconsultants. If applicable, indicate how local firms will be used to ensure a strong understanding of state and local laws, ordinances, regulations, policies, requirements, and permitting. Indicate the extent of the commitment of key personnel for the duration of the Project and furnish resumes of key personnel. Provide an indication of the staffing level for the Project. The SANDAG evaluation of the proposal will consider the Proposer's entire team; therefore, no changes in the team composition will be allowed without prior written approval of SANDAG through the Request to Add Subconsultant and/or Bench Firm process. **Subconsultant letters of commitment are required and must be submitted with the proposal.**
2. Describe the experience of the Proposer's Project team in detail, including the team's Project Manager, and other key staff members, on Projects of similar size, capacity, and dollar value. For each similar Project, include the client's name and telephone number. It is the policy of SANDAG to interview Proposers' references as well as references identified by SANDAG.

E. Subconsultant List

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support;

Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

The Subconsultant List must be completed and submitted with the Proposal. This form lists all subconsultants actually selected by Proposer for the Project, the portion of the scope of work they will be allocated,. The Subconsultant List also must be completed and submitted with each Task or Work Order. The Subconsultant List for each Task or Work Order must list all subconsultants actually selected by a Proposer for the Task or Work Order, the portion of the scope of work they will be allocated, and approximate percentage or dollar amount of the work they will be awarded.

F. Bidders List

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support; Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

The Bidders List must be completed and submitted with the proposal. SANDAG is required to create and maintain a "Bidders List" of firms for both the prime and subconsultants that are bidding, proposing, offering, or quoting on SANDAG contracts. The Bidders List is different from the Subconsultant List . The Subconsultant List only shows firms the Proposer ultimately selected for its team, whereas the Bidders List shows all firms that sought to work on the Project for a Proposer.

G. Detailed Cost Proposal

1. On-Call Rates

Provide fully loaded hourly rates by title for each professional and administrative staff person who will be committed to this project to complete all tasks identified in the scope of work in each category for which the proposer is proposing.

The cost to transmit files that have been created during the development of ongoing work products shall be included in proposal pricing.

Hourly rates will be frozen for the first two years of the contract. Provide an escalation percentage to be applied to the proposed fully loaded hourly rates for years 3, 4, and 5. The Proposer's detailed cost proposal must cover the period of service of five years.

2. Sample Project

Provide a cost proposal for the sample project for which a proposal is submitted. A detailed cost breakdown shall be provided identifying: (1) the number of staff hours and hourly rates for each professional and administrative staff person committed to the sample project, including fringe and overhead costs; (2) an estimate of all other direct costs (ODCs), such as resources, materials and reproduction costs; and (3) an estimate of subconsultant services, if needed. This information will be used in proposal evaluation and to determine the reasonableness of Proposers' estimates.

H. Relevant Local, State, and Federal Experience

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support; Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

Describe the Proposer's experience working in the San Diego region and proposed local presence for interfacing with the SANDAG Project Manager and staff. Relevant experience may include, but is not limited to: knowledge of city, county, and other local agencies' regulations and policies, politics and political issues.

I. Previous Contracts with SANDAG

The Proposer shall submit a list which indicates all prime contracts and/or amendments awarded to the Proposer by SANDAG for the last three years. The list shall include a short description of the project, the project scope of work, award date, completion date, name of the SANDAG assigned Project Manager, and contract value. This information may be used to evaluate Proposer's experience and knowledge of SANDAG, and to obtain references regarding Proposer's previous work.

J. Exceptions to this Request for Proposals

The Proposer shall state whether or not it takes exceptions to this RFP, including but not limited to SANDAG's Standard Services Agreement, which is an Attachment to the RFP. If the Proposer does take exceptions to any portion of the RFP or Agreement, the specific portion to which exceptions is taken must be identified by section number and explained. Requests for changes or additions to sections of SANDAG's Standard Services Agreement must be shown by requesting deletion of specific words and/or by providing new requested Agreement language. Requests for complete replacement of the SANDAG Standard Services Agreement for another contract will not be granted. Failure to make exceptions to the RFP or Standard Services Agreement within the proposal will be deemed a waiver of any objection. Exceptions will be considered during the proposal evaluation process.

K. Addenda to this Request for Proposals

The Proposer shall confirm in its proposal the receipt of all addenda issued to this RFP.

L. Required Certifications

See List of Submittals Required with Proposal (RFP Checklist), which is an RFP Attachment.

M. Statement of Impartiality and Disclosure Regarding Investigations or Litigation

The nature of this Project requires an impartial unbiased approach on the part of the Proposer team. The proposal shall include a statement declaring that the Proposers and subconsultants are not currently, and will not, during the performance of these services, participate in any other similar work involving a third-party with interests currently in conflict or likely to be in conflict with SANDAG's interests. Additionally, Proposer is required to disclose any pending or active investigations or litigation that may affect the reputation or ability of the Proposer to carry out the Project.

Proposers must provide an affirmative statement in their proposals that a conflicts check for the following entities has been processed and that no conflict of interest exists that could disqualify the Proposer from performing communication and marketing services for SANDAG, MTS, NCTD, the FTA, the FHWA, the County of San Diego, and all of the cities within the County of San Diego. Proposers who represent clients who are involved in a conflict or litigation with one of these entities may be disqualified if the conflict is not disclosed or cannot be sufficiently mitigated.

N. References

This section of the RFP should be tailored and labeled separately for each of the eleven categories for which the proposer is submitting a proposal: Category A: Marketing Communications Plans; Category B: Public Outreach and Stakeholder Involvement Plans and Programs; Category C: Special Event Planning and Support; Category D: Collateral Materials; Category E: Graphic Design, Printing, Signage/Exhibit Design and/or Fabrication, Visual Simulations, Video Productions, Digital Audio and Video Outreach, and Photographic; Category F: Copywriting/Editing; Category G: Media Buying, Sponsorship, and Advertising; Category H: Social Media and Other Electronic Outreach Tools; Category I: Survey, Focus Group, and Other Survey Research; Category J: Facilitation and Facilitator Training; Category K: Media and Presentation Training

Describe the Proposer's experience in completing work efforts of similar size, capacity, and dollar value to the project.

List three successfully completed projects of a similar nature. For each completed project, provide the name of the company and project manager the Proposer performed work for, telephone numbers, email addresses, type of work performed, and dollar value of the contracts. A project currently being performed may be submitted for consideration as one of the references. It is the policy of SANDAG to interview Proposers' references as well as references identified by SANDAG. **Proposers are hereby put on notice that SANDAG will only make three attempts to contact references; any reference that fails to respond to SANDAG's inquiry will receive a 0 score. Proposers are strongly encouraged to notify their references of this and request that references respond to SANDAG in a timely matter.**

VI. CONFLICTS OF INTEREST CONSIDERATIONS

A. Proposers Employees in Project Management Roles

The selected Proposer(s) may be tasked with assisting SANDAG with some portion of its contracting processes with third parties, such as writing scope, preparing cost estimates, reviewing invoices, or recommending the selection of supplies or services from third-party providers. If a selected proposer's employees will have any of these types of responsibilities, its effected employees will be required to execute a Consultant Employee in Project Management Role Conflict of Interest and Confidentiality Statement, as well as provide financial disclosure statements required by state law (California Form 700) to confirm that those persons do not have sources of income or gifts that will create a conflict of interest. Such employees will be prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract in combination with or as a result of the services covered by the Agreement. Additional information is available at <http://www.fppc.ca.gov/Form700.html>.

B. Notice of Potential for Organizational and Financial Conflicts of Interest

SANDAG has established policies concerning conflicts of interest in contracting and prohibition against gifts by proposers to SANDAG employees. Please refer to SANDAG Board Policy Nos. 004 and 016 available at www.sandag.org/legal. These policies apply to all Proposers and their proposed subconsultants. All SANDAG procurements must be conducted within the ethical standards approved by the SANDAG Board of Directors. In addition, any practices which might result in unlawful activity are prohibited, including but not limited to rebates, kickbacks, or other unlawful considerations. SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

Proposers, consultants, vendors, and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents, or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

A Proposer is eligible for award of service contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent financial or organizational conflict of interest. A prohibited organizational conflict of interest exists when a proposer is or may be unable to render impartial, objective assistance or advice to SANDAG or where a proposer would receive an unfair competitive advantage. Examples of situations that could

create such a conflict of interest are listed in Board Policy No. 016. Firms that have a conflict of interest due to performing work for SANDAG are ineligible to propose. A process for determining whether a Proposer has a conflict is set forth in Board Policy No. 016. Ineligible firms include the prime Proposer, its subconsultants, and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise.

Proposers are hereby placed on notice that work may be awarded via a Task or Work Order under a contract resulting from this RFP that could preclude a Proposer from working on future stages of a project due to a conflict of interest. For example, if a Proposer is awarded a Task or Work Order with a scope of work calling for the Proposer to assist SANDAG in developing a scope of work for another procurement, the Proposer would have an unfair competitive advantage and would therefore be ineligible to compete when that procurement was issued.

VII. AUDIT REQUIREMENTS

A. Pre-Award and Post-Award Audits

A pre-award and/or post-award audit may be performed for contracts awarded pursuant to this RFP. The selected proposers and all of their subconsultants will be subject to audit by SANDAG or its representatives as described in this Section. All references to "consultant" in this section shall mean the selected Proposer and all of its subconsultants, and the term "subconsultant" shall include Bench firms if Bench firms are used. If a post-award audit is performed and SANDAG determines that a consultant's rates are not reasonable, the consultant will be required to execute an amendment contractually lowering the rates SANDAG is required to pay and SANDAG shall be entitled to an offset against amounts it owes the consultant for the amount of any overpayment that has already occurred.

The scope of the audit will consist of such tests as the auditors consider necessary to assure that the proposer satisfactorily meets the requirements outlined in items below prior to execution of the contract.

At the time of the pre-award and/or post-award audit, the prospective consultant must demonstrate through actual historical data that its accounting system is capable of accumulating and segregating reasonable, allowable, and allocable costs. For new businesses, if actual historical data is unavailable or the accounting system is newly implemented, the system will be tested to determine whether the accounting system is adequate and, if necessary, recommend that an interim audit be performed. At a minimum, the Proposer must have an accounting system that meets the following objectives:

- The ability to record and report financial data in accordance with generally accepted accounting principles and the CFR, Title 48, FAR System, Chapter 1, Part 31.
- The ability to accumulate and segregate reasonable, allowable, and allocable costs through the use of a cost accounting system.
- A system of record keeping ensuring the costs billed to SANDAG will be supported by adequate documentation and will be in compliance with the terms of the contract and applicable federal and state regulations.
- Procedures to retain accounting records and source documentation as required by the terms of the contract.

- A system of internal control which provides reasonable assurance that assets are protected; financial data, records, and statements are reliable; and errors and irregularities are promptly discovered, reported, and corrected.
- The proposer must be financially capable of performing the work.
- The costs proposed must be reasonable.

VIII. SANDAG DBE PROGRAM

A. Agency DBE Goals

As a recipient of federal funding, SANDAG has established DBE program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated. The term DBE means a for-profit small business concern as defined in 49 CFR 26.5. In this Agreement, the term 'bidder' also means 'Proposer' or 'offeror.'

B. Applicability Regardless of Use of Federal Funding

Even if no federal funding will be used on the Agreement awarded pursuant to this RFP and no DBE goal will be set, the selected proposer will still be required to document use of SBs and DBEs in the performance of its work.

C. DBE Requirements

An Agreement awarded under this RFP will be subject to the following requirements:

1. FHWA Funding Will Be Used - Additional DBE requirements related to this procurement are set forth in detail in the Standard Federal Provisions for FHWA Non-Construction (an Exhibit to the Standard Services Agreement) and in the RFP Attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".
 - a. The FHWA DBE Contract Specific Goal Range for this RFP is 0.00 – 25.00 percent. Ability to meet or attempt to meet the goal must be documented prior to the time an Agreement, Task or Work Order is executed.
2. FTA Funding Will Be Used - Additional DBE requirements related to this procurement are set forth in detail in the Standard Federal Provisions for FTA (an Exhibit to the Standard Services Agreement) and in the RFP Attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".
 - a. The FTA DBE Contract Specific Goal Range for this RFP is 0.00 – 25.00 percent. Ability to meet or attempt to meet the goal must be documented prior to the time an Agreement, Task
 - b. Order is executed.
3. FRA Funding may be used at some point during the term of the Agreement; however, SANDAG has not established a specific FRA DBE goal for this RFP.

Proposers are encouraged to obtain DBE participation for Task Orders that are funded with FRA monies.

D. Non-discrimination

SANDAG requires all potential SANDAG proposers to comply with Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and the California Fair Employment and Housing Act, as amended, and all other applicable discrimination laws. SANDAG will not tolerate illegal discrimination or harassment by its proposers or consultants.

IX. PROPOSER DBE COMMITMENT FORM AND GFES

A. Proposer DBE Commitment Form

1. The Proposer DBE Commitment Form shows the percentage of work that the Proposer is offering to commit to DBEs, based on its cost estimate. It must be completed and submitted prior to issuance of each Task or Work Order.
2. If a DBE goal of more than 0% applies and the Proposer does not submit the Proposer DBE Commitment Form prior to issuance of each Task or Work Order, SANDAG will find the proposer nonresponsive. Proposer must submit written confirmation from each DBE stating that it is participating in the contract, which shall be included with the Proposer DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is planning to participate in the contract. Even if no DBE participation is planned, the successful Proposer must execute and return the Proposer DBE Commitment form.

B. GFE

Proposers that do not commit to meet a DBE goal utilizing the Proposer DBE Commitment form must complete and submit the DBE Information-GFEs form and demonstrate adequate GFE to meet the DBE goal in order to maintain their eligibility for award. SANDAG recommends that even Proposers who have proposed to commit to meet the goal additionally submit this form as a means of protecting their eligibility for award in the event the DBE firm participation proposed was improperly credited by the Proposer.

C. GFE Documentation

GFE documentation must include the information and supporting documents, as necessary and as set forth in the RFP Attachments entitled "Guidance for Bidders Completing the GFE and Appendix A to 49 CFR 26" and "DBE Information – Good Faith Efforts." Additional, detailed information regarding how to ensure adequate GFE documentation is provided is in the "GFE Guidelines", which can be found at: <http://www.sandag.org/organization/rfps/pdfs/goodfaith.pdf>.

D. DBE Participation and Task Orders

The DBE participation requirement associated with this procurement cannot be precisely determined until the scopes of work for the Task Orders are approved by SANDAG. The Proposer must certify, however, that it will exercise GFE to meet or exceed the established DBE participation goal inclusive of amendments, modifications, options, and change orders prior to the commencement of work by either: proposing sufficient DBE participation to meet the respective DBE goal or if the Proposer is unable to meet sufficient DBE

participation, the Proposer will provide a showing of good faith efforts undertaken to do so, in conformance with the Agreement provisions and DBE regulatory requirements set forth under 49 CFR 26, Appendix A, to be deemed responsive and eligible to commence work for SANDAG. Proposer should carefully examine all documents that form this RFP and understand that the DBE goal will be set somewhere in the range of 0 percent to 25 percent at the time proposals are sought for a Task Order based on the work actually assigned by SANDAG. The Proposer must commit to meet or exceed the established DBE contract commitment over the term of the applicable Task Order (inclusive of all amendments, modifications, options, and change orders). Proposer is required to acknowledge these requirements by submitting an executed DBE Goal Certification - at the time it submits its proposal.

X. PRE-SUBMITTAL ACTIVITIES

A. Questions Concerning Request for Proposals

All questions relating to the RFP must be received no later than 5 p.m., on August 16, 2018 on the web-based portal for SANDAG RFPs which can be accessed using this address:

www.sandag.org/contracts

Responses to all questions received concerning this RFP will be posted on the web-based vendor portal for SANDAG RFPs, which can be accessed using this address:

www.sandag.org/contracts

All responses and all timely questions received concerning this RFP will be posted to the web at least seven days prior to the proposal due date. It is the responsibility of Proposers to check the web-based vendor portal for questions and responses related to this RFP.

B. Pre-proposal Meeting

A pre-proposal meeting will be held at The Balboa Park Club, on Monday, August 13, 2018 from 9:00 a.m. (PDT) to 12:00 p.m. (PDT) at 2150 Pan American Road West, San Diego, CA 92101. Parking is available in the Pan American Plaza lot or the Spreckels Organ Pavilion lot. The pre-proposal meeting is not mandatory.

Potential Proposers and subcontractors are highly encouraged to register for and attend the pre-proposal meeting. It is an opportunity to learn about the Project, ask questions, and network with firms with whom you may form a team for the Project. Registration can be completed online at: <https://bit.ly/2zPIHxO>.

A summary of the questions and answers from the pre-proposal meeting will be posted on the vendor portal website. The names, emails and phone numbers of potential Proposers that signed in and attended the pre-proposal meeting will be posted on the web to help prime Proposers and potential subconsultants locate each other. This posting is not an endorsement by SANDAG of any of the individuals or firms listed.

C. Revision to the RFP

SANDAG reserves the right to revise the RFP prior to the date that proposals are due. Revisions to the RFP shall be posted on the web page devoted to this RFP at least seven calendar days prior to the deadline for proposals. It is the responsibility of the Proposer to check the website for any revisions related to this RFP.

XI. SUBMITTAL REQUIREMENTS

A. Copies

One hard copy proposal including original signatures, and five xerographic hardcopies of the original proposal, and one copy of the proposal in its entirety in Adobe Acrobat (PDF) format with one copy of the Cost Proposal Form in Microsoft Excel Format on a single flash drive shall be submitted.

Proposers are required to submit a proposal for the sample project included in the Scope of Work in Part 2 - Attachments. The maximum length of the sample project proposal is two pages for each project.

Proposals submitted by facsimile or email are not acceptable and will not be considered.

B. Certifications

The proposal and any required certifications shall be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer. A list of the documents that must be submitted with the proposal is set forth in List of Submittals Required with Proposal (RFP Checklist).

C. Due Date and Time

The proposal must be addressed to and **received no later than 2 p.m., local time, on Monday, August 27, 2018**, at the office of:

Janet Bessent
Contract Administrator
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

Postmarks will not be accepted in lieu of this requirement.

Proposals are to be submitted in a sealed package/box with the following information clearly marked on the outside of the package/box:

Name of Proposer
Solicitation title and number
Package Number (e.g., 1 of 8, 2 of 8)

Failure to comply with any of the requirements of the RFP may result in disqualification. SANDAG is not responsible for finding, correcting, or seeking clarification regarding ambiguities or errors in proposals. If a proposal is found to contain ambiguities or errors, it may receive a lower score during the evaluation process. SANDAG reserves the right to disqualify a proposal that contains a detailed cost estimate with mathematical or clerical errors, inconsistencies, or missing information which prevent SANDAG from fully evaluating the proposal. SANDAG may, but is not required to, seek clarification from a Proposer regarding information in a proposal. Errors and ambiguities in proposals will be interpreted in favor of SANDAG.

SANDAG reserves the right to waive inconsequential irregularities. **Failure to include required DBE documentation that may be shown on the RFP Checklist is not an inconsequential irregularity and will be cause for disqualification of Proposer.**

XII. PROPOSER EVALUATION AND SELECTION PROCESS

Proposals will be evaluated, negotiated, selected and any award made in accordance with the criteria and procedures described below. The approach and procedures are those which are applicable to a competitive negotiated procurement set forth by SANDAG Board Policy No. 016, which is available at www.sandag.org/legal.

Proposals will not be publicly opened.

A. Determination of Responsiveness

Each Proposal will be evaluated for responsiveness. In order to be considered responsive, the Proposal must conform to the instructions set forth in this RFP including, but not limited to, those set forth in the RFP Checklist. Any Proposal that does not so conform may not be accepted. A nonresponsive Proposal which substantially conforms to this RFP may, though it is not strictly responsive, be accepted if the variance cannot have given a proposer an advantage or benefit not allowed other proposers. SANDAG, in its sole discretion, may choose to waive - or not to waive - any non-consequential deviation, including an allowance of proposers to cure issues of responsiveness by providing supplemental information within timelines set by SANDAG.

If SANDAG finds a proposal to be nonresponsive a "Notice of Nonresponsive Proposal" will be sent to the Proposer notifying them of this status. Following notification, a nonresponsive Proposer will no longer be included in any correspondence regarding the RFP.

B. Determination of Responsibility

Proposals will be evaluated to determine the responsibility of Proposers. Any Proposal from proposers whom SANDAG finds not to be responsible and cannot be made to be responsible within timelines set by SANDAG may not be considered for the competitive range. Final determination of a Proposer's responsibility will be made upon the basis of initial information submitted in the Proposal, any information submitted upon request by SANDAG, information submitted in a BAFO (if used) and information resulting from an inquiry by SANDAG of proposer's references and its own knowledge of the Proposer. Proposer's integrity and reputation, as well as its fiscal responsibility will be taken into account as part of the responsibility determination.

C. Evaluation and Ranking of Proposals

1. Evaluation Committees

SANDAG will establish an Evaluation Committee to evaluate proposals.

2. Short List Evaluation

Proposers will be evaluated first on the criteria in the Proposer Short List Evaluation Form in each category for which they submitted a proposal. The criteria in the Short List Evaluation Form will be the basis for the initial evaluation, scoring, and ranking of Proposers' proposals to establish a short list of firms to be interviewed or to be considered for award of a contract if SANDAG deems that interviews are not necessary. Only proposers that are placed on the short list will be invited for an interview.

Each Evaluation Committee member will evaluate Proposers and assign weighted scores per the Proposer Short List Evaluation Form in each category for which they submitted a proposal. The weighted scores will then be converted to ranks, with the highest weighted score ranked one, the next highest score ranked two, and so on. All panel members' ranks for a particular Proposer will be added together and the lowest combined rank score will be the top-ranked firm for the short list in each category for which they submitted a proposal.

Following the Short List evaluation, Proposers of any proposals that have been determined by SANDAG as not in the competitive range will be notified in writing that they were not short listed. Following such notification, a non-short-listed Proposer will no longer be included in any correspondence regarding the RFP.

3. Placement of Proposers on Short List

Proposers whose proposals are found by SANDAG to be within the competitive range in each category for which they submitted a proposal will be notified. Each such Proposer may be invited for a private interview and discussions with SANDAG to discuss answers to written or oral questions, clarifications, and any facet of its proposal.

Placement on the Short List is not a guarantee of contract award. Following the establishment of a short list in each category for which they submitted a proposal, SANDAG may elect to immediately interview the short-listed firms or to delay any such interviews for any period of time in the sole discretion of SANDAG as dictated by the timing of its anticipated needs. SANDAG may also elect to enter into contract negotiations with the top ranked firm without conducting interviews. If interviews are held, they will be held for all short-listed firms.

4. Interviews

Proposers invited for an interview will be evaluated per the criteria as defined in attached Proposer Interview Evaluation Form in each category for which they submitted a proposal. Each Evaluation Committee member will evaluate Proposers and assign weighted scores per the Proposer Interview Evaluation Form in each category for which they submitted a proposal. The weighted scores will then be converted to ranks, with the highest weighted score ranked one, the next highest score ranked two, and so on. All panel members' ranks for a particular Proposer will be added together and the lowest combined rank score will be the top-ranked firm for the interview short list in each category for which they submitted a proposal.

Proposers of any proposals that will not progress beyond the interview stage will be notified in writing for each category for which they submitted a proposal. Following the notification, such Proposers will no longer be included in any correspondence regarding the RFP.

5. Reference Checks

It is the policy of SANDAG to conduct reference checks for Proposers. Proposers' weighted reference scores will be predetermined based upon scores given by proposers' references. Reference scores will be considered during the interview evaluation and selection process.

6. Conditions, Exceptions, Reservations, etc.

In the event that a proposal, which has been included in the competitive range, contains conditions, exceptions, or reservations to any Agreement requirements, said conditions, exceptions, or reservations may be discussed during the interview or contract negotiations.

7. BAFO or FPR

After any interviews have been completed, each of the Proposers in the competitive range may be afforded the opportunity to amend its Proposal and make its BAFO or FPR. SANDAG will then choose the Proposer it finds to be most advantageous to SANDAG based upon the evaluation criteria listed. SANDAG reserves the right to make an award to a Proposer whose proposal it judges to be most advantageous to SANDAG based upon the evaluation criteria, without conducting any written or oral discussions with any Proposers or solicitation of any BAFOs or FPRs.

8. Notices of Award

The Evaluation Committee will recommend the top-ranked Proposers to the SANDAG Executive Director or designee and will request authority to enter into negotiations with the firm. The Executive Director or designee has final authority for making a selection that is in the best interest of SANDAG. The Proposer selected for negotiations will be sent a Notice of Intent to Negotiate. Proposers who are not selected for negotiations will be sent a Notice of Intent to Enter Negotiations with Another Proposer.

9. Negotiations

Upon receipt of the Executive Director's or designee's authorization to negotiate, SANDAG will establish a negotiating team and enter into negotiations with the selected firms. The negotiations may cover: scope of work, contract terms and conditions, and the proposed rates. If the negotiating team is unable to reach an acceptable agreement with a firm, the negotiating team will recommend to the Executive Director that negotiations with that firm be terminated. The Executive Director has final authority to terminate negotiations.

In the event that a proposal that is the subject of negotiation contains conditions, exceptions, reservations, or modifications by Proposer to any Agreement requirements, said conditions, exceptions, reservations, or modifications may be negotiated and SANDAG shall have the right to reject any and all such conditions and/or exceptions, and request the Proposer to amend its proposal and remove said conditions and/or exceptions; and any Proposer failing to do so may cause SANDAG to terminate negotiations as described above.

XIII. CONTRACT EXECUTION

After negotiation of a proposed Agreement that is fair and reasonable in SANDAG estimation, the negotiating team will recommend to the Executive Director or designee that SANDAG enter into agreements with the recommended firms. No Task or Work Order work may commence until after the Agreement has been executed by all of the parties. Any work performed by a Proposer prior to execution of the Agreement and any related Task or Work Order by SANDAG will be uncompensated.

Due to concerns regarding confidentiality during the contract negotiation process, Proposers will not typically be debriefed until after Agreement execution.

Those firms selected for placement on the on-call list will be issued Agreements and Task or Work Orders on an as-needed basis by SANDAG. When services are required, a Task or Work Order will be negotiated with one or more firms based on the criteria that are included in the On-Call Task Order Firm Recommendation Form (an RFP Attachment).

XIV. SPECIAL CONDITIONS

A. No Commitment

This RFP does not commit SANDAG to award a contract, to defray any costs incurred in the preparation of a proposal pursuant to this RFP, or to procure or contract for work. SANDAG may reject Proposer without providing the reason underlying the declination. A failure to award a contract to the Proposer with the lowest cost proposal shall not constitute a valid cause of action against SANDAG.

B. Public Records

All proposals submitted in response to this RFP become the property of SANDAG and public records and, as such, may be subject to public review. Documents protected by law from public disclosure will not be disclosed by SANDAG if clearly marked with the word "confidential" on each applicable page. Trade secrets may be marked as confidential only to the extent they meet the requirements of California Civil Code section 3426.1(d). Only information claimed to be a trade secret at the time of submittal to SANDAG and marked as "confidential" will be treated as a trade secret. To the extent that an entire proposal is marked as confidential or a trade secret, such designations will not be effective and the entire document will thereby be subject to disclosure. To the extent that a Proposer marks any information as either confidential or a trade secret, the Proposer thereby agrees to defend and indemnify SANDAG in the event that SANDAG's non-disclosure of the Cost Proposal is challenged in any legal action. Please see SANDAG's Board Policy 015: Records Management Policy, which is available at www.sandag.org/legal, for information regarding the treatment of documents designated as confidential by SANDAG.

Consistent with California case law, cost proposals and other information regarding proposed rates and value-added services offered, will not be disclosed until after the conclusion of negotiations with the selected Proposer.

C. Right to Cancel

SANDAG reserves the right to cancel or revise, for any or no reason, in part or in its entirety, this RFP. If SANDAG cancels the RFP prior to the deadline for proposals or revises the RFP, notification will be placed on the SANDAG website.

D. Additional Information

SANDAG reserves the right to request additional information and/or clarification from any or all Proposers to this RFP, but is under no obligation to do so.

E. Press Releases and Promotional Materials

Proposers who wish to release information regarding proposer selection, contract award, or procurement information provided by SANDAG in a press release or its promotional

materials prior to the time a contract award is announced must receive prior written approval from SANDAG.

F. Contract with Primes Only

SANDAG intends to contract with Prime firms and will not contract directly with subconsultants. Entities that are unable to contract directly with SANDAG to perform the entire scope of work are encouraged to partner with another entity that is willing to serve as the Prime.

G. Contract for Services

The selected Proposers will be required to sign a customized version of the attached Standard Services Agreement (with Exhibits).

H. Insurance Requirements

SANDAG requires consultants doing business with it to obtain insurance, as shown in the attached Standard Services Agreement. The required insurance certificates must comply with all requirements of the standards as shown in the Agreement and must be provided within 15 days of issuance of the Notice of Intent to Negotiate and prior to the commencement of any work on the Project. An Example Certificate of Insurance is provided as an RFP Attachment. The sample includes standard insurance terms to be used for reference only; the insurance coverages required for this procurement are listed in Section VII of the Agreement.

XV. PROTESTS

Pursuant to the requirements set forth in FTA Circular 4220.1F, "Third-Party Contracting Requirements," when applicable, and SANDAG Board Policies, the following procedures shall be used by SANDAG to fairly and promptly respond to any protests received regarding third-party contracts or the contracting process. SANDAG will consider all protests or objections regarding the contracting process or the award of an Agreement received by SANDAG by 4 p.m. on the deadlines discussed below. SANDAG will review only protests submitted by an actual or prospective Proposer. Protests by prospective subcontractors will be rejected. A protest by any adversely affected Proposer must be made in writing and must be mailed or hand delivered to SANDAG. A protest that does not strictly comply with the SANDAG protest procedures will be rejected.

A. Protests Before Bid/Proposal Opening

Protests relating to the content of the solicitation, including protests related to DBE requirements, must be filed within five business days after the date the solicitation or addendum with the revised content is released to the public by SANDAG. Failure to file a protest concerning the content of the solicitation or addendum prior to this deadline constitutes a waiver of any protest on these grounds.

B. Protests Related to Determination of Responsiveness

Protests relating to any Notice of Non-Responsiveness must be filed within five business days after the date of such notice. Failure to file a protest concerning the non-responsiveness determination prior to this deadline constitutes a waiver of any protest on these grounds and SANDAG shall not be obligated to send Proposer any further notices.

In the event the RFP contains a DBE goal and SANDAG makes a determination that Proposer has not met the goal or GFE requirements set forth in this RFP, SANDAG will send the Proposer a Notice of Non-Responsiveness. A Proposer that receives a Notice of Non-

Responsiveness on the basis of not meeting DBE requirements, such as the requirement to provide adequate GFE documentation, may make a request for administrative reconsideration by SANDAG in accordance with the DBE Complaint Procedures that can be found at: www.sandag.org/organization/rfps/pdfs/DBE_complaint_process.pdf.

C. Protests After Bid/Proposal Due Date

After Proposers are shortlisted and/or selected for negotiations, notices will be sent to all relevant Proposers. Protests relating to failure to make the shortlist must be filed within five business days following protester's receipt of a notice regarding the shortlisting. Protests relating to the intent to negotiate must be filed within five business days following protester's receipt of the notice regarding the intent to negotiate. The date of filing shall be the date SANDAG receives the protest. Untimely protests will be rejected. If deemed necessary, SANDAG shall notify all Proposers of record that a protest has been filed and the award has been postponed until further notice. If necessary, Proposers will be asked to extend the time for acceptance of their proposal in order to avoid the need for re-advertisement of the solicitation.

D. Protest Contents

A letter of protest must set forth detailed grounds for the protest and be fully supported with technical data, documentary evidence, names of witnesses, and other pertinent information related to the subject being protested. The protest also must state the law, rule, regulation, or policy upon which the protest is based. Protests concerning the relative weight of the evaluation criteria or the formula used in assigning points to make an award determination or the individual scores assigned by one or more evaluation panel members will be rejected. The protester must allege or establish a clear violation of a specific law, rule, regulation, or policy. If the protester considers that the protest contains proprietary material that should be withheld, a statement advising of this fact must be affixed to the front page of the protest document, and alleged proprietary information shall be so identified wherever it appears. Protests shall be addressed to:

Protest Administrator, Contracts and Procurement Manager
SANDAG Contract Solicitation No. 5005360
San Diego Association of Governments
401 B Street, Suite 800
San Diego, CA 92101

E. Role of the SANDAG Office of General Counsel and Protest Administrator

If a protest raises solely a question of law, the SANDAG Office of General Counsel shall serve as the Protest Committee and will prepare a recommendation regarding the protest, in writing, to the SANDAG Chief Deputy Executive Director within ten business days. Upon receipt of an adverse decision, the protester may file a request for protest reconsideration pursuant to Subsection I below.

The Protest Administrator shall review each protest to determine if it is in compliance with the deadline, format, content, and notice requirements set forth in this Section. If a protest does not meet such requirements it may be rejected without further consideration. A written notice of such rejection shall be sent to the protester.

If the protest requires resolution of questions of fact, the Protest Administrator or his/her designee will appoint individuals to participate on a Protest Committee from an established list of potential Protest Committee members. The Protest Administrator will endeavor to appoint at least one of the Protest Committee members from an outside agency, and no

one may sit on the Protest Committee that has a known and direct connection to the procurement that is the subject of the protest. The Protest Administrator also will appoint a chairperson for the Protest Committee. The Protest Administrator will gather the documents that the Protest Committee will need for its investigation and prepare a memo to the Protest Committee containing background information regarding the protest. Any communication regarding the protest between the protester and SANDAG shall be through the Protest Administrator during the protest proceedings. Protesters may not contact anyone at SANDAG other than the Protest Administrator or Office of General Counsel during the protest process.

F. Protest Committee

The Protest Committee shall ensure the protest was received within the timeline specified and review the protest to determine if it itemizes in appropriate detail each matter contested as well as any factual reasons for the requested protest. The Committee chairperson shall schedule the date of the Protest Committee meeting, contact the Committee panel members, and distribute all protest documentation.

G. Reply to Protest

The Protest Committee will review all qualifying protests in a timely manner and may hold an informal hearing if deemed necessary in order to complete its investigation. The Protest Committee will prepare a recommendation regarding the protest, in writing, to the SANDAG Chief Deputy Executive Director within ten business days of the date of receipt of the protest. All materials included with the original protest at time of submittal will be considered. Supplemental materials filed by a protester after the protest deadline will not be considered unless there are extenuating circumstances in the opinion of the Protest Committee. Protest documents will not be withheld from any interested party outside of SANDAG, with the exception that information will be withheld when required by law or regulation. The Chief Deputy Executive Director or his/her designee will either sustain or reject the protest in writing based upon the recommendation of the Protest Committee and the best interests of SANDAG. This decision will be communicated in writing to the protestor and/or the party whose proposal is the subject of the protest.

H. Request for Protest Reconsideration

Upon receipt of an adverse decision by the Protest Administrator or the Chief Deputy Executive Director, the protester may file a request for protest reconsideration. A request for protest reconsideration must be directed to the Executive Director in writing with a copy sent to the Protest Administrator, comply with the content and notice requirements in Subparagraph D "Protest Contents" above and be received within five full business days from the date the protester receives the protest decision from SANDAG. The Executive Director will respond to the request for protest reconsideration within ten full business days of its receipt. The decision of the Executive Director will be in writing and final. The decision will be sent to the protestor and/or the party whose proposal is the subject of the protest. No further protests will be heard by SANDAG.

I. Results of the Protest

If the protest relating to a contract award is sustained, the original Notice of Intent to Award may be withdrawn after the deadline for protest reconsideration has passed. SANDAG then may issue a new Notice of Intent to Award to a different bidder/Proposer and a new protest period will commence using the same timelines discussed above. If the protest is rejected, the original Notice of Intent to Award will stand and SANDAG will continue with contract negotiations with the awardee.

XVI. PROTEST ON PROCUREMENTS WITH FEDERAL FUNDING

A. Review of Protests by Appropriate Agency

Pursuant to federal agency guidance, SANDAG is responsible, in accordance with good administrative practice and sound business judgement, for the settlement of all contractual and administrative issues arising out of its procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. In the case of contracts using federal funds, protests may be reviewed by the federal agency providing funds only when the issue is a compelling federal concern. If review is granted by the federal awarding agency, the federal awarding agency will not substitute its judgment for that of SANDAG unless the matter is primarily a federal concern. Violations of law should be referred to the local, state, or federal authority having proper jurisdiction. See, 2 C.F.R. § 200.318(k). Alleged violations of a specific federal requirement that provides an applicable complaint procedure must be submitted and processed in accordance with that federal regulation. For example, see the Buy America Requirements at 49 CFR 661.15, and requirements for Participation by Minority Business Enterprise in DOT Programs at 49 CFR 23.73.

XVII. INCORPORATION OF ATTACHMENTS

The following documents are attached and incorporated by reference if the box next to document title is marked. Wherever the word "contractor" appears in the attachments, it should be read as the equivalent to the word "consultant." Wherever the words "bid" or "bidder" appear in the attachments, they should be read as the equivalent to the words "proposal" or "Proposer."

- List of Submittals Required with Proposal (RFP Checklist)
- Scope of Work
- Sample Project
- Cost Proposal Form
- Proposer Information Form
- Subconsultant List
- Bidders List
- Public Contract Code Certifications
 - (Part 1) Public Contract Code Section 10162 Questionnaire
 - (Part 2) Public Contract Code Section Statements
- Buy America Certificate (FTA)
- Buy America Certificate (FHWA)
- Certifications for Federally Funded Contracts
 - (Part 1) Eligibility Certificate for Federally Funded Contracts
 - (Part 2) Non-collusion Affidavit
 - (Part 3) Debarment and Suspension Certificate, Title 49, CFR, Part 29
 - (Part 4) Subconsultant's Statement of Eligibility
 - (Part 5) Certification of Restrictions on Lobbying (4 pages)
- Equal Employment Opportunity Certificate

- ☒ DBE Goal Certification (1 page)
- ☒ Guidance for Bidders Completing the GFE and Appendix A to 49 CFR 26 (3 pages)
- ☒ Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions
- ☒ On-Call Task or Work Order Firm Recommendation Form
- ☒ Proposer Short List Evaluation Form
- ☒ Proposer Interview Evaluation Form
- ☒ Example Certificate of Insurance
- ☒ Standard Services Agreement (with Exhibits)

PART 2 - ATTACHMENTS

RFP CHECKLIST - LIST OF SUBMITTALS REQUIRED FOR PROPOSAL

The following documents must be submitted. The documents must be submitted and any required certifications must be signed by an individual or individuals authorized to execute legal documents on behalf of the Proposer. The table below denotes whether the document needs to be filled out by the prime and/or sub.

Documents	Prime	Sub
Proposal <ul style="list-style-type: none"> • One hard copy with original signature • Five additional hard copies • One electronic copy in Adobe PDF on a flash drive 	X	
Cost Proposal Form <ul style="list-style-type: none"> • One electronic copy of the Cost Proposal Form in its entirety in Excel format and in Adobe PDF on flash drive 	X	
Proposer Information Form	X	
Subconsultant List	X	
Bidders List	X	
Public Contract Code Certifications <ul style="list-style-type: none"> • (Part 1) Public Contract Code Section 10162 Questionnaire • (Part 2) Public Contract Code Section Statements 	X	X
Buy America Certificates and Information (FTA)	X	
Buy America Certificates and Information (FHWA)	X	
Certifications for Federally-Funded Contracts <ul style="list-style-type: none"> • (Part 1) Eligibility Certificate for Federally Funded Contracts • (Part 2) Non-collusion Affidavit • (Part 3) Debarment and Suspension Certificate, Title 49, CFR, Part 29 • (Part 4) Subconsultant's Statement of Eligibility • (Part 5) Certification of Restrictions on Lobbying (4 pages) 	X	Part 4 Part 5
Equal Employment Opportunity Certificate	X	X
DBE Goal Certification (1 page)	X	

SCOPE OF WORK

I. INTRODUCTION

The San Diego Association of Governments (SANDAG) is a legislatively created regional government agency that serves as the federally-designated Metropolitan Planning Organization (MPO) and Regional Transportation Commission for the San Diego region. Through SANDAG, local governments work together to solve current problems and plan for the future.

The SANDAG Board of Directors is the governing body responsible for establishing the agency's policies and programs. Directors are elected officials – mayors, city councilmembers, or county supervisors – selected by their peers from each of the region's 18 incorporated cities and the county. Representatives from Imperial County, Caltrans District 11, the U.S. Department of Defense, the Port of San Diego, the San Diego County Water Authority, the San Diego Metropolitan Transit System, the North County Transit District, the Southern California Tribal Chairmen's Association, and Mexico serve on the Board of Directors as non-voting advisory members.

SANDAG's annual budget is just over \$1 billion, comprising federal, state and local funds as well as revenue from *TransNet*, the voter-approved half-cent sales tax administered by SANDAG and used to construct highway, transit, and other types of transportation projects. The budget is approved by the SANDAG Board of Directors in conjunction with an overall work program that specifies projects and programs to carry out the agency's regional responsibilities. These include transportation and public transit, bike and mobility programs, environmental management, housing, open space, air quality, energy, fiscal management, economic development, and criminal justice.

SANDAG is committed to an open process that creates opportunities for public input and engagement. In fact, the successful planning, implementation, and completion of the programs and projects noted above depend on ongoing, multi-faceted outreach efforts and interaction with the region's residents and stakeholders. Creative efforts to increase public participation, including with population groups that traditionally have had limited participation in the public planning process are key to maximizing participation and achieving the social equity and environmental justice goals established by the agency and its partners.

Efforts to achieve these goals include the development and implementation of strategic and creative marketing communications plans for SANDAG programs and projects, including *TransNet* capital projects such as freeway/highway corridors, Express Lanes projects, transit (bus and light rail) projects, border projects, and regional bicycle facilities. Branding and promotional plans are required for Transportation Demand Management Programs (including iCommute, Bike to Work Day/Month, Rideshare Week, Diamond Awards, and School Pool), active transportation programs, 511, *FasTrak*, and transit programs such as planning for *Rapid*, the region's bus rapid transit services.

Public outreach efforts also may include developing project communications and marketing strategic plans, identity and messaging, preparing and coordinating public information presentations to targeted stakeholder groups, direct mail strategies and electronic marketing, special event coordination and management, and the implementation of customer relationship management (CRM) tools and strategies to analyze and enhance interactions with stakeholders, and create and maintain a Record of Public Involvement to document and summarize public participation and input as required by the federal Title VI requirements.

Other work to create a robust outreach and communications program include special event planning and support, public meetings and workshops, the preparation of collateral materials such as brochures, project fact sheets, e-newsletters, presentation materials, and social media and web content. Some projects call for graphic design, printing, signage/exhibit design, photography, visual simulations, video productions, and digital audio and video outreach, copywriting and editing services, media buying, social media service, survey design/implementation/analysis; and meeting facilitation services.

The efforts described above are required to support the work conducted by SANDAG and its partner agencies, which fall into three primary categories: Capital Projects, Operations and Services, and Overall Work Program efforts. Following is a list of projects in each category and the total estimated budgeted amount for each. The tables below provide a sample list of the potential CIP/Operations/Overall Work Program funding that has been identified for this RFP. This funding is subject to change and does not imply that any work under this RFP will be assigned based on the figures listed below.

A. Capital Projects

Capital Infrastructure Projects (CIP) are typically large-scale, multi-year projects to improve the region’s transportation and transit infrastructure. With the *TransNet* Extension Ordinance passed by county voters in November 2004, SANDAG continues to partner with Caltrans District 11 and the transit operators to implement major transit, highway, and bike/pedestrian projects throughout the San Diego region. Capital projects require extensive public outreach, stakeholder engagement, and marketing efforts to ensure full and ongoing public participation during the planning process and adequate information and public awareness/education is provided during the implementation and construction phases.

Sample Capital Improvement Projects (\$1,000s)

Interstate 15 Corridor	\$	635,370
State Route 76 Corridor	\$	368,820
Blue & Orange Line Improvements	\$	163,260
Coastal Corridor	\$	586,063
Interstate 805 Corridor	\$	603,925
TCIF Goods Movement Projects	\$	848,113
Regional Bikeway Projects	\$	233,532
Major Capital Projects	\$	293,004
Minor Capital Projects	\$	4,719
TOTAL Active CIP Projects	\$	3,736,806

B. Operations and Services

Operations and Services include work to deliver enhanced mobility and public safety services, and the maintenance and support of intelligent transportation, autonomous vehicles, and regional law enforcement data systems for travelers and public safety agencies. The programs below typically require marketing and or research services.

Motorist Aid-Freeway Service Patrol	\$	6,067,394
I-15 FasTrak Value Pricing Program	\$	7,720,541
Intelligent Transportation Systems Operation	\$	1,532,531
SR 125 Facility Operations (SBX)	\$	42,178,565
Centralized Trolley Control Maintenance	\$	241,877
Freeway Service Patrol-Traffic Mitigation Program	\$	1,026,271
ARJIS	\$	5,246,025
TOTAL Operations and Services	\$	64,013,204

C. Overall Work Program Projects

Overall Work Program (OWP) Projects (\$44 million) include regional planning efforts and project implementation, data development and dissemination, and mobility programs and services. This would include such initiatives as the San Diego Regional Transportation Plan, San Diego Forward.

Modeling and Research	\$	10,164,672
Regional Planning	\$	10,000,969
Project Implementation	\$	15,150,402
External Support and Communications	\$	8,726,132
TOTAL Overall Work Program	\$	44,042,175

II. GENERAL INFORMATION APPLICABLE TO ALL CATEGORIES

A. PROJECT ADMINISTRATION

Ongoing communication between the consultant and the SANDAG project/task manager is key to the successful and timely completion of projects. The consultant will establish a tracking and

reporting system for each task or work order awarded that provides the basis against which the project status and progress will be measured and reported. The tracking system shall include a status report and a project and deliverables schedule in a format approved by the SANDAG project manager. Communications strategies for measuring and delivering return on investments must be demonstrated and established through the duration of the contract. All deliverables shall be submitted in an editable electronic file format such as Microsoft Word or Adobe PDF for review. Final products shall also be submitted in such electronic formats. These files may be required to be transmitted at milestones, regular intervals, or at the end of the project.

The consultant also may be asked to report to the Communications Department and the SANDAG Board or its committees, as necessary. This could include preparation of PowerPoint presentations and Board reports, attendance at closed and open sessions, and attendance at preparation meetings with SANDAG and partner agency staff.

III. SERVICE CATEGORIES

A. Category A - MARKETING COMMUNICATIONS PLANS

The consultant shall coordinate with SANDAG staff to develop and implement strategic and creative marketing communications plans for SANDAG programs and projects. These projects may include, *TransNet* capital projects such as freeway/highway corridors, Express Lanes projects, transit projects, border projects, regional bicycle facilities, etc. Branding and promotional plans for Transportation Demand Management Programs (including iCommute, Bike to Work Day/Month, Rideshare Week, Diamond Awards, and School Pool), Active Transportation programs, 511, *FasTrak*, and transit programs such as *Rapid* and bus rapid transit services also are included in this effort.

B. Category B - PUBLIC OUTREACH AND STAKEHOLDER INVOLVEMENT PLANS AND PROGRAMS

SANDAG is committed to an open process that creates opportunities for input and engagement in the development and implementation of its programs and projects. Creative ideas to increase public participation, including population groups that traditionally have had limited participation in the public planning process, are desired to maximize participation and achieve the social equity and environmental justice goals established by the agency and its partners.

In coordination with SANDAG staff, the consultant shall develop and implement strategic and creative public outreach/marketing and involvement plans to support a variety of efforts. These include capital highway, rail, transit, and bicycle projects in all phases (design, environmental, right of way acquisition, and construction). Other examples include the [TransNet program](#), Active Transportation and Transportation Demand Management programs, [the Shift program](#), the [SANDAG Public Participation Plan](#), public involvement plans, and [San Diego Forward: The Regional Plan](#).

Public outreach efforts may include participating in project team meetings, developing project identity and messaging, developing and coordinating public information presentations to targeted stakeholder groups, direct mail strategies and electronic marketing, special event coordination and management, written and real-time audio translation services, procurement of court reporting services, and crisis communications planning and implementation. The consultant also may be asked to implement customer relationship management (CRM) tools and strategies to analyze and enhance interactions with stakeholders, and/or create and maintain a Record of Public Involvement

to document and summarize public participation and input as required by federal Title VI guidelines.

For construction project outreach, the consultant may be required to provide project-specific public information staffing and construction liaisons, signage, telephone hotlines, website content and updates, media support, collateral materials, field work, photography/video services, time-lapse video, and public presentations.

Public meetings and events inform the public about project elements and are a valuable tool to increase public awareness and gain input from a diverse array of stakeholders. The consultant may be asked to coordinate meeting logistics, provide on-site facilitation of the meeting(s) or coordinate with the meeting facilitator, prepare collateral materials, and prepare reports that include an executive summary, a discussion of the outcome and findings, graphic illustrations that highlight interesting or especially relevant findings, and appendices that provide the date and location of the meeting(s), the number of participants with any demographic information that may have been collected, and a list and examples of collateral materials that were used.

C. Category C -SPECIAL EVENT PLANNING AND SUPPORT

The consultant shall assist with planning, organizing and coordinating events including groundbreaking/grand opening/ribbon cutting ceremonies, public meetings/hearings or workshops, community events, contests and other special events. The consultant will be responsible for related activities including researching, recommending and securing locations that comply with ADA accessibility standards; developing an event plan with designated roles and responsibilities; coordinating meeting logistics to include room set up; preparation of collateral materials; providing staffing assistance at the event; coordinating food and beverage required for an event; coordinating registration/check-in process and any other tasks associated with registration; staging and execution of event, coordinating how placement is determined, guest flow, and number of staff at event; and assisting with other event activities such as securing sponsorship development, site coordination, permit acquisition and vendor participation.

The above-mentioned plans, programs, and events could include:

- strategic communications plans;
- communications audits;
- best practices research;
- public outreach strategic plans;
- stakeholder engagement plans;
- construction outreach plans;
- audience-specific plans;
- project debriefs and recommendations;
- marketing communications strategies and campaigns;
- market analysis;
- market or customer research (quantitative and/or qualitative);
- development strategies for stakeholder/interested party's lists (including community-based organizations);
- social equity and environmental justice marketing strategies;
- promotional strategies and tactics;

- product/service positioning strategies;
- social media tactics;
- online marketing strategies and content;
- sponsorship development;
- advertising and media buying/placement;
- sales support communications;
- branding and identity development;
- graphic design strategies and implementation for collateral materials;
- special and promotional event planning;
- printing and direct mail strategies and services;
- partnership and collaboration strategies;
- bi-national coordination and outreach;
- video storyboards and animated whiteboards;
- implementation timelines; and
- strategies for measuring the return on investment

Providing any other services as needed to perform, implement, execute and provide recommendations for SANDAG marketing and outreach activities.

D. Category D - COLLATERAL MATERIALS

To varying degrees, collateral materials will be required for the plans, studies, and projects described in this RFP. Collateral items could include newsletters (electronic and print), brochures, project fact sheets, FAQs, meeting notices and invitations, PowerPoint presentations, presentation boards, visual simulations, display ads, signage, social media and web content, video presentations, media materials, reports, construction outreach maps and stakeholder database development and maintenance. Some collateral materials may require multiple language translations of copy for publication.

SANDAG will approve draft and final layouts, graphic/visual presentations, and proofs for offset printing, electronic distribution, and web postings. The format for graphic presentation of materials may include computer animations, charts, tables, aerial photo images (and licensed drone footage), maps, videos (including time lapse), montages, and visual and artistic renderings. These materials must be prepared with software and file formats that can be used by SANDAG with no post-processing or additional future expense to SANDAG.

E. Category E - GRAPHIC DESIGN, PRINTING, SIGNAGE/EXHIBIT DESIGN AND/OR FABRICATION, VISUAL SIMULATIONS, VIDEO PRODUCTIONS, DIGITAL AUDIO AND VIDEO OUTREACH, AND PHOTOGRAPHIC SERVICES

Many of the projects discussed in this RFP will require, to varying degrees, one or more services which are described in detail below. The consultant will work closely with SANDAG to ensure the output clearly conveys the intended message and/or desired visual metaphor or depiction. Services could include:

- Graphic design and production of advertising, marketing, and other collateral materials to support SANDAG projects and programs. These materials may include brochures,

newsletters, graphics, fact sheets, print and/or online advertisements, banners, storyboards, promotional items, billboards, bus wraps, and other collaterals.

- Signage including the design, fabrication, and installation of construction project and highway signage, custom exhibit/trade show exhibits. The consultant is encouraged to bring creative and new ideas forward to enhance connecting with all SANDAG audiences.
- Procurement of promotional items such as mugs, pens, t-shirts, and other promotional items as necessary. The consultant is encouraged to bring creative and new ideas forward to enhance connecting with all SANDAG audiences.
- Video production to develop both cost-effective videos, "vlogs" and high-end, multi-media presentations for use on a variety of platforms including the web and PowerPoint presentations. The ability to produce animated PowerPoint presentations is highly desirable. These efforts will require production, editing, casting, scriptwriting, digital animation and other technical expertise.
- Digital audio (Spotify, Pandora, etc.) and video streaming (Connected TV with pre-roll video on devices such as Roku, Apple TV, Android, Samsung Smart TV and X-Box and publishers like Hulu and Amazon).
- Digital pre-roll video and retargeting display ads and general display ads with specific compatibility on mobile and desktop devices. Other digital tools may include native ads, YouTube bumper ads, WAZE and AdWords.
- Digital video/computer simulations to depict transportation, smart growth, and other projects and GIS-based maps and other simulations to engage stakeholders and assist them in understanding and visualizing plans and projects. For more information, please see the SANDAG YouTube channel here:
https://www.youtube.com/channel/UCouAv3PNma0Sm7MiLbrD_bw
- Photographic services in support of targeted marketing campaigns, public outreach campaigns and special events. For more information please see the SANDAG Facebook page here: <https://www.facebook.com/SANDAGregion/>. The Keep San Diego Moving site at <http://www.keepsandiegomoving.com/Home.aspx> may be a helpful resource as well. Where appropriate, attention should be paid to the photographic documentation of ethnic, cultural, and age diversity that reflects the region's demographics. For special events such as groundbreakings, photos should clearly capture the breadth and depth of the event, including key moments, the physical environment, project highlights, and the variety of attendees. Photos taken during public events with an easily recognizable person require a release form provided by SANDAG for each recognizable person in the photo. If a person is not easily recognizable, that person is not required to sign a release form. If a person in the photos is a minor, the photo release form must be signed by a parent or guardian.

Photos provided can be used in all media, including PowerPoint, Web, print publications, and displays

Photos saved at 300 dpi or higher as required by certain projects as RAW, and .jpg files

Photos provided in electronic form with agreed-upon naming convention

Photo organization: Extensis Portfolio preferred consultant-specified gallery or other

- Other types of desired expertise may include direct mail strategies and electronic marketing, printing of marketing, outreach, and other collateral materials such as signage and banner ads, use of web-based public engagement tools, and experience with website and/or other application development. This could include expertise in HTML programming.

F. Category F - COPYWRITING/EDITING SERVICES

The consultant shall provide copywriting and editing services to support SANDAG projects and programs. A professional writing style and skills in editing written material to correct errors in grammar, spelling, syntax and usage are required. Consultant shall be familiar with the SANDAG Style Guide [and](#) is expected to produce copy that is clear, concise, and has been edited for consistency with the Guide). The consultant may be asked to develop original content, update existing content or edit content developed by SANDAG staff for a variety of purposes which may include reports, white papers, brochures, newsletters, fact sheets, website content, e-mail, direct mail, formal letters, invitations, advertisements, radio promotions, PowerPoint presentations, speaking points, press releases, social media outreach, program scripts and run of show among others. The consultant shall be able to adapt writing styles to fit a variety of audiences, keeping tone and familiarity/formality consistent with current SANDAG projects and programs.

The SANDAG Style Guide can be viewed or downloaded from the Attachments tab in the posting on the vendor-based web portal.

G. Category G - MEDIA BUYING, SPONSORSHIP, AND ADVERTISING SERVICES

The consultant shall provide media recommendations and buying services for print, broadcast, online and outdoor services, new media, among others, for SANDAG projects and initiatives. The consultant also may be contracted to provide advertising, sponsorship, and account management services to secure sponsorship and advertisers to offset costs for SANDAG programs such as the Regional Bike Map, Rideshare Week/Month, SchoolPool, Compass Card, Bike to Work Day, Diamond Awards, and other events or programs. Expertise is required in advertising sales, sponsorship, and account management services to develop and execute sponsorship and media partnership programs

and identify and contact potential sponsors or partners on behalf of SANDAG. This may need to be done on an annual basis.

H. Category H - SOCIAL MEDIA AND OTHER ELECTRONIC OUTREACH TOOLS

A robust social media presence is critical for SANDAG to reach a wide audience, promote awareness, build trust, deliver key messages, and gain stakeholder insights. The consultant shall provide social media strategies to help SANDAG reach these objectives and build relationships with the public, stakeholders, partner agencies, other government agencies, regulators, program partners, and the media.

Social media and other electronic strategies may be deployed to support planning projects, capital design or construction projects, and consumer programs and events. Social media activities will be developed for platforms including Facebook, Twitter, Instagram, YouTube, and LinkedIn, and shall be integrated with existing agency websites, as well as partner agency websites.

I. Category I - SURVEY, FOCUS GROUP, AND OTHER SURVEY RESEARCH SERVICES

The consultant shall work with SANDAG to develop and conduct quantitative and qualitative research using methods including phone, in-person, online, mail-out, intercept, and mixed-method (e.g. telephone and electronic) surveys, focus groups, and stakeholder interviews. Creative approaches to reach special population groups (such as limited English proficiency) may be required. Reports that include an executive summary, a discussion of the results that highlights the most significant findings, graphic illustrations of pertinent results, and appendices providing a copy of the survey instrument and a description of the survey methodology also may be required.

Expertise is required in survey instrument design and pilot testing, sample design (statistically valid and representative of the population), data coding, quality control and assurance, data analysis (including weighting, expansion, and statistical testing), and focus group guide design and facilitation. Versions of survey instruments in languages other than English may be required, as well as the ability to conduct telephone surveys and facilitate focus groups in Spanish and English. Translation of written survey responses to English may also be required. Data entry of responses to surveys administered internally by SANDAG may also be part of this work.

Topic areas addressed in data collection efforts may include but are not limited to transit ridership, travel behavior, tax initiatives, quality of life issues, traffic, parking, customer satisfaction, border crossing habits and active transportation.

J. Category J - FACILITATION SERVICES AND FACILITATOR TRAINING

The consultant shall provide professional facilitation services to SANDAG, as needed, to support public meetings, workshops, small group sessions, and working group meetings for planning and capital programs.

The consultant shall also provide training to equip and guide SANDAG staff members in the role of facilitator on an as-needed basis. Training should include structured, formal (but flexible)

techniques for guiding and directing the work of people in workshops and meetings. The training should include following good meeting practices: timekeeping, setting agendas, following an agreed-upon agenda, and keeping a clear record of topics discussed along with task assignments and follow up responsibility. Other training topics include a variety of listening and facilitation skills, including the ability to paraphrase, stack a conversation, build consensus, balance participation, and create space for more reticent group members.

K. Category K - MEDIA AND PRESENTATION TRAINING

The consultant shall provide professional training services to prepare SANDAG Board leadership, management, and project staff to effectively conduct media interviews, training, and presentations. The consultant shall train staff members to present in a variety of settings and formats which may include internal and external speeches, large and small group presentations, delivery of PowerPoint presentations, delivery of live or taped broadcasts, print or phone media interviews, radio and television interviews, one-on-one media interactions, and press conferences.

SAMPLE PROJECT

A sample project is shown below. Proposers are required to submit proposals for the portion of this project that relates to the category(ies) for which they are proposing. Maximum length of proposals is two pages for each category. No task Orders will be issued as a result of these proposals. They will be used for evaluation purposes only.

PROJECT # 1 - STATE ROUTE 78 (SR 78) CORRIDOR

Project Background

State Route 78 (SR 78) serves as the primary east-west travel corridor between Escondido and Oceanside, traversing through the cities of Carlsbad, Vista, and San Marcos, as well as unincorporated areas of San Diego County. SR 78 is the primary route for local and regional travel in North County between these local jurisdictions and provides a connection between Interstate 5 (I-5) on the west and Interstate 15 (I-15) on the east. SR 78 has experienced major traffic congestion in recent years as substantial commercial and residential growth has occurred in North County. Delays are particularly frequent near the SR 78 and I-15 Interchange. To address this increased congestion, a [SR 78 Corridor Study](#) was conducted in 2012 to evaluate plans to improve SR 78 and the potential for future transportation improvements west of the SR 78/I-15 interchange.

The [SANDAG 2050 Regional Transportation Plan \(RTP\)](#), calls for two High Occupancy Vehicle (HOV/Express Lanes) on SR 78 (one eastbound and one westbound), and a HOV direct connector at I-15/SR 78 to be built. The ultimate configuration of the SR 78 corridor includes the addition of a HOV direct connector at I-5/SR 78 to be built by 2035 to compliment the future HOV lanes on I-5. Long-term plans call for the implementation of [FasTrak](#) and potential tolling along the SR 78 corridor that would require the development of a marketing campaign program tailored for the North Inland County region. The [SR 78 Corridor Study](#) analyzed two alternatives. For purposes of this RFQ only, Proposers should assume the selection of Alternative 1 as the preferred approach – where carpools and transit would access the lanes for free and solo drivers could access the Express Lanes by paying a fee using *FasTrak*.

Sample Project Description

As part of this RFP evaluation process, proposers are asked to develop a three-month strategy that includes both a stakeholder engagement/involvement plan for the design phase, and/or a public outreach/marketing plan for the construction of two HOV/Express Lanes on SR 78, and the HOV direct connector at I-15/SR 78 that will connect to the existing I-15 Express Lanes. Proposers that intend to respond to this RFP should address as many of the solicitation components as possible which are relevant to the categories for which they are proposing in their submittal. Firms that intend only to provide one or a limited number of professional services should respond by addressing the component(s) of the sample project that best matches the RFP services category (i.e., photography, videography, graphics, etc.). Firms that plan to seek contracts in either of the service areas mentioned below may choose to submit either a stakeholder engagement/involvement plan or a construction public outreach/marketing framework plan. Proposers should use 2018 dollars in their cost proposals and when making other budget assumptions.

A. Stakeholder Engagement/Involvement Plan

The stakeholder engagement/involvement plan should address the following components:

1. Strategic communications planning and message development
2. Tactics to inform the public and impacted stakeholders about the individual project components
3. Collateral development
4. Audience surveys/focus groups
5. Key stakeholder outreach/briefings
6. Public meetings/facilitation
7. Creative ideas to engage the public in the design process
8. Media relations and social media
9. Community outreach
10. Other direct costs

B. Construction Public Outreach/Marketing Plans

The construction public outreach/marketing plans should address the following components:

1. Strategic outreach communications
2. Tactics to inform the public and impacted stakeholders about individual project components
3. Project messaging
4. Collateral development
5. Key stakeholder outreach/briefings
6. Community meetings
7. Creative marketing ideas to inform the public about potential construction impacts and future tolling (*FasTrak*) opportunities within the corridor
8. Community outreach and special events
9. Media relations and social media

COST PROPOSAL FORM

THE COST PROPOSAL FORM IS PROVIDED IN MS EXCEL FORMAT FOR DOWNLOAD FROM PLANETBIDS.

Complete the MS excel file and submit as both hard copy and as an electronic copy on a flash drive.

PROPOSER INFORMATION FORM

Proposer to complete and return this form with the proposal

Company Name: _____

Address: _____

Company Type (i.e., Sole Proprietorship, Partnership, Corporation): _____

Dun & Bradstreet No. (DUNS): _____ Federal Tax ID: _____

Is the firm a certified Disadvantaged Business Enterprise (DBE)? Yes No

Is the firm a certified Small Business (SB)? Yes No

PERSON AUTHORIZED TO EXECUTE AGREEMENT ON BEHALF OF PROPOSER

Contact Name: _____

Title: _____

Phone (_____) _____ Fax (_____) _____

Email _____

PROPOSER POINT OF CONTACT FOR SANDAG PROJECT MANAGER/CONTRACTS ANALYST

Contact Name _____

Title _____

Phone (_____) _____ Fax (_____) _____

Email _____

SUBCONSULTANT LIST

At the Task Order stage, Consultant must provide this form to SANDAG with dollar amounts for each proposed subconsultant.

PROPOSED SUBCONSULTANTS

Subconsultant Firm Name and Address	Scope of Work
Name: Address:	
Name: Address:	
Name: Address:	
Name: Address:	
Name: Address:	
Name: Address:	

If no subconsultants are proposed, mark the box below and sign the form.

I do not propose to use any subconsultants for this Agreement.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

BIDDERS LIST

Proposer

RFP/TO/WO No.

The United States DOT requires SANDAG to create and maintain a Bidders List containing information about all firms (DBEs and non-DBEs) that bid, propose, or quote on the SANDAG contracts in accordance with 49 CFR 26.11. 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 subconsultants. The Bidders List form shall be submitted with the proposal. SANDAG will utilize this information to assist in the Overall Annual DBE Goal Setting process. ***The Bidders List content will not be considered in evaluating the proposal or determining award of an Agreement.***

The DOT requires SANDAG to create and maintain a Bidders List containing information about all firms (DBEs and non-DBEs) that bid, propose, or quote on the SANDAG DOT-assisted contracts in accordance with 49 CFR 26.11. Prior to the time a Task Order is executed, Consultant will be required to complete all requested information for every firm that submitted a bid, proposal, or quote, including the Consultant itself, and any proposed subconsultants. SANDAG will utilize this information to assist in the Overall Annual DBE Goal Setting process.

Proposer's Information			
Name of Prime's Firm:		Phone: () -	
Firm Address:		Fax: () -	
City: ST: ZIP:		Type of work/services/materials provided:	
Number of years in business:			
Contact Person:			
Is the firm currently certified as a DBE under 49 CFR 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"/> Less than \$5 million <input type="checkbox"/> Less than \$10 million <input type="checkbox"/> Less than \$15 million <input type="checkbox"/> More than \$15 million	
<input type="checkbox"/> African American	<input type="checkbox"/> Asian Pacific American		
<input type="checkbox"/> Native American	<input type="checkbox"/> Woman		
<input type="checkbox"/> Hispanic American	<input type="checkbox"/> Subcontinent Asian American		
<input type="checkbox"/> Other			

(CONT'D)

Note: Each proposed subconsultant must complete this form and it must be submitted with the proposal.

Note: Each proposed subconsultant must complete this form and the Consultant must submit it prior to execution of the applicable Agreement or Task Order.

Subconsultant's Information			
Name of Subconsultant's Firm:		Phone: () -	
Firm Address:		Fax: () -	
		Type of work/services/materials provided:	
City:	ST:	ZIP:	
Number of years in business:			
Contact Person:		Title:	
Is the subconsultant's firm currently certified as a DBE under 49 CFR 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"/> African American	<input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Less than \$5 million	
<input type="checkbox"/> Native American	<input type="checkbox"/> Woman	<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.

Failure to submit the required Bidders List form may cause SANDAG to deem the proposal for award of an Agreement or Task Order non-responsive.

PUBLIC CONTRACT CODE PART 1

Public Contract Code Section 10162 Questionnaire

In accordance with Public Contract Code Section 10162, the Proposer shall complete, under penalty of perjury, the following questionnaire:

Has the Proposer, any officer of the Proposer, or any employee of the Proposer who has a proprietary interest in the Proposer, ever been disqualified, removed, or otherwise prevented from bidding or proposing on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes No

If the answer is yes, explain the circumstances in the space below.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PUBLIC CONTRACT CODE SECTION STATEMENTS PART 2

Public Contract Code Section 10232 Statement

In conformance with Public Contract Code Section 10232, the Proposer, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Proposer within the immediately preceding two year period because of the Proposer's failure to comply with an order of a federal court which ordered the Proposer to comply with an order of the National Labor Relations Board.

Public Contract Code Section 10285.1 Statement

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the Proposer hereby declares under penalty of perjury under the laws of the State of California that the Proposer

has **has not**

(Must Check One)

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "Proposer" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as well as any subconsultant, as referred to in Public Contract Code Section 10285.1 (reference to "bidder").

The above statement is part of the proposal. Signing the proposal on the signature portion thereof shall also constitute signature of this statement. Proposers are cautioned that making a false certification may subject the certifier to criminal prosecution.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

BUY AMERICA CERTIFICATE (FTA)
CERTIFICATE OF COMPLIANCE WITH SECTION 165(A)

ALTERNATIVE A (FTA)

Consultant hereby certifies that it will comply with the requirements of: Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR 661. Consultant further agrees that it will comply with FTA's September 1, 2016 Policy Guidance on the implementation of the phased increase in domestic content contained in 49 USC §5323(j).

Please note that SANDAG may request that this form be executed again on a Task Order basis depending on work that may be assigned to Consultant.

Name of Contractor: _____

Name of Signatory: _____

Title: _____ Date: _____

Signature of Consultant _____

ALTERNATIVE B (FTA)

Consultant hereby certifies that it cannot comply with the requirements of: Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 CFR 661.7.

Name of Contractor: _____

Name of Signatory: _____

Title: _____ Date: _____

Signature of Consultant _____

NOTE: COMPLETE EITHER ALTERNATIVE A OR B
DO NOT COMPLETE BOTH

(CONT'D)

Additional Information for Buy America Certificate (FTA) (Alternative B)

Consultant hereby certifies that it cannot comply with the requirements of: **Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and regulations in 49 CFR 661.7.**

Item No.	Description	Type of Waiver Requested by No. (1)	Indicate Rolling or Non-rolling Stock	Description of Foreign Components of Item	Unit Procurement Cost of Foreign Components
Notes	1. For "Type of Waiver Requested," See 49 CFR §661. List Type 1, 2, 3, or 4.			_____ Consultant Name	_____ Date
	2. Consultant must complete either Alternative A or B Buy America Certificate.			_____ Consultant Signature	

BUY AMERICA CERTIFICATE (FHWA)

ALTERNATIVE A (FHWA)
CERTIFICATE OF COMPLIANCE WITH SECTION 165(a)

Consultant hereby certifies that it will comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and amendments thereto and the regulations in 23 CFR 635.

Please note that SANDAG may request that this form be executed again on a Task Order basis depending on work that may be assigned to Consultant.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

ALTERNATIVE B (FHWA)

Consultant hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165(b) of the Surface Transportation Assistance Act and amendments thereto and regulations in 23 CFR 635.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

**NOTE: COMPLETE EITHER ALTERNATIVE A OR B
DO NOT COMPLETE BOTH**

(CONT'D)

Additional Information for Buy America Certificate (Federal Highway Administration) - Alternative B

Consultant hereby certifies that it cannot comply with the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982, but it may qualify for an exception to the requirement pursuant to Section 165 of the Surface Transportation Assistance Act and amendments thereto and regulations in 23 CFR 635.

Item No.	Description	Type of Waiver Requested by No. (1)	Indicate Rolling or Non-rolling Stock	Description of Foreign Components of Item	Unit Procurement Cost of Foreign Components
Notes	1. For "Type of Waiver Requested," See 49 CFR §661. List Type 1, 2, 3, or 4.			_____	_____
	2. Consultant must complete either Alternative A or B Buy America Certificate.			Consultant Signature	

PART 1 - FEDERALLY-FUNDED CONTRACTS ELIGIBILITY CERTIFICATION

The award of the Agreement is subject to a financial assistance contract between SANDAG and the United States DOT. Any name appearing on the Comptroller General’s list of ineligible contractors for federally financed or assisted contracts is not eligible for this contract.

Proposer hereby certifies that neither the Proposer nor any of its officers or holders of a controlling interest are on the U.S. Comptroller General’s list of ineligible consultants for federally funded and assisted contracts. In the event the Proposer or any of its subconsultants are included on such a list during the performance of this Project, Proposer shall promptly inform SANDAG of this fact.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PART 2 - NON-COLLUSION AFFIDAVIT/DECLARATION

(Title 23 United States Code Section 112 and California Public Contract Code Section 7106)

In accordance with Title 23, United States Code Section 112, and Public Contract Code 7106, the Proposer (referred to herein as "Bidder") declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state].

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PART 3 - DEBARMENT AND SUSPENSION CERTIFICATE

Title 49, Code of Federal Regulations, Part 29

Proposer, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
- Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
- Does not have a proposed debarment pending; and
- Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining Proposer's responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PART 4 - SUBCONSULTANT'S STATEMENT OF ELIGIBILITY

Instructions: Complete either Part A or Part B below, as applicable. Do not complete both.

PART A

(To be completed by each subconsultant)

_____ (Name of Subconsultant) certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any federal project by any federal department or agency. Where the subconsultant is unable to certify any of the statements in the certification, such subconsultant shall attach an explanation with this form.

The subconsultant certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. 3801, et seq., are applicable.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PART B

(To be completed by the Proposer if no subconsultants are listed)

_____ (Name of Proposer) certifies that it has no listed subconsultants in its Proposal.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

PART 5 - CERTIFICATION OF RESTRICTIONS ON LOBBYING

- A. Proposer certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or SANDAG appropriated funds have been paid, or will be paid by-or-on behalf of Consultant to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- B. 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 Section 1352, Title 31, U.S. Code. 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.
- C. Proposer also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.
- D. Proposer, with regard to the work performed by it during the Agreement shall act in accordance with Title VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion, sex, age, or disability in the selection and retention of subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices when the Agreement covers a program whose goal is employment.

Executed this ____ day of ____ 20 .

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

<p>1. Type of Federal Action</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type</p> <p><input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change</p> <p>a. initial filing For Material Change Only: Year: _____ Quarter: _____ Date of last report: <u> / / </u></p>
<p>4. Name and address of Reporting Entity</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee</p> <p>Tier _____, if known: _____ Congressional District, if known: _____</p>		<p>5. If Reporting Entity in No. 4 is sub-awardee, Enter name and address of Prime</p>
<p>6. Federal Department/Agency</p>	<p>7. Federal Program Name/Description</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known _____</p>	<p>9. Award Amount, if known: \$0.00</p>	
<p>10a. Name and Address of Lobbying Entity (if individual, last name, first name, MI)</p>		<p>10b. Individuals Performing Services (including address if different from #10a)</p>
<p><i>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</i></p>		
<p>11. Amount of Payment (check all that apply): \$0.00 <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply);</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify nature: _____ value: _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:</p>		
<p>15. Continuation Sheets SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		<p>Signature _____ Print Name _____ Title _____</p> <p>Phone No. () Date</p>
<p>Federal Use Only:</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

Disclosure of Lobbying Activities (cont'd)

Reporting Entity: _____ Page ____ of ____

Instructions for Completion of Self Disclosure of Lobbying Activities

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

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the first tier. Subawards include, but are not limited to, subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks, then enter the full name, address, city, state, and ZIP code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal number, Invitation for Bid number, grant announcement number, the contract grant or loan award number, or the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Items 4 or 5.
10.
 - A. Enter the full name, address, city, state, and ZIP code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.
 - B. Enter the full names of the individual(s) performing services, and include full address if different from 10A. Enter last name, first name, middle initial.
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been

made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate boxes. Check all boxes that apply. If payment is made through in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate boxes. Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the dates of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal officials or employees contacted or the officers, employees, or members of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348 0046), Washington, D.C. 20503.

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE

Consultant hereby certifies that it will comply with the provisions of the SANDAG Equal Employment Opportunity Program (SANDAG Board Policy No. 007), and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

Furthermore, Consultant hereby certifies that it

has has not

been found, adjudicated, or determined to have violated any laws of Executive Orders relating to employment discrimination or affirmative action including, but not limited to, Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000[e] et seq.); the Equal Pay Act (29 U.S.C. 206[d]); Executive Order (EO) 10925 (Kennedy, 1961), EO 11114 (Kennedy, 1963), or EO 11246 (Johnson, 1965); or the California Fair Employment and Housing Act (Government Code 12460 et seq.); by any federal or California court or agency, including but not limited to the Equal Employment Opportunity Commission, the Office of Federal Contract compliance Programs, and the California Fair Employment and Housing Commission.

If yes, please explain the circumstance.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

DISADVANTAGED BUSINESS ENTERPRISE GOAL CERTIFICATION

RFP No. 5005360 _____

Proposer Name

DBE goals for SANDAG Task Orders will be established on a Task Order basis on this procurement due to the difficulty of predicting the type of funding to be used and the exact work that will eventually be awarded to consultants. The specific Task Order DBE goal will be established based on the estimated dollar value, funding sources, scope of work, and subcontracting opportunities of each Task Order.

It is understood and agreed by Proposer that it has carefully examined all documents that form the RFP and acknowledges that the DBE Task Order goals for each Task Order with federal funding issued by SANDAG on this procurement are estimated to range between 0 percent to 25 percent, but a specific goal percentage will be determined by SANDAG for each Task Order within this range.

Proposer further commits to meet or exceed the established DBE Task Order goals for each Task Order (inclusive of all amendments, modifications, options, and change orders). Proposer understands that if it cannot commit to meet or exceed the DBE goal or provide adequate Good Faith Effort documentation for a particular SANDAG Task Order, it will not be awarded the Task Order.

In fulfilling the Proposer's commitment to meet or exceed the established DBE participation goal and Task Order DBE commitments made, Proposer will adhere to all DBE specified provisions set forth in the solicitation, governing regulations 49 CFR 26 or the Agreement or any Special Provisions that result therefrom.

Name of Firm: _____

Printed Name: _____

Title: _____

Signature

Date

GUIDANCE FOR BIDDERS COMPLETING GOOD FAITH EFFORT SUBMITTAL – PAGE 1

The information necessary to establish the Proposer's adequate good faith efforts to meet the DBE goal should include the information listed below. Please note that all references to "Proposer" in this document shall also be treated as a reference to Consultant where applicable.

- A.** The names and dates of each publication in which a request for DBE participation for this Project was placed by the Proposer.
- B.** The names and dates of written notices sent to certified DBEs soliciting bids for this Project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested.
- C.** The items of work that the Proposer made available to DBE firms, including, where appropriate, any breaking down of the Task Order work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the Proposer's responsibility to demonstrate that sufficient work to meet the DBE goal was made available to DBE firms.
- D.** The names, address and phone numbers of rejected DBE firms, the firms selected for that work, and the reasons for the Proposer's choice.
- E.** Efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any work which was provided to the DBEs.
- F.** Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the Proposer or its affiliate.
- G.** The names of agencies contacted to provide assistance in contracting, recruiting and using DBE firms.
- H.** Any additional data to support a demonstration of good faith efforts.

It is recommended that Proposers consider the following in making efforts to obtain participation of DBEs, and when preparing the documentation to be submitted, demonstrating their good faith efforts:

Advertising for DBE participation may be placed in newspapers, trade papers, minority focus papers and on the Internet.

The more advertising the better. The wider the audience—especially in trade and focus publications—the better a prime contractor can "get the word out" they plan to bid a project, the better potential for DBEs to know about the project and to whom they should bid.

Solicitations and follow-up telephone contacts should occur within reasonable time before the proposal due date to allow the subcontractor time to prepare a quote to submit to the Proposer. Telephone or email logs, and fax receipts may be used to corroborate follow-up contacts.

Advertisements and solicitations should state which items or portions of work are being made available. The Proposer should consider making as many items of work available as possible to meet the goal, including those items normally performed by the Proposer with its own forces.

Proposers are encouraged to assist DBE subcontractors in the areas of bonding (if required), lines of credit, and obtaining necessary equipment, supplies and materials, and inform DBEs of this assistance in their solicitations.

GUIDANCE FOR BIDDERS COMPLETING GOOD FAITH EFFORT SUBMITTAL – PAGE 2

The documentation to be submitted to SANDAG should clearly demonstrate all efforts made by the bidder to meet the DBE goal. To assist in providing clear documentation, Proposers should consider the following:

- Attachments may include copies of advertisements, solicitations and logs of telephone follow-ups, email or fax receipts.
- In documenting the work made available to DBEs, list the task item number, description of the work, and what portion of the item was offered, if applicable.
- Include quotes from rejected DBEs and the quotes from the firms selected. If the Proposer is doing the work at less cost, include the items to be performed and the costs.
- Identify any contacts with agencies, organizations, or groups used or contacted to provide assistance in contacting, recruiting, and using DBE firms, and any responses or assistance received from them.
- Describe any additional information which would demonstrate that adequate good faith efforts were made to meet the goal.

GUIDANCE FOR BIDDERS COMPLETING GOOD FAITH EFFORT SUBMITTAL – PAGE 3
TITLE 49—TRANSPORTATION
SUBTITLE A--OFFICE OF THE SECRETARY OF TRANSPORTATION
PART 26-PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES
IN DEPARTMENT OF TRANSPORTATION
SUBPART F-COMPLIANCE AND ENFORCEMENT

Sec. Appendix A to Part 26--Guidance Concerning GFE

- I.** When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.
- II.** In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.
- III.** The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV.** The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

 - A.** Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - B.** Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - C.** Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- D.**

 1. Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
 2. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- E.**

 1. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 2. A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.
- F.** Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G.** Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H.** Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.
- I.** In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in Section 26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro

forma mailings to DBEs requesting bids are not alone sufficient to satisfy GFE under the rule.

- VI.** A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute GFE.

NOTICE REGARDING DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS AND INSTRUCTIONS

SANDAG will establish a DBE goal when applicable prior to seeking proposals for specific Task Orders.

I. DBE PARTICIPATION GENERAL INFORMATION

- A In conformance with 49 CFR 26, SANDAG is required to implement a minority-conscious component for its DBE program. The minority-conscious goal established by SANDAG for each Task Order is based on an analysis of available subcontracting opportunities and the availability of DBEs within the SANDAG market area. In the event of any conflicts or inconsistencies between the CFR and the SANDAG DBE Program with respect to DOT-assisted contracts, the CFR shall prevail.
- B It is SANDAG policy to provide disadvantaged, minority, and women-owned business enterprises, as defined in 49 CFR 26, an equitable opportunity to participate in all contracting opportunities. SANDAG has entered into agreements with FTA and FHWA regarding its DBE programs, which include minority and women-owned business enterprises. SANDAG is required to administer contracts, consultant selection, and all related procurement activities without regard to race, color, religion, disability, political beliefs, age, national origin, gender, sexual orientation, veteran status, or cultural background. Accordingly, no firm or individual shall be denied the opportunity to compete for SANDAG contracts by reasons so stated or implied. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, "Participation by DBEs in DOT Financial Assistance Programs"). The Consultant should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance.
- C Proposers are encouraged to use services offered by financial institutions owned and controlled by DBEs. For more information, including a list of Minority Owned Banks, visit the United States Department of Treasury's Financial Management Service's website at www.fms.treas.gov/mbdp/index.html. Please be advised that the utilization of Minority Owned Banks is encouraged but will not be counted as participation toward achievement of a DBE goal.
- D The Agreement is subject to 49 CFR 26.13(b) which states:
- "The contractor [Consultant], subrecipient, or subcontractor [subconsultant] 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 26 in the award and administration of DOT-assisted contracts. Failure by the contractor [Consultant or subcontractor] to carry out these requirements is a material breach of this contract [Agreement], 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
 4. Disqualifying the contractor from future bidding as non-responsible."

- E Information regarding the SANDAG DISCO and DBE programs as well as a link to the CUCP database from the DOT, Civil Rights, Business Enterprise Program website can be found at: www.sandag.org/index.asp?fuseaction=rfps.dbe
- F A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the CUCP. Please note that DBE goals must be met using firms certified as DBE by the state of California. SBE, Women-Owned Business Enterprise, and Minority Business Enterprise certifications are not equivalent to DBE certification.
- G A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- H A Proposer not proposing as a joint venture with a DBE, will be required to document one or a combination of the following:
- The Proposer is a DBE and will meet the goal by performing work with its own forces.
 - The Proposer will meet the goal through work performed by DBE subconsultants, suppliers, or trucking companies.
 - The Proposer, prior to proposing, made adequate GFE to meet the goal.
- I A DBE joint venture partner must be responsible for specific items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. A DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- J 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.
- K The Proposer shall list only one subconsultant for each category of work described in its proposal and all DBE subconsultants should be listed in the cost proposal and list of subconsultants (Subconsultant List – RFP Attachment).
- L A Proposer 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 subconsultants.
- M Consultant shall include in each subcontract the Consultant signs with a subconsultant language providing for the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes.
- N SANDAG reserves the right to withhold payment to the Consultant in an amount up to \$10,000 in order to enforce the DBE provisions of the Agreement or to use other remedies described in this Agreement. SANDAG is not obligated, however, to make such a deduction or to provide notice thereof. Payment of withheld funds shall not be made on a Task Order until such time as Consultant submits sufficient documentation demonstrating achievement of the commitment or until such time as the commitment is modified or waived by SANDAG or a sanction amount is agreed to by the parties. Consultant shall include the provisions in this subsection in each subcontract it signs with a subconsultant.
- O SANDAG will conduct post-award monitoring of Consultant’s compliance with the DBE provisions of the Agreement. For example, SANDAG may ask to review Consultant’s subcontracts to ensure that DBEs have done the work for which credit was claimed. Consultant shall cooperate with SANDAG requests for assistance with post-award monitoring. Failure by the Consultant to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other

remedy as SANDAG deems appropriate.

- P Failure to meet a DBE Commitment due to unilateral decisions by Consultant will be considered a material breach of contract. Consultant must communicate with SANDAG promptly if it believes changes in work approved by SANDAG merit modification of the commitment. Consultant shall notify the SANDAG Project Manager in Consultant's monthly project status reports of any anticipated problems with Consultant meeting its commitment.

II. RESOURCES

- A SANDAG participates as a Non-Certifying Member in the CUCP. 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 at (916) 324-8347 for assistance.
- B Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: www.dot.ca.gov/hq/bep/.
- Click on the link in the left menu titled *Disadvantaged Business Enterprise*
 - Click on Search for a DBE Firm link
 - Click on Click Here to Access the DBE Query Form
 - Searches can be performed by one or more criteria
 - Follow instructions on the screen

C **DBE Directory**

If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the online database. A copy of the directory of certified DBEs may be ordered by calling (916) 263-0822 or by writing to:

California Department of Transportation
Publication Distribution Unit
1900 Royal Oaks Drive
Sacramento, CA 95815-3800

III. DBE CREDITING PROVISIONS

- A Materials or supplies purchased from DBE count towards DBE credit under the following conditions:
1. If the materials or supplies are obtained from a DBE Manufacturer, count 100 percent of the cost of the materials or supplies. A DBE Manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
 2. 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 specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE Regular Dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE Regular Dealer in such bulk items as

petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating or maintaining a place of business provided in this section.

3. If a dealer both owns and operates distribution equipment needed for the Project, any supplementing of Regular Dealers' own distribution equipment shall be, by a long-term lease agreement and not on 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.
4. Materials or supplies purchased from a DBE, which is neither a Manufacturer nor a Regular Dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required for the Project, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

B For DBE trucking companies: credit for DBE will count towards DBE credit under the following conditions:

1. 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 goal.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Agreement.
3. The DBE 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.
4. 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.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. A 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. A DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE. If a Proposer chooses this approach to meet a SANDAG goal, it must notify SANDAG in advance and obtain concurrence from SANDAG since SANDAG will be required to obtain written consent from the appropriate DOT operating administration.
6. 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.

IV. DBE CERTIFICATION

A SANDAG will accept DBE certification from the certifying member agencies, which certify eligibility of DBEs in accordance with 49 CFR 26, under the California CUCP or another state's certification program pursuant to the interstate certification process described in 49 CFR 26.85. Listings of certifying member agencies are available in the Department of Transportation, Civil Rights, Business Enterprise Program website at:

www.dot.ca.gov/hq/bep. A firm that is certified DBE by another state at the time of proposal submission, must be certified as DBE by the state of California by the time of Agreement execution.

- B The CUCP database includes the DBEs certified from all certifying agencies participating in the CUCP. If you are looking for a certified DBE firm or want to be sure the firm you plan to subcontract with is certified, you may perform a query in the CUCP database by going to: www.dot.ca.gov/hq/bep/find_certified.htm. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Civil Rights Certification Unit at (916) 324-8347 for assistance.
- C If a DBE subconsultant is decertified during the term of the Agreement, the decertified subconsultant shall notify the Consultant in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Project, the subconsultant shall notify the Consultant in writing with the date of certification. The Consultant shall furnish the written documentation to SANDAG. A DBE Certification Status Change Form (an Exhibit to the Standard Services Agreement) indicating the DBE's existing certification status, shall be signed and certified correct by Consultant and shall be furnished to SANDAG within 90 days from the change in certification status.

V. COMMERCIALY USEFUL FUNCTION STANDARDS

- A A DBE performs a commercially useful function when it is responsible for execution of the work of the Agreement and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the Agreement, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, SANDAG will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Agreement is commensurate with the work it is actually performed and the DBE credit claimed for its performance of the work, and other relevant factors.
- B A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, SANDAG must examine similar transactions, particularly those in which DBEs do not participate.
- C If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, SANDAG will presume that it is not performing a commercially useful function.
- D When a DBE is presumed not to be performing a commercially useful function as provided in the previous paragraph, the DBE may present evidence to rebut this presumption. SANDAG may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
- E SANDAG decisions on commercially useful function matters are subject to review by FTA.

VI. DBE "FRONTS" AND FRAUDS

Only legitimate DBEs are eligible to participate in any federally funded contract. Therefore, Proposers are cautioned against knowingly and willingly using "fronts" or doing business with DBEs in a manner, which could compromise the DBE's continued eligibility and DBE participation credit.

The use of “fronts” and “pass through” subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of federal funds should be immediately reported to the Office of Inspector General, United States DOT toll free hotline at (800) 424-9071.

VII. SUBMISSION OF DISADVANTAGED BUSINESS ENTERPRISE INFORMATION BY PROPOSERS TO A TASK ORDER

Please note that in this Section, the term “Proposer” is used when referring to Consultant because even if a firm has already executed the Agreement, it is treated as a Proposer when it is attempting to be awarded a Task Order.

- A Each time SANDAG is planning to award a Task Order that will have federal funding, it will notify one or more qualified firms of the DBE goal that has been set for the Task Order so that proposing firm can submit a proposal for the work based on the team proposed for the work, including sufficient use of DBE firms performing commercially useful functions to meet the DBE goal. If Proposer/Consultant is unable to meet the goal it will have to submit adequate GFE documentation with its proposal. A Consultant Contract DBE Commitment Information form (10-O2) listing the subconsultant firm(s) it is committing to use to meet or exceed the DBE goal must be submitted prior to the time the applicable Task Order is executed.
- B The Proposer DBE Commitment form (an Exhibit to the Standard Services Agreement, which is also known as the 10-O1) shows the percentage of work that Consultant proposes to commit to based on its cost estimate and/or GFE documentation. A Proposer that does not commit to meet the DBE goal utilizing the Proposer DBE Commitment form must complete and submit the DBE Information-Good Faith Efforts form and demonstrate adequate GFE to meet the DBE goal in order to maintain its eligibility for award. SANDAG recommends that even if a Proposer has proposed to commit to meet the goal, it should additionally submit the DBE Information-Good Faith Efforts form as a means of protecting its eligibility for award in the event any of the DBE firms proposed were improperly credited by the Proposer.
- C Proposers must submit written confirmation from each DBE stating that it is participating in the Agreement **or Task Order**. A copy of a DBE's quote will serve as written confirmation that the DBE has agree to participate in performing a portion of the scope of work.
- D In the event Proposer’s proposed team includes utilization of DBE firms that will exceed the applicable DBE goal, but Proposer does not wish to list this potential excess utilization information on the Consultant Contract DBE Commitment Information form (an Exhibit to the Standard Services Agreement, which is also known as the 10-O2), Proposer may, on its own accord, and on the basis of race-neutral DBE program objectives, identify those firms on the Surplus DBE Utilization Form (an Exhibit to the Standard Services Agreement). Use of such DBE firms on a race-neutral basis will cause Proposer to exceed its applicable DBE commitment resulting in “Surplus DBE Utilization.”
 - 1. The Surplus DBE Utilization Form must only list those firms that are DBE businesses certified in California that are not necessary for purposes of Proposer meeting its DBE commitment to use the firms listed in Consultant Contract DBE Commitment Information form. SANDAG encourages, but does not require Surplus DBE Utilization.
 - 2. If utilized by a Proposer, payments for Surplus DBE Utilization to subconsultants shall be recorded in CIS just like all other subconsultant payments. Use of such firms should also be reported on the FUR form.

3. Surplus DBE firms listed on the Surplus DBE Utilization form can be used by a Proposer at any point during the term of the Agreement **or Task Order** without Proposer having to submit a Request to Add Subconsultant and/or Bench Firm form (an Exhibit to the Standard Services Agreement).
4. A Proposer/Consultant will not be in breach of the terms of the Agreement or the relevant Task Order if it must substitute another firm for one of the DBE firms listed on the Surplus DBE Utilization form. Proposer/Consultant will still have to follow the Agreement requirements for substitution of a subconsultant, but will not be limited to substitution with another DBE firm or be required to show GFE to do so. Proposer understands and agrees that nothing in this subsection modifies its commitment to utilize the firms listed in the Consultant Contract DBE Commitment Information form. Consultant cannot use the firms shown on the Surplus DBE Utilization form to replace its commitments to the DBE firms shown on the Consultant Contract DBE Commitment Information form unless it goes through the process of requesting SANDAG permission to modify the commitments on that form.
5. Additionally, nothing in this section is intended to modify Proposer/Consultant's requirements to comply with subconsultant substitution procedures for the firms and amounts shown in Consultant Contract DBE Commitment Information form, which are set forth in this Attachment.

E When a Proposer is in the process of proposing on and then negotiating the Agreement or a Task Order with a DBE goal, Consultant is to fill out and submit to SANDAG the following documents:

- DBE Information–Good Faith Effort form (if goal will not be met)
- Proposer DBE Commitment (10-O1)
- Consultant Contract DBE Commitment Information Form (10-O2)
- Bidders List (showing all firms that were requested to or did submit a proposal, quote or bid to Proposer/Consultant, whether ultimately selected by Proposer/Consultant or not)
- Subconsultant List (showing all firms ultimately selected for the Agreement **or Task Order**)

VIII. SUBSTITUTION

- A DBEs must perform work or supply materials as listed in the Proposer DBE Commitment form specified under the Section entitled "Disadvantaged Business Enterprises" of the RFP and as shown in the Exhibit entitled "Consultant Contract DBE Commitment Information". Consultant shall not terminate a DBE listed subconsultant for convenience and perform the work with its own forces or obtain materials from other sources without prior written authorization from SANDAG.
- B SANDAG will grant authorization to substitute other forces or sources of materials if Consultant submits a request to SANDAG that establishes any of the following justifications:
1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the Project.
 2. Consultant stipulates that a bond is a condition of executing the subcontract and the listed DBE fails to meet the bond requirements.
 3. Work requires a license and listed DBE does not have a valid license.
 4. Listed DBE fails or refuses to perform the work or furnish the listed materials.

5. Listed DBE's work is unsatisfactory and not in compliance with its contract.
 6. Listed DBE delays or disrupts the progress of the work.
 7. Listed DBE becomes bankrupt or insolvent.
- C Consultant will need to follow the procedures below to substitute DBE subconsultants so that the DBE commitment can be met.
- D Before requesting permission from SANDAG for a substitution, Consultant must give notice in writing to the DBE subconsultant, with a copy to the SANDAG Manager of Small Business Development, of its intent to request to terminate and/or substitute the DBE subconsultant. The notice sent to the DBE subconsultant must include the reason the Consultant is requesting the substitution.
- E Consultant must give the DBE subconsultant five days to respond to Consultant's notice. The DBE's response should advise the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract. The response should include information regarding why the substitution should not be approved. Consultant shall provide the SANDAG Manager of Small Business Development with a copy of the DBE subconsultant's response, if any, when submitting its request for substitution.
- F The proposed new subconsultant must be certified to perform a commercially useful function for one or more of the types of work in the scope of work. SANDAG can assist with locating DBE firms, and may already have a posted list of certified DBE firms on its Website.
- G Consultant must check the CUCP database to ensure the proposed firm is DBE certified for the associated categories and types of work (identified by the NAICS codes) in the scope of work.
- H If, even after seeking assistance from SANDAG in locating DBE firms, Consultant cannot locate DBE firms that are ready, willing and able to do the work, Consultant shall provide SANDAG or its designee with GFE documentation regarding its efforts for the SANDAG contract file that will justify waiver of all or a portion of the DBE goal/commitment. SANDAG or a designee will review and determine if Consultant's submitted GFE documentation is adequate.
- I Consultant shall provide SANDAG with the qualifications and fee information that was used for selection.

IX. REQUEST TO WAIVE DBE GOAL FOR TASK ORDER

- A There are at least two instances under which Consultant can request that SANDAG waive the DBE goal for a particular Task Order. If one of the situations below occurs, SANDAG staff will need sufficient documentation in the contract file to justify the waiver, and the waiver decision will be at the sole discretion of SANDAG. A waiver request can be made by Consultant when:
1. Consultant provides sufficient documentation to establish that no qualified DBE firms were located that are ready, willing and able to carry out any of the proposed work. Use of this waiver provision should be determined after Consultant has documented GFE to meet the DBE goal.
 2. The total anticipated amount of the work that may be issued under the proposed Task Order (including any potential amendments to the Task Order) is not expected to exceed \$50,000. If a Task Order amendment will result in the Task Order amount

exceeding \$50,000, a DBE goal may be evaluated for the entire amount of the Task Order at the time of the amendment. Use of this waiver provision should be determined prior to the time SANDAG expends resources to set a DBE goal for the Task Order.

PROPOSER SHORT LIST EVALUATION FORM

Proposer
Name: _____

Solicitation 5005360 Description: On-Call Communications and Marketing Services
Category: _____

Criteria	(a) Weight	(b) Score (0-10)	(a) x (b) Weighted Score
1. PROJECT TEAM <ul style="list-style-type: none"> • Qualifications and relevant individual experience • Unique qualification of key personnel • Time commitment of key members • Integrity and reputation of project team • Identification and assignment of firm's subject matter expert as project manager or major contributor in project team • Firm and staff ability to prioritize various projects and assignments to ensure successful and timely completion 	2.0		
2. FIRM/TEAM EXPERIENCE <ul style="list-style-type: none"> • Relevant experience, to include strategies directly related to the category • Ability to produce animated PowerPoint presentations when required • Experience with the use of web-based public engagement tools, website and/or other application development, including expertise in HTML programming when required. • Demonstrated knowledge of working in the San Diego region • Quality and cost control • Staff depth/availability 	2.0		
3. PROPOSED METHODOLOGY AND APPROACH TO WORK <ul style="list-style-type: none"> • Demonstrated knowledge of SANDAG and the work required • Explanation of the project or services required • Approach and proposed methodology to project scope • Innovative approaches and internal measures for timely completion of project • Creative ideas to increase public participation, especially to achieve the social equity and environmental justice goals established by SANDAG and its partners • Demonstrated knowledge and application of SANDAG Board Policy 25 	3.0		
4. COST <ul style="list-style-type: none"> • Value of proposer's work as it relates to its cost proposal • Reasonableness of billing rates (i.e. within the competitive range) • Ranking of comparative cost among firms in the same category • Ranking of comparative cost among firms proposing the same sample project 	2.0		
5. ADDITIONAL INFORMATION <ul style="list-style-type: none"> • Similar current or past client base • Number of years in business • Clarity, comprehensiveness and organization of proposal 	1.0		
Total			

Comments (continue on reverse if necessary):

I certify that I have performed an independent evaluation of the above-named proposer. I further certify that I have not engaged in discussions within the last year with the above-named proposer or any subconsultant named in the proposal regarding my future employment with said proposer and that neither I nor anyone in my household has received income from any of the proposers or any of their listed subconsultants during the last twelve months.

Evaluator Signature

Date

Evaluator Name (print or type)

Checked By

Date

PROPOSER INTERVIEW EVALUATION FORM

Proposer Name: _____

Solicitation No.: 5005360 Description: On-Call Communications and Marketing Services

Category:

Criteria	(a) Weight	(b) Score (0-10)	(a) x (b) Weighted Score
1. COST OR BEST VALUE · Value of Proposer’s work based on cost estimate · Demonstrated knowledge of the work required · Equitable distribution of work across titles as proposed in sample project(s) · Pricing of sample project(s)	3.0		
2. PROJECT EXPERIENCE · Other ongoing projects and priorities · Quality and cost control · Staff depth/ availability · Qualifications and relevant individual experience · Unique qualification of key personnel · Integrity and reputation of project team · Knowledge and understanding of San Diego region and relevant laws and policy issues · Specific experience and capabilities in relation to SANDAG’s needs · Firm’s subject-matter expert identified as a project manager or major contributor to the project team	1.0		
3. PROPOSED METHODOLOGY AND APPROACH TO WORK · Approach and proposed methodology to project scope · Approach and proposed methodology to the sample project · Demonstrated knowledge of the work required · Understanding of the services required · Optimization of resources · Innovative approaches & internal measures for timely project completion	1.0		
4. OTHER CRITERIA · Ability to provide animated PowerPoint when requested and if appropriate · Ability to produce creative ideas to increase public participation and public awareness · Ability to demonstrate strong strategies in direct mail, electronic Marketing, Printing of Marketing and public outreach and other collateral materials such as mailers, signage and banner ads · Previous experience with web-based public engagement tools, websites and/or other application development, including expertise in HTML programming where appropriate and required	1.0		
5. INTERVIEW QUESTIONS · Demonstrated knowledge of the work required · Responses to questions · Demonstration of level of preparation for interview	3.0		
6. REFERENCES* · Record of quality work on similar projects, on time and within budget	1.0		
Total			
*All panel members must enter a zero for all interviewed proposers if time did not allow for reference checks or if the reference checks were not completed on all the proposers.			

Comments (continue on reverse if necessary):

I certify that I have performed an independent evaluation of the above-named proposer. I further certify that I have not engaged in discussions within the last year with the above-named proposer or any subconsultant named in the proposal regarding my future employment with said proposer and that neither I nor anyone in my household has received income from any of the proposers or their listed subconsultants during the last twelve months.

Evaluator Signature

Date

Evaluator Name (print or type)

Checked By

Date

ON-CALL TASK OR WORK ORDER FIRM RECOMMENDATION FORM

Project Manager: _____ Date: _____
Task or Work Order No.: _____ Contract No.: _____
Task or Work Order Amount: _____ Category: _____
Project Description/Title: _____

You must compare all eligible on-call firms to each other. You may not select one firm and then simply state why it is qualified because, in almost all cases, more than one on-call firm is eligible and qualified for the work. Therefore, a comparison of the firms is required. You must document a comparison of the eligible firms and explain why the firm selected is the best choice among the eligible firms based on the selection factors discussed in the procurement document.

SECTION I

Are you using this document to establish use of a particular on-call firm for work that will go on beyond this Task of Work Order on a Project-wide basis and will be of the best value to SANDAG?
 Yes No

If you have marked the "No" box above, skip to Section II of this form. If you have marked the "Yes" box above, briefly describe the range of work that will be expected for the entire Project, beyond what is being awarded in the current Task or Work Order:

(EXPLANATION)

The on-call firm identified below for award of this Task or Work Order has already performed services on a Project that is in progress. The selected firm was evaluated as the best value to SANDAG for the Project overall when price, qualifications, and other factors were considered previously in the Task or Work Order Selection Form dated _____. If this box is marked, skip to Section III of this form.

SECTION II

By marking the box below, you are affirming that the following statements are true.

Selection of firm for this Task or Work Order is based upon qualification(s) and cost (best value).

Describe any additional specialty qualifications and experience needed for Task or Work Order or Project:

(PROVIDE BRIEF DESCRIPTION OF QUALIFICATIONS AND EXPERIENCE)

List the number and names of all firms under contract in this category. If one or more eligible on-call firms were not considered for the work in this Task or Work Order/Project, identify the firm(s) and provide an explanation for why the firms were not considered based on factors such as experience, rates, or past performance:

(EXPLANATION)

Draft scope of work was discussed with or compared with the SOQs or proposal(s) of the on-call firms shown below:

- | | | | |
|---------------------------------------|---------------------------------------|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm |
| <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm |
| <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm | <input type="checkbox"/> Name of Firm |

SECTION III

Check all that apply for your comparison analysis. The selected firm:

- Offers the most relevant experience based on the complexity level of this Task or Work Order/Project compared to the other firms evaluated.
- Can meet the schedule needed for completion of the scope of work for this Task or Work Order/Project.
- Has availability to take on additional work without jeopardizing existing project deliverables and performance.
- Provides the most appropriately experienced and skilled key personnel for this Task or Work Order/Project when compared to the other firms evaluated.
- Has prior work experience with this Project that will prevent work from being redone and; therefore, will provide a better value to SANDAG compared to the other firms.
- Demonstrated best understanding of the Project and approach during interviews/discussions as compared to the other firms.
- Offered the best overall proposal for this Task or Work Order/Project taking level of effort and rates into account.
- Was selected in previous documentation for the overall Project and has performed to SANDAG's satisfaction on prior work for the Project.
- Performance ratings of firm on previous work establish it has performed satisfactorily for SANDAG.
- Other (see explanation below)

Document discussions with on-call firms confirming information marked in boxes above and/or identifying information in proposals or other documents establishing that the qualifications and cost of selected firm for this Task or Work Order/Project are the best value for SANDAG's needs. Make sure to discuss rates/costs of selected firm compared to other eligible firms.

(EXPLANATION)

I am not aware of any conflicts of interest or organization conflicts that would arise as a result of choosing (name of firm) and believe it is best qualified for this Task or Work Order/Project.

Project (or Task or Work Order) Manager	Date
Contract Manager (if applicable)	Date

Accepted by Contracts Staff

Date

EXAMPLE CERTIFICATE OF INSURANCE

Certificate of Insurance						Date: MM/DD/YYYY	
Producer: LOCAL AGENT, LTD. 1234 LOCAL DRIVE ANYTOWN, ST 30455			THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.				
Insured:			COMPANIES AFFORDING COVERAGE				
			COMPANY A				
			COMPANY B				
			COMPANY C				
COVERAGES THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM, OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE PRODUCTS DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.							
CO LTD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS		
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				COMBINED SINGLE LIMIT	NA	
					EACH OCCURRENCE	\$1,000,000	
					FIRE DAMAGE (Any one fire)	INCLUDED	
					MEDICAL	INCLUDED	
					PERSONAL & ADV. INJURY	INCLUDED	
					GENERAL AGGREGATE	\$2,000,000	
					PRODUCTS - COMP/OP AGG	INCLUDED	
					BROAD FORM PROPERTY DAMAGE	INCLUDED	
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT	NA	
					EACH OCCURRENCE	\$1,000,000	
					BODILY INJURY (Per person)	INCLUDED	
					BODILY INJURY (Per accident)	INCLUDED	
					PROPERTY DAMAGE	INCLUDED	
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EACH ACCIDENT	Add as required	
					OTHER THAN AUTO ONLY:	Add as required	
					EACH ACCIDENT	Add as required	
					AGGREGATE	Add as required	
	EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM				EACH OCCURRENCE	Add as required	
					AGGREGATE	Add as required	
C	WORKERS' COMPENSATIONS AND EMPLOYER'S LIABILITY PROPRIETOR S/ PARTNERS / EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> EXCL.				COMBINED SINGLE LIMIT	NA	
					EACH OCCURRENCE	\$1,000,000	
					STATUTORY LIMITS		
					EACH ACCIDENT		
					DISEASE - POLICY LIMIT		
					DISEASE - EACH EMPLOYEE		
	OTHER <input type="checkbox"/> Professional Liability-Errors & Omission: Crime <input type="checkbox"/> Privacy/Network (Cyber) Liability <input type="checkbox"/> Technology Errors & Omission Insurance				EACH CLAIM	Add as required	
					PER OCCURRENCE	Add as required	
					AGGREGATE	Add as required	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS SANDAG Contract # 500XXXX Additional Insured Endorsement required for General Liability & Automobile (covered parties): SANDAG, its Board of Directors, Officers, employees, and agents [Add Additional Insureds as Required per Contract] Waiver of Subrogation Endorsement required for General Liability and Workers Compensation policies. Primary Non-Contributory Endorsement required for General Liability and Automobile.							
CERTIFICATE HOLDER				CANCELLATION			
				SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.			
				AUTHORIZED REPRESENTATIVE (SIGNATURE)			

PART 3 - STANDARD SERVICES AGREEMENT



STANDARD SERVICES AGREEMENT

CONTRACT NO.

PROJECT NUMBER(S)

THIS AGREEMENT is effective as of this day of month year, in the State of California by and between San Diego Association of Governments (SANDAG), and the following contractor, hereinafter referred to as "Consultant." This Agreement will terminate on month day, year, unless an amendment is executed by the parties.

Name: _____ RFP DBE Goal 0-25%
Address: _____ Range: _____
City, State, ZIP: _____ Consultant DBE Commitment N/A%
Form of Business: [Note: corporation, partnership, sole proprietor, etc.]
Tax ID Number: _____
Authorized person to sign contract:
Name: _____
Title: _____
Phone: () _____
Fax: () _____
Email: _____

The attached Standard Terms and Conditions are part of this Agreement. The Consultant agrees to furnish to SANDAG services and materials, summarized as follows (the "Project"): On-Call Communications and Marketing Services

The Total Agreement Value shall not exceed \$ U.S. dollars unless amended. The minimum contract value is \$50 U.S. dollars. The total value of all agreements issued under RFP NO. 5005360 shall not exceed \$5,000,000 U.S. dollars unless amended.

Table with 2 columns: SAN DIEGO ASSOCIATION OF GOVERNMENTS and CONSULTANT AUTHORIZATION. Rows for signature and approval.

STANDARD TERMS AND CONDITIONS

I. AUTHORIZATION TO PROCEED

A. Notice to Proceed

Specific authorization to proceed with all or a portion of the work described in the scope of work (an Exhibit to the Standard Services Agreement) shall be granted in writing by SANDAG via a Task/Work Order or a Notice to Proceed. Consultant shall not proceed with the work unless it is authorized. No expenditures are authorized on a Project, and work shall not commence, until a Notice to Proceed or Task/Work Order for those tasks has been executed by SANDAG.

B. Use of Task Order and Work Orders

For any work to be performed in excess of \$10,000 a Task Order will be issued to the Consultant. For work less than \$10,000 a Work Order will be issued.

C. Performance Period

1. This Agreement shall go into effect on the date shown on the first page of the Agreement, contingent upon approval by SANDAG, and Consultant shall commence work after notification to proceed by SANDAG. The Agreement shall end on the date shown on the first page of the Agreement, unless extended by Agreement amendment.
2. Consultant is advised that any recommendation for Agreement award is not binding on SANDAG until the Agreement is fully executed and approved by SANDAG. Any Task Order Amendment or Agreement amendment issued under this Agreement also is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.
3. The period of performance for each specific project shall be in accordance with the Task/Work Order for that project. If work on a Task/Work Order is in progress on the expiration date of the Agreement, the terms of the Agreement shall be extended by amendment.

II. CONSIDERATION

A. Compensation

1. SANDAG agrees to pay invoices within 30 days after receipt of invoice or approval of all goods or services, whichever occurs last, and payment shall be deemed made upon mailing by SANDAG.

Whether or not a DBE goal is set for the procurement or a DBE commitment is made for the Agreement or a Task or Work Order, Consultant shall submit a document entitled "Final Report – Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses" ("the FUR") within 90 days after the date of completion of the scope of work for the Agreement and/or a Task or Work Order. SANDAG is required to track use of DBE and SB firms on procurements, whether or not federal funding is used.

2. The Consultant agrees to complete, to the full satisfaction of SANDAG, all of the services described on the Scope of Work set forth in the Exhibit of that name attached to the Standard Services Agreement. Progress payments will be used as the method of compensation for this Agreement. Progress payments must be invoiced by Consultant in arrears, and no more often than monthly, based upon services or deliverables provided, unless otherwise stated in the Rate Schedule (an Exhibit to the Standard Services Agreement). Consultant shall invoice SANDAG at the fixed price amounts set forth in the attached Rate Schedule up to the maximum aggregate amount of the Agreement. The Maximum Aggregate Amount of this Agreement, including any potential Task or Work Orders shall be \$[Insert: Amount], unless a written amendment is executed by SANDAG. It is understood and agreed that the actual amount of work requested by SANDAG may be less than the Maximum Aggregate Amount. There is no guarantee, either expressed or implied, as to the actual dollar amount that will be authorized under this Agreement. Fixed price amounts shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. Issuance of Task or Work Orders under this Agreement shall be contingent on funding, budget approval, Consultant's performance, and other relevant factors. SANDAG reserves the right to increase or decrease the amount of estimated funds allocated to each Task Order. Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG.

As tasks are identified, SANDAG may issue Task/Work Orders to Consultant. Consultant is not authorized to perform services for SANDAG before the effective date of each Task/Work Order or beyond the termination date set forth in each Task/Work Order. The parties have agreed to the Rate Schedule attached to this Agreement as an Exhibit. For any Task or Work Orders that may be issued, the parties will negotiate the amount of payment due based on the amounts in the Rate Schedule attached to the Standard Services Agreement. Payments may be made on a fixed fee or cost reimbursement basis at SANDAG discretion. Under no circumstances should Consultant presume that Task/Work Orders will be issued or that it will receive more than the maximum amount agreed to by the parties for any currently issued Task Order. Issuance of Task/Work Orders under this Agreement shall be contingent on funding, budget approval, Consultant's performance, and other relevant factors. SANDAG reserves the right to increase or decrease the amount of estimated funds allocated to each Task/Work Order. Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task/Work Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG. The maximum amount authorized in each Task/Work Order shall not be exceeded without an amendment to such Task/Work Order.

B. Travel Reimbursement

Transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but shall not exceed the rates stipulated in the Caltrans Travel and Expense Guide for Non-Represented Employees at: www.dot.ca.gov/hq/asc/travel/ch12.htm.

C. Limitations

Premium time or overtime is not allowed without the express written approval of SANDAG. If Consultant uses staff that are on the payroll of a temporary agency, whether such staff are treated by Consultant as temporary employees or subconsultants, SANDAG shall not be charged more than the amount invoiced by the temporary firm or subconsultant to

Consultant unless the arrangement is fully disclosed to SANDAG and expressly agreed to in this Agreement or an executed amendment.

III. ESCALATION []

Consultant will be paid at the rates set forth in in the attached Rate Schedule. Rates listed in the Rate Schedule Exhibit are inclusive of the following:

A. Agreement Execution until **[Insert: Date]**: Rates per Fee Schedule Exhibit (“Base Rates”)

1. **[Insert: Date]** through **[Insert: Date]**: Base Rates escalated by **[Insert: Percentage]** percent (“Adjustment Factor”) applied on a pro-rata basis to the date of Agreement execution (“First Adjustment”)
2. **[Insert: Date]** through **[Insert: Date]**: First Adjustment escalated by **[Insert: Percentage]** percent (“Second Adjustment”)
3. **[Insert: Date]** through end of performance period of contract: Adjustment Factor will be recalculated on a one-time basis as the average of the three most recently published annual United States Department of Labor’s Bureau of Labor Statistics’ ECI for professional, scientific and technical services (Table 5: employment Cost Index for total compensation, for private industry workers, by occupational group and industry) as of **[Insert: Date]**, and applied on January 1 of each year beginning on **[Insert: Date]**. Second Adjustment escalated by (X) percent (“Third Adjustment”)
4. .

Since a fixed (X) percent increase will be applied to the rate schedule for years 3 through 5, no additional ECI increase will be applied for the term of the contract

a.

IV. SUBCONTRACTOR REIMBURSEMENT AND PAYMENT

A. Allowed Costs

In determining allowable incurred subcontractor costs that are eligible for reimbursement, in addition to reimbursement for actual costs that are incurred by reason of payment, SANDAG will allow subcontractor costs that are treated by the Consultant as accrued due to such costs having been billed to the Consultant and recognized by the Consultant as valid, undisputed, due, and payable.

B. Time for Payment

By submitting accrued but unpaid subcontractor costs for reimbursement, Consultant agrees that, within ten days of receipt of reimbursement, the full amount submitted as a reimbursable accrued subcontractor cost shall be paid to the subcontractor. All payments hereunder shall be in US dollars and made upon mailing by SANDAG.

C. Payment in the Event of Non-Completion

If Consultant fails to satisfactorily complete a deliverable or portion thereof according to the schedule set forth in the Agreement or a Task or Work Order, no payment will be made until the relevant deliverable or portion thereof has been satisfactorily completed or the parties have agreed to amend the scope of work or terminate the Task or Work Order.

D. Change of Address

Payments shall be made to the address or account specified in the Standard Services Agreement or such other address or account as is specified by Consultant in writing from time to time, provided that Consultant shall give SANDAG at least 90 days' prior notice of any account, address or other change in payment instructions. SANDAG will not be liable for any late or misdirected payment caused by Consultant's failure to provide timely notice of any such change.

V. INVOICE REQUIREMENTS

A. Information Required

Consultant shall submit invoices that reference the Agreement number, Project title, and any applicable Task or Work Order number. Invoices shall be submitted no later than 45 calendar days after completion of each billing period or upon completion of the Agreement as well as each Task or Work Order.

B. Final Invoice

Upon completion of all deliverables and work tasks to the satisfaction of SANDAG, submit a final invoice showing the cumulative costs incurred by Consultant, not to exceed maximum amount of the Agreement. Final payment of any retained amounts will be made following Consultant's submittal of all required documentation and completion of the Project, including the FUR. Notwithstanding the foregoing, all payments are subject to the conditions set forth elsewhere in this Agreement or which are otherwise required by law. Payments shall be subject to review by SANDAG for compliance with the requirements of this Agreement, and payment may be withheld if Consultant is not in compliance with the Agreement. Payments shall be subject to an audit upon completion of services. No other compensation will be paid except for work done under an amended agreement approved pursuant to the Section in this Agreement entitled, "Changes in Work."

VI. COMPLIANCE INFORMATION SYSTEM

Consultant and all subconsultants shall report payment details using the SANDAG web-based CIS by the 15th of each month. CIS allows consultants to manage their own records, maintain accurate contract information, and report payment details online.

CIS is mandatory for Consultant and subcontractors to use unless SANDAG instructs otherwise. A Consultant account will be created after award, which will allow Consultant to enter data into CIS via an internet browser. After award, Consultant will receive instructions on how to set up their account and enter required subconsultant data. Consultant must require each of its subconsultants to enter required payment information into CIS. Failure of Consultant or its subconsultants to enter required information on a timely basis will result in delay of payment by SANDAG.

VII. INDEPENDENT CONTRACTOR

A. Not a SANDAG Employee

Consultant hereby declares that it is engaged in an independent business and agrees that, in the performance of this Agreement, it shall act as an independent contractor and not as an employee of SANDAG. Consultant has and hereby retains full control of all the employment, compensation, and discharge of all employees of Consultant assisting in its performance hereunder. Consultant shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws

and regulations governing such matters. Consultant shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Consultant will be solely responsible for determining means and methods for performing the services described in the scope of work.

B. Withholding and Employment Taxes

The payments made to Consultant pursuant to this Agreement shall be the full and complete compensation to which Consultant is entitled. SANDAG shall not make any federal or state tax withholdings on behalf of Consultant. SANDAG shall not be required to pay any workers' compensation insurance on behalf of Consultant. Consultant agrees to indemnify SANDAG for any tax, retirement contribution, social security, overtime payment, or workers' compensation payment which SANDAG may be required to make on behalf of Consultant or any employee of Consultant for work done under this Agreement.

C. No Agency

Except as SANDAG may specify in writing in this Agreement or elsewhere, Consultant shall have no authority, express or implied, to act on behalf of SANDAG in any capacity whatsoever, as an agent or otherwise, or to bind SANDAG or its members, agents, or employees to any obligation whatsoever.

VIII. INSURANCE

Consultant shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons, or damages to property, which may arise from, or in connection, with the performance of the work hereunder by Consultant, its agents, representatives, or employees.

A. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Carriers must be licensed to do business in California and maintain an agent for service of process within California. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

B. Pass-Through Costs to SANDAG

To the extent Consultant elects to pass through insurance premium costs to SANDAG, Consultant shall not charge SANDAG for any insurance costs that are not directly attributable to the Project. Consultant shall not pass through insurance costs to SANDAG that are attributable to, or overlap with, work performed for Consultant's other projects or clients or are included in Consultant's overhead rate.

C. Notice of Termination, Cancellation, or Change

Should any of the insurance policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions and sent to SANDAG. Consultant shall notify SANDAG immediately following Consultant's first notice or awareness of any proposed or actual termination, cancellation, or change in its insurance coverage. Each insurance policy required by this clause shall state or be endorsed to state that coverage shall not be amended or canceled, except after 30 days' prior written notice has been given to SANDAG. Notice of cancellation sent by registered mail, postage prepaid, with a return receipt of addresses requested shall be sufficient notice.

D. Failure to Provide Insurance

Failure to provide and continue in force any insurance as described in this Insurance Section shall be deemed a material breach of this Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to Consultant in the event of material noncompliance with the insurance requirements outlined herein. If consultant fails to maintain the insurance as set forth herein, SANDAG shall have the right, but not the obligation, to purchase said insurance at Consultant's expense and to withhold the expense of such insurance from any payments otherwise due to Consultant.

E. Certificates of Insurance and Endorsements

Consultant shall furnish SANDAG with Certificates of Insurance and any required endorsements affecting coverage required by this section. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Endorsements must specifically state that they modify the policy language. All certificates and endorsements are to be received and approved by SANDAG before work commences. Consultant shall ensure that the representations made on the Certificate of Insurance and Endorsements are true and correct. Complete policies of insurance shall be provided to SANDAG upon request and no later than five (5) days after such request. Failure to provide SANDAG a copy of the insurance policies required in this contract shall be deemed a material breach of contract, which shall be deemed at the option of SANDAG to constitute a cause for immediate termination hereof. The coverage forms and related endorsements required herein required by Consultant shall conform to the Insurance Services Office (ISO) 2013 Edition (or the latest revision available).

1. Commercial General Liability and Auto Liability Endorsements

The Commercial General and Auto Liability policies shall contain, or be endorsed to contain, the following provisions:

- a. SANDAG, its directors, officers, agents and employees are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations.
- b. Commercial general liability coverage shall be provided in the form of an additional insured policy endorsement to the Consultant's insurance at least as broad as ISO CG 20 10 and CG 20 37 forms, respectively. Auto liability coverage shall be provided in the form of an additional insured policy endorsement at least as broad as the ISO CA 20 48 form.
- c. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects SANDAG, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it. Consultant shall provide SANDAG a conforming ISO CG 20 01 Endorsement for Commercial General Liability and ISO CA 04 50 Endorsement for Auto Liability, respectively.
- d. Consultant agrees to waive all rights against SANDAG and its directors, officers, agents and employees for recovery of damages to the extent these damages are covered by the Commercial General Liability and Auto Liability insurance required pursuant to this contract. Consultant shall provide

SANDAG a conforming ISO CG 24 04 Endorsement for Commercial General Liability and ISO CA 04 44 Endorsement for Auto Liability, respectively.

F. Insurance Certificate Submittal

SANDAG will use myCOI to track and verify insurance coverage. On SANDAG's receipt of the executed Agreement, Consultant will receive an email from:

certificaterequest@mycoisolution.com

Follow the instructions contained in the email and complete the online registration. Upon completion of registration, myCOI will request proof of insurance directly from Consultant's insurance agents. Consultant shall not commence work and no payments shall be made to Consultant, unless Consultant is registered with myCOI and compliant Certificates of Insurances (COIs) have been received. Consultant shall cause its insurance agents to comply with requests for updated information from myCOI on no less than an annual basis. Consultant is responsible for ensuring that its agents send SANDAG updated certificates of insurance throughout the term of the Agreement via myCOI.

Consultant shall include the Agreement number and/or task order number on all insurance-related correspondence submitted to myCOI (i.e., the insurance certificate itself).

G. No Limitation on Liabilities and Obligations

The requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by SANDAG, or their insurance Consultants are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Consultant pursuant to this Agreement, including, but not limited to, the provisions concerning indemnification.

The specified insurance limits are minimum amounts to be provided, and any insurance maintained by Consultant above such limits shall provide protection to SANDAG and all additional insureds to the same extent as other insurance provided by Consultant.

H. Coverage for Subconsultants

Insurance required of the Consultant shall be provided by all subconsultants or by Consultant on behalf of all subconsultants to cover their services performed under this Agreement. Consultant shall not require subconsultants to maintain insurance amounts that are disproportionate to the risk exposure, scope of work and/or dollar value of work subcontracted. Consultant shall be held responsible for all modifications, deviations, or omissions in these insurance requirements as they apply to any subconsultant.

I. No Waiver of Requirements

Acceptance by SANDAG of a certificate or endorsement that varies from the requirements in this section shall not constitute a waiver by SANDAG of strict compliance with the provisions herein.

J. Self-Insured Retentions

Any self-insured retentions must be declared to SANDAG. At the option of SANDAG, the Consultant shall provide a financial guarantee satisfactory to SANDAG guaranteeing payment of losses and related investigations, claim administration and defense expenses.

K. Claims -Made Coverages

If any of the Consultant's insurance are written on a claims-made form:

1. The insurance coverage period must commence before the effective date of the Agreement or the beginning of work performed pursuant to the Agreement.
2. Insurance must be maintained and evidence of insurance must be provided for at least two years after completion of work under the Agreement.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, the Consultant must purchase an extended reporting coverage for a minimum of two years after completion of work under the Agreement.
4. A copy of the claims reporting requirements must be submitted to SANDAG for review.

L. Cross-Liability Coverage

If Consultant's liability policies do not contain the standard ISO separation of insured's condition, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

M. Additional Insureds

The Commercial General Liability, Auto Liability, policies shall name in the endorsements and schedules as additional insureds the following entities including their directors, officers, agents, employees, and designated volunteers as their interests may appear, unless otherwise specified by SANDAG in a Task Order.

1. San Diego Association of Governments (SANDAG)
2. The San Diego Metropolitan Transit System (MTS)
3. The North County Transit District (NCTD)
4. California Department of Transportation (Caltrans)
- 5.

N. Minimum Policy Limits and Requirements

Prior to performing any work, Consultant shall provide proof and maintain limits no less than the following coverages:

Insurance Type	Requirements	Limits
Commercial General Liability (CGL)	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B and C.	Limits no less than \$2,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit. The policy shall be issued on a policy basis.
Automobile Liability	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	Limit no less than \$1,000,000 - per accident for bodily injury and property damage. The policy shall be issued on a combined single limit.
Workers' Compensation and Employer's Liability	Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, all of their employees working on or about the Right-of-Way, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required by Consultant.	As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.
Professional Liability	Policy to cover losses arising from wrongful acts and pollution incidents whenever committed in the performance of professional services under this contract. [Limit no less than \$1,000,000 per claim and annual aggregate limit of \$2,000,000.

Insurance Type	Requirements	Limits

Insurance Type	Requirements	Limits
Cyber Liability	<p>At all times during this Agreement and for a period of three years thereafter, Consultant agrees to maintain cyber liability insurance that provides coverage for third party damages and associated expense that arises out of unauthorized access to, or release of electronic data within Consultant’s network or business containing personally identifiable information of SANDAG employees or third parties including, but not limited to: (1) privacy breaches (liability arising from the loss or disclosure of confidential information no matter how it occurs); (2) system or network breach; (3) denial or loss of service; (4) introduction, implantation, or spread of malicious software code, (5) intellectual property infringement; and (6) unauthorized access to or use of computer systems in the care, custody or control of Consultant . The cyber liability insurance policy shall include coverage for regulatory and PCI fines and penalties; crisis management expenses and business interruption as well. No exclusion/ restriction for unencrypted portable devices/media may be on the policy.</p>	Limits no less than \$1,000,000

Task or Work Order proposals may identify all applicable insurance costs that are not already included in Consultant’s rate. For example, if cyber liability insurance is not part of the Consultant’s standard insurance coverage and the cost was not included in the rate, then the Consultant can identify the cost for the cyber insurance as an ODC at the Task or Work Order level.

IX. TERMINATION OF AGREEMENT

A. General

1. SANDAG reserves the right to terminate this Agreement upon 30 calendar days written notice to Consultant with the reasons for termination stated in the notice.
2. SANDAG may terminate this Agreement with Consultant should Consultant fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. If SANDAG terminates this Agreement with Consultant for convenience, SANDAG shall pay Consultant the sum due to Consultant under this Agreement prior to termination, unless the cost of completion to SANDAG exceeds the funds remaining in the Agreement. In which case the overage shall be deducted from any sum due Consultant under this Agreement and the balance, if any, shall be paid to Consultant upon demand.
3. The maximum amount for which SANDAG shall be liable if this Agreement is terminated is the capacity amount remaining on the Agreement or Task or Work Orders that are open as of the date of the notice of termination.
4. Consultant shall immediately notify subcontractors and service or supply vendors providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Consultant being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the Consultant.

B. Termination for Cause

1. In the event SANDAG determines sufficient cause exists, SANDAG will send a notice to cure to the address set forth in this Agreement for Consultant. If Consultant fails to satisfactorily cure the problems within 10 days of receiving written notice from SANDAG specifying the nature of the cause, SANDAG may immediately cancel and/or terminate this Agreement and every right of the Consultant and any person claiming any right by or through the Consultant under this Agreement.
2. Termination for cause also shall be merited in the event of a material breach of this Agreement. Events of material breach shall include, but not be limited to, failure to adhere to the Project time schedule, failure to maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by Consultant in connection with this Agreement; documentation or lack thereof establishing that Consultant is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; Consultant refuses or negligently fails, except in cases for which extension of time is provided by SANDAG, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or Consultant negligently or intentionally disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
3. In the event of such termination, SANDAG may proceed with the work in any manner deemed proper by SANDAG. All actual and reasonable costs to SANDAG in the event of termination for cause ("termination costs") shall be deducted from any sum due the Consultant under this Agreement and the balance, if any, shall be paid to the Consultant upon demand. Termination costs include, but are not limited to,

the cost of soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

C. Termination for Convenience

1. General Conditions

SANDAG may terminate this Agreement or a Task or Work Order, in whole or in part, at any time by written notice to the Consultant when it is in the best interest of SANDAG. Consultant shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination if it is terminating for convenience. Consultant shall promptly submit its termination claim to SANDAG to be paid to Consultant. If Consultant has any property in its possession belonging to SANDAG, Consultant will account for the same and dispose of it in the manner that SANDAG directs. No billable costs will be considered payable after notice of termination is given to Consultant.

D. Consultant's Deliverables under Early Termination

Consultant shall provide all Project-related documents and correspondence required as part of the scope of work/Deliverables or included in Task or Work Orders. Project-related documents shall be described, listed, and identified as part of the final revised cost proposal. Project-related documents shall include all documents that are in complete and final form and which have been accepted as complete by SANDAG, or documents in draft and/or incomplete form for those deliverables which are in progress by the Consultant and have not been accepted as complete. All documents must be received and accepted before the settlement cost invoice is paid.

E. Invoice Submittal under Early Termination

Separate final invoices for Project-related costs and termination settlement costs, if applicable, shall be submitted no later than 30 calendar days after the date Consultant is notified of acceptance of the final cost proposals by the Executive Director. The invoice for termination settlement costs shall include the following, to the extent they are applicable: Lease termination costs for equipment and facilities approved under the terms of the contract; equipment salvage costs for equipment valued over \$3,000; rental costs for unexpired leases, less the residual value of the lease; cost of alterations and reasonable restorations required by the lease; settlement expenses, e.g., accounting, legal, clerical, storage, transportation, protection, and disposition of property acquired or produced under the contract, indirect costs, such as payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs related to wages and salaries, incurred as settlement costs.

F. Reimbursement under Early Termination

Termination settlement expenses will be reimbursed in accordance with 48 CFR 31, Federal Acquisition Regulations System, except on negotiated contracts procured under a Request for Proposals, which shall instead be governed by 48 CFR 15.

G. Consultant Claims under Early Termination

Consultant agrees to release SANDAG from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by Consultant of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement or Task or Work Order.

X. INDEMNIFICATION

A. General

With regard to the Consultant's performance in connection with or incidental to this Agreement, the Consultant agrees to defend, indemnify, protect and hold SANDAG and its directors, officers, and employees as well as any additional insured identified in the Agreement or related Task or Work Order, harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to the Consultant's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the Consultant and its subcontractors and their agents, officers, or employees, in performing the work or services herein, or the breach of any representation, warranty, covenant or obligation of Contractor and/or its subcontractors associated with the Project under this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the Consultant's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its directors, agents, officers, or employees.

B. Retention of Funds

In addition to any other remedy authorized by law, so much of the money due Consultant under this Agreement as shall be considered necessary by SANDAG may be retained until disposition has been made of any claim for damages.

C. Survival of Indemnification

This Section of the Agreement shall apply to all liability, regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. This Section of the Agreement shall survive in perpetuity.

D. Job Site Safety

SANDAG agrees that, in accordance with generally-accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction on the Project, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences, or procedures, as these are solely the responsibility of the construction contractor.

XI. ASSIGNMENT AND SUBCONTRACTING

A. Subcontracting

1. Nothing contained in this Agreement or otherwise, shall create any contractual relation between SANDAG and any subconsultant(s), and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to SANDAG for the acts and omissions of its subconsultant and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its subconsultant is an independent obligation from SANDAG'S obligation to make payments to the Consultant.

2. Consultant shall perform the work contemplated with resources available within its own organization and no portion of the work pertinent to this Agreement or a Task or Work Order shall be subcontracted without written authorization by SANDAG's Project Manager, except for instances which are expressly identified in an approved Task or Work Order.
3. Consultant shall pay its subconsultant within ten calendar days from receipt of each payment made to Consultant by SANDAG.
4. Any subcontract in excess of \$25,000 entered into as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to subconsultant.
5. Any substitution of subconsultant must be approved in writing by SANDAG's Project Manager prior to the start of work by the subconsultant.

B. SANDAG Consent Required

Consultant shall not assign, sublet, or transfer (whether by assignment or novation) this Agreement, or any rights under or interest in this Agreement, without the written consent of SANDAG, which may be withheld for any reason, provided however, that claims for money due to Consultant from SANDAG under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished promptly to SANDAG in writing.

C. Responsibility for Subcontractors

If Consultant subcontracts any of the work to be performed under this Agreement, Consultant shall be as fully responsible to SANDAG for the acts, errors, or omissions of Consultant's subcontractor and of the persons employed by the subcontractor as Consultant is for the acts and omissions of persons directly employed by Consultant.

XII. STANDARD OF CARE

A. Service Performance

Consultant's services shall be performed in accordance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to the reasonable satisfaction of SANDAG. Errors or omissions identified in the Consultant's work product and deemed to be negligent shall be corrected upon written notification by the Project Manager, and no additional payment shall be made for said corrections. Corrections of errors or omissions to the Consultant's work product shall not limit enforcement of any other provision of this Agreement.

B. No Waiver

Neither the SANDAG review, approval, or acceptance of, nor payment for, any of the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance thereof; and the Consultant shall be, and remain liable to, SANDAG in accordance with applicable law for all damages to SANDAG by Consultant's errors or omissions deemed to be negligent performance of any of the services furnished under this Agreement.

C. Inaccuracy of Data

Consultant acknowledges and understands that the data and/or information it collects and/or provides to SANDAG will be relied upon by SANDAG and other persons or entities that are now or will in the future be under contract with SANDAG. Should information derived and provided by Consultant be inaccurate and cause SANDAG to incur damages or additional expenses, SANDAG shall notify Consultant and Consultant shall immediately place any applicable insurance carrier on notice of a potential claim.

D. Compliance with Safety Regulations

Consultant shall comply with OSHA and California OSHA regulations applicable to the Consultant regarding necessary safety equipment or procedures. Consultant shall comply with safety instructions issued by SANDAG or other government representatives. Consultant's personnel shall wear white hard hats and orange safety vests at all times while working on a construction Project site and/or within the vicinity of vehicular traffic.

E. Evaluation of Performance

Consultant's performance will be evaluated by SANDAG. A copy of the final consultant evaluation will be sent to Consultant. The evaluation, together with any responsive comments that may be sent to SANDAG by Consultant, shall be retained by SANDAG. Interim or yearly evaluations may also be performed by SANDAG.

XIII. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To SANDAG:
San Diego Association of Governments
Attention: Tedi Jackson
401 B Street, Suite 800
San Diego, CA 92101

To Consultant:
As shown on front page.

XIV. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

A. Equal Opportunity Certificate

Consultants doing business with SANDAG must be equal opportunity employers who achieve or attempt to achieve parity in the representation of women and minorities in their workforce. A signed Equal Employment Opportunity Certificate is a proposal submittal requirement and is a condition for contract award to Consultant.

B. No Discrimination

Consultant shall ensure equal employment opportunity for all persons. Consultant and its subcontractors shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, sex, sexual orientation, national origin, ancestry, age, medical condition, physical, or mental disability, Vietnam-era veteran or special disabled veteran status, marital status, or citizenship, within the limits imposed by law. These principles are to be applied by the Consultant in all employment practices, including

recruiting, hiring, transfers, promotions, training, compensation, benefits, layoffs, and terminations.

C. Compliance with Non-Discrimination Laws

During the performance of this Agreement, Consultant agrees to comply with all the requirements imposed by Title VI and Title VII of the Civil Rights Act of 1964, as amended, and the regulations issued thereunder (Executive Order 11246 [Johnson, 1965]), the California Fair Employment Practices Act, the Americans with Disabilities Act of 1990, and any other applicable federal and state laws and regulations subsequently enacted. In addition, pursuant to Final Rule (RIN 1250-AA06) on pay transparency (effective January 11, 2016) and which implements Executive Order 13665, Consultant and its subconsultants with government contracts in excess of \$10,000 are prohibited from terminating or otherwise discriminating against employees for discussing, disclosing, or inquiring about their own pay or co-workers' pay. The Final Rule also protects pay discussions by job applicants.

D. Workforce Make-up Reports

From time to time SANDAG may request that Consultant provide information regarding its workforce to SANDAG. Within 30 days of such a request from SANDAG, Consultant shall complete and submit the Agreement Exhibit entitled "SANDAG Annual Employment Utilization Report."

XV. CONFORMITY TO LEGAL REQUIREMENTS

A. Compliance with Laws

Consultant shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code Section 1775 when applicable. Consultant shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local and shall pass all of the provisions in this section of the Agreement through to all of its subconsultants.

B. Verification of Employment Eligibility

Consultant shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement.

C. Licenses and Permits

Consultant represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications and approvals, of whatever nature, that are legally required for Consultant to practice its profession. Consultant further represents and warrants to SANDAG that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for Consultant to practice its profession and/or perform services under this Agreement.

D. Rebates, Kickbacks or Other Unlawful Consideration

Consultant warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any SANDAG employee. For breach or violation of this warranty, SANDAG shall have the right in its

discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

XVI. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

Consultant shall not be entitled to additional compensation for out-of-scope work, unless it has given SANDAG a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Consultant believes additional compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to SANDAG prior to the time Consultant shall have performed the work if based upon an act or failure to act by SANDAG or, in all other cases, within 15 calendar days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that any claim for out-of-scope work be brought to the attention of SANDAG at the earliest possible time so that matters related to any such work can be settled in a prompt manner. Consultant hereby agrees that it shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

XVII. DISPUTES

A. Interpretation of the Agreement

This Agreement shall be interpreted in accordance with the laws of the State of California.

B. Continuation of Work During Dispute

In the event Consultant has a dispute with SANDAG during the performance of this Agreement, Consultant shall continue to perform unless SANDAG informs Consultant in writing to cease performance. Consultant shall submit a statement of the grounds for the dispute, including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to Consultant within 20 calendar days. Upon receipt of an adverse decision by SANDAG, Consultant may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten calendar days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten working days. The decision of the Executive Director will be in writing.

C. Request for Mediation

If Consultant is dissatisfied with the results following exhaustion of the above dispute resolution procedures, Consultant shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within 30 calendar days. If SANDAG agrees mediation is appropriate, a mutually-acceptable mediator shall be selected by the parties, and the parties will proceed to mediation of the dispute.

D. Litigation

If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the parties, the prevailing party shall

be entitled to recover all reasonable costs incurred, including reasonable attorney's fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

XVIII. LIMITATIONS ON USE AND DISCLOSURE

A. Services exclusively for SANDAG

The deliverables hereunder are provided for the exclusive use of SANDAG, and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Consultant are not to be used or relied upon by other parties except as authorized by SANDAG.

B. Sensitive Information

Consultant shall not use for financial gain, disclose, or make other improper use of privileged information that is acquired in connection with this Agreement. For purposes of this Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other PII; and knowledge of selections of contractors or subcontractors in advance of an official announcement by SANDAG. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out this Agreement, shall be protected by the receiving party from unauthorized use and disclosure. Additional terms concerning sensitive, privileged or confidential information or data, including, but not limited PII, PCI, or data covered by confidentiality or privacy laws, may be set forth in the Special Provisions.

C. Limitation on Disclosure

Permission to disclose Sensitive Information on one occasion or public hearing relating to the Agreement shall not authorize the Consultant to further disclose such information or disseminate the same on any other occasion.

D. Permission for Public Comment

Consultant shall not issue any news release or public relations item of any nature whatsoever regarding work performed or to be performed under this Agreement without prior review of the contents thereof by SANDAG and receipt of written permission from SANDAG.

E. Subcontract Disclosure Requirements

Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

F. Disclosure Required by Law

Consultant is allowed to disclose Sensitive Information when required by law, rule, regulation, or court order upon notice to SANDAG sufficient to allow SANDAG to challenge such required disclosure.

G. Access to Procurement Information

All information related to a construction estimate, an independent cost estimate for non-construction work, evaluation of proposals or bids submitted to SANDAG, or scope of work

for a future SANDAG procurement that may be prepared in whole or in part by Consultant for use by SANDAG for a third-party procurement is confidential, and shall not be disclosed by Consultant to any entity other than SANDAG.

H. SANDAG Data

In the event Consultant or its subconsultants will have access to a SANDAG database, server or other SANDAG technology or data, Consultant and all applicable subconsultants, and applicable employees thereof, shall take adequate precautions to ensure SANDAG information is not leaked, hacked or otherwise lost, disclosed or misused. All Consultant or subconsultant employees with access to SANDAG data by electronic means shall be required to sign the acknowledgement included in the Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees" and Policy Acknowledgement Regarding Policy on Use of Technology and Electronic Resources by SANDAG "Non-Employees."

In the event of a data breach caused by Consultant, subconsultants, or any of their employees, the indemnification provisions of this Agreement shall apply and all costs for remedying the breach shall be reimbursed to SANDAG by the relevant Consultant and/or subconsultants.

XIX. DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

A. Agency DBE Goals

As a recipient of federal funding, SANDAG has established DBE program goals and is required to report on DBE participation each year so that its attainment efforts may be evaluated.

B. Applicability Regardless of Use of Federal Funding

Even if no federal funding will be used on the Agreement and no DBE goal was set, the Consultant is required to document use of SBs and DBEs in the performance of its work.

C. Department of Transportation Funding

This Agreement will be funded in whole or in part by United States DOT funds. The applicable requirements are set forth below.

1. FHWA Funding Will Be Used - Additional DBE requirements for this Agreement are set forth in detail in the Standard Federal Provisions for FHWA (Non-Construction) (an Exhibit to the Standard Services Agreement) and in the attachment to the RFP entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".

The FHWA DBE contract-specific commitment range for this Agreement is 0.00 – 25.00 percent.

Consultant will be notified of the FHWA DBE goal prior to the time a Task Order is executed. Ability to meet or attempt to meet goal must be documented.

2. Federal Transit Administration (FTA) Funding Will Be Used - Additional DBE requirements for this Agreement are set forth in detail in the Standard Federal Provisions for FTA (an Exhibit to the Standard Services Agreement) and in the

attachment to the RFP entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".

The FTA DBE contract-specific commitment range for this Agreement is 0.00 – 25.00 Percent.

Consultant will be notified of the FTA DBE goal prior to the time a Task Order is executed. Ability to meet or attempt to meet goal must be documented.

3. Federal Railroad Administration (FRA) Funding may be used at some point during the term of the Agreement; however, SANDAG has not established a specific FRA DBE goal for this RFP. Proposers are encouraged to obtain DBE participation for Task Orders that are funded with FRA monies.

D. Post-award Compliance Monitoring

SANDAG will conduct post-award monitoring of Consultant's compliance with the DBE provisions of the Agreement. For example, SANDAG may ask to review Consultant's subcontracts to ensure that DBEs have done the work for which credit was claimed. Consultant shall cooperate with SANDAG requests for assistance with post-award monitoring. Failure by the Consultant to cooperate may be considered a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as SANDAG deems appropriate.

XX. RETENTION AND PROMPT PAYMENT

A. Payment of Subcontractors

Consultant shall pay its subconsultants within ten calendar days from receipt of each payment made to the Consultant by SANDAG. The ten days is applicable unless a longer period is agreed in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the prior written approval of SANDAG.

B. Retention of Funds

SANDAG shall hold a ten percent retention from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by SANDAG, of the work performed under this Agreement and pay retention to Consultant based on these acceptances. Consultant or subconsultant shall return all monies withheld in retention from all subcontractors within ten days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the work by SANDAG. Any delay or postponement of payment may take place only for good cause and with the prior written approval of SANDAG. Any violation of these provisions shall subject the violating Consultant or subconsultant 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 Consultant or subconsultant; deficient subconsultant performance and/or noncompliance by a subconsultant.

XXI. RECORDS RETENTION

A. Project Records

For the purpose of determining compliance with Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the Agreement pursuant to Government Code 8546.7; Consultant, subconsultants, and SANDAG shall maintain and make available for inspection all books, documents, papers, accounting records, emails and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for three years from the date of final payment under the Agreement. The state, State Auditor, SANDAG, FHWA, FTA or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of Consultant and its Certified Public Accountants (CPA) work papers that are pertinent to the Agreement, Consultant's or its subconsultants' performance under and compliance with the Agreement, and Indirect Cost Rates (ICR) for audit, examinations, excerpts, and transactions, and copies thereof shall be furnished to SANDAG or its designated agent if requested. Subcontracts in excess of \$25,000 shall contain this provision.

B. Work Documentation Records

Consultant shall allow inspection of all work data, documents, proceedings, and activities related to this Agreement for a period of five years from the date of final payment under this Agreement. This Section must be included in any subcontract entered into as a result of this Agreement.

C. Location of Stored Records

Consultant shall ensure that no records relevant to this Agreement are stored at a location or on a server or remote database (cloud) outside of the United States.

XXII. COVENANT AGAINST CONTINGENT FEES

A. Restrictions on Participation

No elected official(s) of SANDAG or any of its member agencies, the State of California, or the United States Government shall become directly or indirectly interested in or personally benefit from the financial proceeds of this Agreement or in any part of it. No officer or employee of SANDAG shall become directly or indirectly interested in or benefit from the financial proceeds of this Agreement or any part of it.

B. No Gifts or Fees

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

XXIII. OWNERSHIP OF DOCUMENTS AND OTHER WORK PRODUCTS

A. Ownership of Deliverables

All deliverables prepared or obtained under the terms of this Agreement shall be delivered to and become the property of SANDAG. The term "deliverables" includes, but is not limited to, all original drawings, reports, and other documents, including detailed calculations, digital/electronic databases, source code, data sets, analyses, maps, and other work products developed for the Project.

B. Intellectual Property Resulting from Creation of Deliverables

Consultant agrees that any and all property rights, including intellectual property rights such as copyrights or patents that arise from creation of deliverables or other work products required by this Agreement shall be vested in SANDAG and hereby agrees to relinquish all claims to such property rights in favor of SANDAG. Additional provisions concerning intellectual property, if applicable, may be included in the scope of work or Special Provisions.

C. Information and Data Not to Be Disclosed or Sold by Consultant

Consultant and all of its subconsultants, agents, representatives and employees are prohibited from disclosing or selling data or information provided, collected or obtained pursuant to this Agreement without express, written permission from SANDAG. Additional terms concerning privileged or confidential information or data, including, but not limited to such information or data that may qualify as PII, PC, or data covered by any other privacy laws, may be set forth in the scope of work or Special Provisions.

XXIV. TIMELY PERFORMANCE

Consultant acknowledges that timely performance is an important element of this Agreement. Accordingly, the Consultant shall put forth its best efforts to complete its services in accordance with the agreed-upon schedule. It shall be the responsibility of Consultant to advise SANDAG on a monthly basis of the progress of its work, expenditures incurred, and information regarding whether the Project is projected to comply with the schedule and budget limits. Consultant shall document the progress and results of work performed under this Agreement to the satisfaction of SANDAG and, if applicable, to the satisfaction of any government agency as directed by SANDAG. This may include progress and final reports, plans, specifications, estimates, or other evidence of attainment of the Agreement objectives.

XXV. CHANGES IN WORK

If changes in the work seem merited by Consultant or SANDAG, and informal consultations with the other party indicate that a change is warranted, it shall be processed by SANDAG in the following manner: A letter outlining the changes shall be forwarded to SANDAG by Consultant, but no statement of estimated changes in fee or time schedule shall be provided initially. The SANDAG Project Manager will prepare an independent cost estimate if he/she believes the additional work is needed. The SANDAG Project Manager will then request that Consultant provide an estimate of hours and costs for the change. If SANDAG determines the change is merited, is due to an unexpected circumstance, and was caused through no fault of the Consultant, an amendment to the Agreement may be prepared by SANDAG following negotiation with the Consultant. SANDAG will not be required to pay for the changes in work unless the amendment is executed by both parties **before** performance of such services commences. **Consultant is expressly put on notice that no employee of SANDAG has authority to authorize, in writing or otherwise, any additional work that would increase the cost of this Agreement or an issued Task or**

Work Order without SANDAG Executive Director approval. Such an amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

XXVI. FORCE MAJEURE

Either party is excused from performance hereunder if such non-performance results from acts of God, war, riots, acts of governmental authorities, or any other cause that could not have been overcome by the exercise of due diligence or planning by the non-performing party. In the event of the occurrence of a force majeure event, the party unable to perform shall promptly notify the other party. It shall further pursue its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

XXVII. ENTIRE AGREEMENT

This Agreement represents the entire understanding of SANDAG and Consultant as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing, signed by SANDAG and Consultant.

XXVIII. INCORPORATION OF EXHIBITS

The SANDAG RFP and Consultant’s proposal concerning the Project are hereby incorporated by reference except to the extent they may conflict with the terms of the Agreement. The following documents (exhibits to this Standard Services Agreement) also are attached and incorporated by reference if the box next to document title is marked:

- Scope of Work
- Rate Schedule
-
- Special Provisions for Service and/or Equipment Agreements
- Standard Federal Provisions for FTA
- Federal Provisions for FTA Procurements in Excess of \$100,000
- Standard Federal Provisions for FHWA (Non-Construction)
- Final Report - Utilization of All Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses
- Disadvantaged Business Enterprises Certification Status Change Form
- SANDAG Annual Employment Utilization Report
- Policy on Use of Technology and Electronic Resources by SANDAG “Non-Employees” and Policy Acknowledgement
- Surplus DBE Utilization Form
- Request to Add Subconsultant Form and/or Bench Firm Form

In the event of conflicting provisions, the following order of precedence will apply: 1) Standard Federal Provisions for FTA & FHWA; 2) Federal Provisions for FTA Procurements in Excess of \$100,000; 3) Special Provisions for Service and/or Equipment Agreements; 4) Exhibits to the Standard Services Agreement; 5) the Standard Services Agreement; 6) Attachments to the RFP; 7) the RFP; and 8) Consultant's proposal.

Wherever the word "contractor" may appear in the attachments or exhibits to this Agreement, it should be read as the equivalent to the word "consultant." Wherever the words "bid" or "bidder" may appear in the attachments or exhibits to this Agreement, they should be read as the equivalent to the words "proposal" or "Proposer."

XXIX. ADMINISTRATION OF AGREEMENT

Consultant proposes to assign [Insert: Name of person] as its Project Manager to provide supervision and have overall responsibility for this Agreement for Consultant. The Project Manager shall not be removed from the Project or reassigned without prior approval of SANDAG. Consultant must obtain approval from SANDAG in writing before assigning a new Project Manager to the Project. No subcontracting of these professional services shall be made without prior approval of SANDAG.

XXX. HEADINGS

Section headings in this Agreement shall not be used to alter the plain meaning of the text in this Agreement.

XXXI. PRESERVATION OF AGREEMENT

Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall be severable and enforceable.

XXXII. SUCCESSORS OR ASSIGNS

All terms, conditions, and provisions hereof shall inure to and shall bind each of the parties hereto, and each of their respective heirs, executors, administrators, successors, and assigns.

XXXIII. SURVIVAL

The rights, obligations and conditions set forth in the Sections of this Agreement entitled Indemnification, Limitations of Liability, Representations and Warranties, Insurance, Limitations on Use and Disclosure, Assignment and Subcontracting, Standard of Care, Notices, Disputes, Records Retention, Ownership of Documents and Other Deliverables, as well as the Special Provisions, and any right, obligation or condition that, by its express terms or nature and context is intended to survive the termination or expiration of this Agreement, shall survive any such termination or expiration hereof.

XXXIV. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities. This Agreement may be executed in any number of separate counterparts, each of which shall be deemed an original but all of which when taken together shall constitute one and the same instrument.

PART 4 - STANDARD SERVICE AGREEMENT EXHIBITS

SCOPE OF WORK

[Note: See draft scope of work, the final scope of work for the Agreement will be inserted at the time of Agreement execution.]

RATE SCHEDULE

(The Final Fee, Rate or Payment Schedule for the Agreement will be inserted at the time of Agreement execution.)

SPECIAL PROVISIONS FOR SERVICE AND/OR EQUIPMENT AGREEMENTS

THE SPECIAL PROVISIONS BELOW ARE INCORPORATED INTO THE AGREEMENT

I. OPTION TO EXTEND

SANDAG shall have the option to extend the term of this Agreement in one or more increments for a total of no less than one and no more than six calendar months at the discretion of SANDAG in order to address unforeseeable circumstances or delays. Each extension shall be effected by written unilateral Agreement amendment delivered to Consultant no less than 15 calendar days prior to expiration of any Agreement term. The rates set forth in the Agreement shall apply to this option clause unless provision for appropriate price adjustment has been made elsewhere in this Agreement or by Agreement amendment. All payments are subject to availability of funds from SANDAG.

II. CONFLICT OF INTEREST

A Conflict of Interest Statement

Consultant's employees shall file a Conflict of Interest Statement with the SANDAG Executive Director if it is required by the SANDAG Conflict of Interest Code. SANDAG shall determine if Consultant's employees must be designated in the SANDAG Conflict of Interest Code for purposes of the Political Reform Act or for compliance with any applicable financial disclosure requirements based on the scope of work in the Agreement. Consultant represents that, to its knowledge, entry into this Agreement will not result in a conflict of interest prohibited by California Government Code Section 1090 for the SANDAG employees or Board of Directors. Depending on the work assigned to them, Consultant's employees may be required to sign agreements regarding confidentiality and/or conflicts of interest. Employees of Consultant or subconsultant that will be in a position to influence a procurement or contracting decision by SANDAG will be required to file Disclosures of Financial Interests, which will be public records. Such employees will be prohibited from receiving gifts (tickets, meals, travel, etc.) from entities with which SANDAG may contract with as a result of the services covered by the Agreement. An example of the type of document Consultant's employees may be required to sign is attached to the Agreement as an Exhibit entitled "Consultant Employee in Project Management Role – Conflict of Interest and Confidentiality Statement." In addition, a Consultant's employees may be required to meet additional background check requirements depending on the nature of the duties they will perform for SANDAG or fill out forms disclosing financial interests. SANDAG will supply copies of the agreements or documents that the Consultant's employees may need to execute to meet these additional requirements when applicable.

B Attempts to Influence Government Decisions

Consultant shall not make or participate in making or in any way attempt to use Consultant's position to influence a governmental decision in which Consultant knows or has reason to know Consultant has a financial interest other than the compensation promised by this Agreement. Consultant represents that Consultant has diligently conducted a search and inventory of Consultant's economic interests, as defined in the regulations promulgated by the Fair Political Practices Commission, and has determined that Consultant does not, to the best of Consultant's knowledge, have an economic or organizational

interest which would conflict with Consultant's duties under this Agreement. Consultant agrees to scrupulously avoid performing services for any person or entity or entering into any contractual or other relationship with any person or entity that might create a conflict with the rendering of services under this Agreement. Consultant will immediately advise the General Counsel of SANDAG if Consultant learns of an economic or organizational conflict of interest or other prohibited conflict of interest on the part of Consultant or any of its subcontractors during the term of this Agreement.

C Ethical Standards of Conduct

All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004 and 016 at sandag.org/legal. SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.

D Exchange of Gifts with SANDAG

Consultants, contractors, vendors and agents thereof currently doing business with or planning to seek contract awards from SANDAG are strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. The SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

E Determination of Conflict

A Proposer is eligible for award of service contracts by SANDAG so long as the contract or Task or Work Order in question will not create an actual, potential, or apparent financial or organizational conflict of interest. A prohibited organizational conflict of interest exists when a firm is or may be unable to render impartial, objective assistance or advice to SANDAG or where a firm would receive an unfair competitive advantage. Examples of situations that could create such a conflict of interest are listed in Board Policy No. 016. Proposers that have a conflict of interest due to performing work for SANDAG are ineligible to submit a proposal. A process for determining whether a Proposer has a conflict is set forth in Board Policy No. 16. Ineligible firms include the prime Proposer, its subconsultants and affiliates of either. An affiliate is a firm that is subject to the control of the same persons through joint ownership or otherwise. **EQUIPMENT PURCHASES**

Authorization and Appraisal

Prior authorization in writing, by SANDAG's Project Manager, shall be required before Consultant enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or consultant services. Consultant shall provide an evaluation of the necessity or desirability of incurring such costs.

For purchase of any item, service or consulting work not covered in the Agreement or applicable Task/Work Order] and exceeding \$5,000, prior authorization by SANDAG's Project Manager is required. Three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

Any equipment purchased as a result of this Agreement is subject to the following: "Consultant shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, SANDAG shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, Consultant may either keep the equipment and credit SANDAG in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established SANDAG procedures; and credit SANDAG in an amount equal to the sales price. If Consultant elects to keep the equipment, fair market value shall be determined at Consultant's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by SANDAG and Consultant, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG." 2 CFR 200 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

All subcontracts in excess \$25,000 shall contain the above provisions.

Expediting by SANDAG

The goods furnished under this Agreement shall be subject to expediting by SANDAG. SANDAG shall be afforded free access to Consultant's shops, factories, or places of business, and those of Consultant's suppliers, for expediting purposes. As required by SANDAG, Consultant shall supply schedules, unpriced copies of purchase orders, and progress reports for the use of SANDAG in expediting.

No Substitutions

Substitutions of goods shall not be permitted without express written permission from a SANDAG employee with the title of Division Director or higher.

Units of Measurement

Unless specified otherwise, manuals, specifications, drawings, plans, purchase orders, subcontract documents, and invoices submitted in accordance with this Agreement shall be in metric ("Systems International d' Units," or "SI units") with the United States equivalents clearly shown.

Standards and Codes

Whenever references are made in the scope of work to standards or codes in accordance with which the goods are to be manufactured or tested, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly set forth. Unless otherwise specified, reference to such standards or codes is solely for implementation of the technical portions of such standards and codes. In case of conflict among any referenced standards and codes, or between any referenced standards and codes and the Technical Specifications supplied by SANDAG, SANDAG will determine which will govern.

Delivery Free on Board Destination

Delivery of goods shall be free on board destination, with the destination address to be supplied by SANDAG. SANDAG shall have no liability for goods until they are accepted at their final destination by the SANDAG Project Manager or his/her designee.

III. WORK ON PREMISES OF SANDAG OR OTHERS

All or a portion of Consultant's work is to be performed on SANDAG property, premises where SANDAG is conducting operations, or the premises of San Diego Metropolitan Transit System (MTS); North County Transit District (NCTD); California Department of Transportation (Caltrans District 11), the 18 cities within the County of San Diego, and the County of San Diego. Therefore, Consultant shall take all necessary precautions to prevent the occurrence of injury to persons or damage to property during the progress of such work and, except to the extent that any such injury or damage is due to the negligence, act, or omission by SANDAG, as the case may be, Consultant shall defend and indemnify SANDAG, its officers, employees, agents, and landlord, and San Diego Metropolitan Transit System (MTS); North County Transit District (NCTD); California Department of Transportation (Caltrans), the 18 cities within the County of San Diego, and the County of San Diego their officers, employees, agents, and landlords against any and all loss, costs, liability, damage, or expense (including without limitation, attorney's fees and expenses) which may result in any way from any act or omission of Consultant, its employees, servants, agents, or contractors arising from work performed on such property.

It may be determined that on certain Task or Work Orders the Consultant will be required to provide onsite staff at SANDAG and/or the above named local agency offices. In those situations where SANDAG or one of the above named local agencies provides such office space, computers, software, and/or supplies for the Consultants' (or its personnel, the Consultant shall be required to reduce the "Overhead" portion and or "combined overhead" rate from the billing rates for the affected personnel for such Task Orders in accordance with the guidelines set forth in the most recent version of the American Association of State Highway and Transportation Officials Uniform Audit and Accounting Guide. The relevant Overhead modification provisions are set forth in Section 5.6 "Field Office rates" of the 2010 version of which is available for review at: audit.transportation.org/Documents/2010_Uniform_Audit_and_Accounting_Guide.pdf.

Overhead for "Fringe" benefits and "General Administration" shall not be affected under such circumstance. Exceptions to this Overhead removal requirement shall be in writing and at the sole discretion of SANDAG. GRANT REQUIREMENTS

SANDAG anticipates use of grant funding from sources that have not been identified at this time. Once they are identified Consultant will be required to comply with any pass-through grant obligations. SANDAG will notify the Consultant of any such requirements through a contract amendment **or at the time task/work orders are issued**. In the event that the grant requirements impose substantial additional requirements on Consultant, Consultant may request that the scope and compensation set forth in the Agreement be equitably adjusted.

IV. AGREEMENT WITH FEDERAL TRANSIT ADMINISTRATION AND FEDERAL HIGHWAY ADMINISTRATION PROVISIONS

This Agreement requires the use of both Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) Standard Provisions. In case of a conflict between an FTA and FHWA provision, the United States DOT and/or the SANDAG Office of General Counsel may be consulted

for a determination. For Buy America and Disadvantaged Business Enterprise requirements, both the FTA and FHWA provisions and certifications shall apply.

V. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A Allowable Costs

1. Consultant agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.
2. Consultant also agrees to comply with federal procedures in accordance with 2 CFR 200.
3. Any costs for which payment has been made to Consultant that are determined by subsequent audit to be unallowable under 2 CFR 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Consultant to SANDAG.

B Application to Subcontractors

All subcontracts in excess of \$25,000 shall contain the above provisions.

VI. AUDITS

Consultant has already or may in the future undergo a pre-award or post-award audit. Consultant and all of its subconsultants that work on the Project will be subject to audit by SANDAG or its representatives as described in this Section. Therefore, this Section of the Agreement must be passed through in writing to all subconsultants, hired by Consultant. All references to "consultant" in this section shall mean Consultant and all of its subconsultants. SANDAG will not pay Consultant at rates or in amounts that exceed the amounts negotiated or required by SANDAG following an audit. An additional audit may need to be carried out if this Agreement is amended, legal requirements change, or circumstances warrant additional auditing. Each consultant agrees to fully cooperate if an additional audit is requested. Consistent with 49 U.S.C. 5325(b)(3)(A)(B), any contract or subcontract awarded under this section must be performed and audited pursuant to Federal Acquisition Regulations. SANDAG will accept a consultant's indirect cost rates, established in accordance with Federal Acquisition Regulations cost principles, for one-year applicable accounting periods by a cognizant federal or state government if those rates are not currently under dispute

A Audit Review Procedures

1. Any dispute concerning a question of fact arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by the SANDAG, Department Director of Finance.
2. Not later than 30 days after issuance of the final audit report, a consultant may request a review by SANDAG, Department Director of Finance of unresolved audit issues. The request for review will be submitted in writing. Neither the pendency of a dispute nor its consideration by SANDAG will excuse a consultant from full and timely performance, in accordance with the terms of this Agreement. Consultant and subconsultants' contracts, including cost proposals and Indirect Cost Rates (ICR), are subject to audits or review such as, but not limited to, a Contract Audit, and Incurred Cost Audit, and ICR Audit, or a Certified Public Accountant (CPA) ICR Audit Workpaper Review. If selected for audit or review, the contract, cost proposal and ICR and related workpapers if applicable, will be reviewed to verify compliance with 48 CFR 31 and other related laws and regulations. In the instances of a CPA ICR

Audit Workpaper Review, it is the consultant responsibility to ensure federal, state, or local government officials are allowed full access to the CPA's workpapers. The contract, cost proposal, and ICR shall be adjusted by the consultant and approved by SANDAG contract manager to conform to the audit or review recommendations. Consultant agrees that individual terms of costs identified in the audit report shall be incorporated into the contract by this reference if directed by SANDAG at its sole discretion. Refusal by a consultant to incorporate audit or review recommendations, or to ensure that the Federal, State, or local governments have access to CPA workpapers, will be considered a breach of contract terms and cause for termination of this Agreement or other applicable contract and disallowance of prior reimbursed costs.

VII. CONSULTANT EMPLOYEE USE OF SANDAG OFFICES OR NAME

Consultant agrees that if its employees or employees of its subcontractors will work from SANDAG office space or have access to SANDAG servers, databases, or records storage areas it will cause those employees to do the following prior to the employee having access to any of the foregoing:

A Complete Classroom Training

Complete a harassment and discrimination class no less often than every two years that contains the training components set forth in California Government Code Section 12950.1 and acknowledge receipt of documentation from Consultant informing the employees that unlawful harassment and discrimination is prohibited when conducting business with SANDAG.

B Drug and Alcohol Documentation

Acknowledge receipt of documentation from Consultant informing the employee that drug and alcohol use and violence are prohibited during work hours, including when conducting business with SANDAG;

C Ethics Training

Complete a training program regarding ethics and conflicts of interest that, at a minimum, informs the employee of his/her obligation to immediately report any potential or actual financial or organizational conflicts of interest with SANDAG to the SANDAG project manager.

D Office Space Agreement

Agree to and execute the attached SANDAG Office Space User Agreement if SANDAG office space will be used. Failure by Consultant, its subcontractors, or employees to comply with this Section of the Agreement shall be cause for termination of the Agreement for cause at the sole discretion of SANDAG.

E Use of SANDAG Name

Consultant's and its subconsultants' employees shall not use any SANDAG stationary, business cards, email address signatures, or any other practice or methodology that may mislead the public into believing those employees have an employment relationship with SANDAG or have authority to act on behalf of SANDAG. Consultant's employees that wear clothing displaying one or more SANDAG-owned logos shall also wear a prominent nametag that clearly designates the person as an employee of the Consultant in order to not mislead the public.

VIII. ADDITION OF NEW SUBCONSULTANT

A Consultant shall use the Request to Add Subconsultant or Bench Firm Form to obtain approval to add new subconsultants.

B General Requirements for Addition or Removal of Subconsultants

1. Consultant must obtain prior approval for adding new subconsultants or removing existing subconsultants. To add staff or subconsultants, SANDAG must approve the changes in writing, however, a formal Agreement amendment shall not be required to add staff or new subconsultants. Consultant may substitute a subconsultant if the work SANDAG proposes to assign or has assigned under the Agreement or a Task or Work Order cannot be fulfilled by one of the subconsultants listed in the Consultant's proposal because the subconsultant is unavailable, unwilling or unable to perform the work. In addition, a subconsultant addition may be allowed if the work SANDAG intends to assign is not in any of the work categories listed for subconsultants that SANDAG has already approved for use under the Agreement. It is Consultant's responsibility to select qualified and responsible subcontractors. Consultant may request assistance from SANDAG in identifying subconsultants, but SANDAG may not direct Consultant to hire a particular subconsultant unless a sole source is warranted. The following procedures should be used to add or substitute a subconsultant.
2. SANDAG will require documentation that establishes that the proposed rates for the new subconsultant are reasonable. SANDAG staff may be able to document this by comparing the proposed rates against a) the rates charged in other contracts for similar services; or b) what other public agencies have been charged for similar services. If SANDAG is unable to locate sufficient documentation to compare prices, the Consultant will be required to attempt to locate other firms qualified to perform the services and provide rate data for those firms to SANDAG.
3. Consultant does not have to select the subconsultant with the lowest rates. Selection of a subconsultant should be based on a combination of factors including qualifications, experience and price.
4. Consultant should not substitute key personnel (Project Manager and others listed by name in the cost proposal) or subconsultants without prior written approval from SANDAG. Consultant must request and justify the need for the substitution and obtain approval from SANDAG prior to use of a different subconsultant. The proposed substituted person or firm must be as qualified as the original, and at the same or lower cost.
5. Consultant and any new subconsultant may be required to amend previous documents or sign new documents in order to comply with SANDAG procurement and contracting requirements. Consultant and subconsultant shall complete, sign, and return to SANDAG any forms SANDAG may require in order to add the subconsultant.

C Addition or Removal of DBE Subconsultants

1. Additional requirements shall apply to replacement of DBE subconsultants that Consultant agreed to use to carry out work on an Agreement or Task or Work Order with a DBE commitment. If the removal, substitution, or addition affects a DBE subconsultant that was to be used by Consultant to meet its DBE commitment, Consultant shall also comply with the additional applicable requirements concerning

substitution of DBE, including but not limited to following the process for the Disadvantage Business Enterprise Certification Status Change Form, the Request to Add Subconsultant or Bench Firm Form, the requirements in the FTA and FHWA Federal Provisions, and filling out a new Consultant Contract DBE Commitment Information form (Caltrans Exhibit 10-O2).

2. The procedures to be followed by Consultant for substitution of a DBE for another DBE or non-DBE firm are described in the RFP Attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions."

IX. PROVISIONS FOR CONFIDENTIAL, PRIVILEGED, PRIVATE OR SENSITIVE DATA ACCESS

Consultant's scope of work includes access to, creation of, or Processing of Sensitive Information. Accordingly, the following provisions shall apply to the Agreement.

A Definitions

"Authorized Users" means all persons, including end users, authorized by SANDAG to access and use the Consultant's Materials, SANDAG intellectual property or SANDAG Data under this Agreement.

"Confidential Information" means any information that is treated as confidential by either party ("Disclosing Party"), including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing, regardless of whether such information was intentionally or unintentionally disclosed or marked as "confidential" or "proprietary" by the Disclosing Party or otherwise obtained (including by visual inspection) by the other party or any of its Representatives ("Receiving Party").

"Consultant Materials" means all devices, documents, data, know-how, methods, processes, software and other inventions, works, technologies and materials, including any and all service software, documentation, computer hardware, programs, reports and specifications, client software and deliverables provided or used by Consultant in connection with performing the scope of work, in each case developed or acquired by the Consultant independently of this Agreement.

"Hosted Services" means the hosting, management and operation of the software or other services for remote electronic access and use by SANDAG and its Authorized Users as may be called for in the scope of work.

"Personal Information" means data or information obtained or derived from Consultant or any of its subconsultants when carrying out the scope of work (including the Processing) that constitutes Personally Identifiable Information, Personal Credit Information, or any other information to which legal restrictions apply in order to protect the privacy of individuals. means any information that any of the Consultant Personnel collects, receives or obtains, from or on behalf of SANDAG or any of its Authorized Users that does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located, such as the individual's name, address, social security number, etc., and any other information relating to an identified or identifiable individual. The foregoing applies whether the information regarding a specific individual can be directly, derivatively, or by aggregating it with other information. Personal Information includes such information of or pertaining to SANDAG's personnel, directors, officers, agents, suppliers, contractors, members of the public or customers and all "nonpublic personal information," as defined under the Gramm-Leach-Bliley Act (15 U.S.C. 6801 et seq.), "protected health information" as defined under the Health and Insurance Portability and Accountability Act of 1996

(42 U.S.C. 1320d), any other similar laws applicable to privacy of individual information and all rules and regulations issued under any of the foregoing.

"Processing" means to perform any operation or set of operations on any data, information, material, work, expression or other content, including to (a) collect, receive, input, upload, download, record, reproduce, store, organize, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other improvements or derivative works; (b) process, retrieve, output, consult, use, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available; or (c) block, erase or destroy. "Processing" and "Processed" have correlative meanings.

"SANDAG Data" means any and all information, data, materials, works, expressions or other content, including any that are (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of SANDAG or any Authorized User for Processing by or through any Hosted Services; or (b) collected, downloaded or otherwise received by Consultant or any Hosted Services for SANDAG or any Authorized User pursuant to this Agreement or any Service Order or at the written request or instruction of SANDAG or such Authorized User. All output, copies, reproductions, improvements, modifications, adaptations, translations and other derivative works of, based on, derived from or otherwise using any SANDAG Data are themselves also SANDAG Data. For the avoidance of doubt, SANDAG Data includes all User Data and Personal Information but does not include any Consultant Materials.

"Sensitive Information" refers collectively to Confidential Information, Personal Information, User Data, and information covered by federal or state government statutes or regulations intended to protect sensitive security information. All notes, analyses, summaries, interpretations and other embodiments, expressions and derivative works of, containing, based on, derived from or otherwise reflecting any Sensitive Information, in whole or in part, and prepared by any person, shall themselves constitute the Sensitive Information of the Disclosing Party on whose Sensitive Information they are based. Without limiting the foregoing, (a) all SANDAG Data (including all Private Information and Confidential Information) is and will remain the Sensitive Information of SANDAG; and (b) the Consultant Materials will remain the Sensitive Information of Consultant.

"User Data" means any and all information reflecting the access or use of Consultant Materials, SANDAG intellectual property or SANDAG Data by or on behalf of SANDAG or any Authorized User, including any end user profile-, visit-, session-, impression-, click through- or click stream- data and any statistical or other analysis, information or data based on or derived from any of the foregoing.

B Confidentiality

1. Exclusions. Confidential Information does not include any information or material that the Receiving Party can demonstrate by written or other documentary records: (a) is or becomes generally known other than through a breach of this Agreement or another confidentiality or non-disclosure agreement, obligation or duty, or other wrongful act, of or on behalf of the Receiving Party or any of its Representatives; (b) was already rightfully known to the Receiving Party, without restriction on use or disclosure, prior to being directly or indirectly disclosed by or on behalf of the Disclosing Party, or obtained by or on behalf of the Receiving Party; (c) has been or hereafter is rightfully received by or on behalf of the Receiving Party from a third-party without restriction on use or disclosure and without breach of any agreement or obligation or duty of confidentiality to the Disclosing Party or any other Person; or (d) was or is independently developed by the Receiving Party without access or reference to or use of any Confidential Information of the Disclosing Party.

2. SANDAG Data Exception. Notwithstanding the provisions of Subsection 1 or any other provisions of this Agreement, none of the exclusions set forth in Subsection 1 apply to any SANDAG Data, whether provided by or on behalf of SANDAG to Consultant for Processing or generated or derived from such Processing and regardless of whether such SANDAG Data may be publicly available or otherwise qualify for exclusion under any of the other provisions of this Section. The preceding sentence does not prohibit or limit Consultant from any use or disclosure of any information that may be the same as any SANDAG Data but which Consultant can demonstrate by documentary evidence was: (a) obtained by Consultant without access to, reference to or use of any SANDAG Data; and (b) at all times maintained separately from and not in any way combined, commingled, compared, benchmarked or in any way associated with any SANDAG Data.
3. Confidentiality and Use. Consultant shall use, and ensure that its representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information, to safeguard the SANDAG's Sensitive Information from use or disclosure other than as permitted under the Agreement. Without limiting the foregoing, Consultant shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement. As a condition to being provided with such Sensitive Information, Consultant agrees that, during the Term and for two years thereafter, it will:
 - a. Not use or permit the use of SANDAG's Sensitive Information other than as strictly necessary to exercise its rights or perform its obligations under this Agreement;
 - b. Not use or permit the use of any of SANDAG's Sensitive Information, directly or indirectly, in any manner to the detriment of SANDAG;
 - c. Maintain SANDAG's Sensitive Information in strict confidence and, subject to the following Subsection, not disclose or make available SANDAG's Sensitive Information to any person without SANDAG's prior written consent, provided, however, that Consultant may disclose the Sensitive Information to its representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such Sensitive Information, under this Agreement; (ii) have been informed in writing of the highly confidential nature of the Sensitive Information and the limitations, procedures and obligations that apply to the access, use and disclosure of Sensitive Information under this Section; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that Consultant shall be responsible for ensuring its representatives' compliance with, and shall be liable for any breach by its representatives, of this Section.
4. Compelled Disclosures. If Consultant becomes compelled by applicable Law to disclose any Sensitive Information, Consultant shall, to the extent permissible by applicable law:
 - a. As soon as possible after becoming aware of such requirement and prior to disclosing Sensitive Information pursuant thereto, notify SANDAG in writing of such required disclosure so that SANDAG may seek a protective order or other appropriate remedy or waive its rights under this Section;
 - b. At the Consultant's expense, use reasonable efforts not to release such Sensitive Information pending the outcome of any measures taken by

- SANDAG to contest, oppose or limit such compelled disclosure or any further disclosure or use of Sensitive Information that may result therefrom;
- c. Use reasonable efforts to obtain assurance that the Sensitive Information will be accorded confidential treatment if a protective order or other remedy is not obtained or SANDAG waives compliance with this Section; and
 - d. Disclose only the portion of Sensitive Information that it is legally required to produce to the minimum extent required by applicable Law.
 - e. No such compelled disclosure by the Receiving Party will otherwise affect Consultant's obligations hereunder with respect to the Sensitive Information so disclosed.
5. Return or Destruction of SANDAG's Sensitive Information. Upon SANDAG's written request at any time and subject to any contrary obligations under applicable law, Consultant shall at SANDAG's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on SANDAG's Sensitive Information, in whole or in part; or (b) solely such specific SANDAG Data, databases or other collections or articles of SANDAG's Sensitive Information as SANDAG may request, and provide a notarized written statement to SANDAG certifying that it has complied with the requirements of this Subsection.

C Personal Information

1. Consultant shall not cause or permit any Personal Information to be Processed in any manner or for any purpose other than the performance of the scope of work in compliance with the restrictions set forth in this Agreement and all applicable Laws.
2. Ownership and Treatment of Personal Information. As between SANDAG and Consultant, SANDAG is and shall remain the sole and exclusive owner of all right, title and interest in and to Personal Information. Without limiting any other representation, warranty or obligation of Consultant under this Agreement, Consultant represents, warrants and covenants, and shall obtain the binding written representations, warranties and covenants of all Consultant Personnel involved in any aspect of the scope of work, that:
3. During the Term and thereafter in perpetuity, Consultant will not Process or otherwise undertake or refrain from any act with respect to any Personal Information in any manner, including any actual or attempted Processing thereof, except for the sole purpose of performing the scope of work and in compliance with: (i) the express terms and conditions of this Agreement or as SANDAG may hereafter expressly direct in advance in writing; (ii) SANDAG's then current privacy and security policies; and (iii) all applicable laws (including all then current and applicable laws relating to spamming, privacy and consumer and data protection);
4. Except as SANDAG or an Authorized User may submit to Consultant personnel for purposes of SANDAG's or such Authorized User's use of the scope of work, or as SANDAG may hereafter expressly direct in advance in writing, Consultant will not under or in connection with this Agreement or any transaction or arrangement hereunder collect any Personal Information from or in connection with SANDAG's or any Authorized User's access to or use of the scope of work, or through any access Consultant may have to the SANDAG Systems, including through any cookies, applets, beacons or other data mining methods or technologies;

5. Consultant shall promptly notify SANDAG in writing when Consultant becomes aware of any unauthorized access, use or other act respecting Sensitive Information or if Consultant becomes the subject of any government, regulatory or other investigation or proceeding relating to its data privacy, security or handling practices;

D Security

1. Protection of SANDAG's Sensitive Information. Throughout the term of the Agreement and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:
 - a. Maintain and enforce an information security program including safety and physical and technical security policies and procedures with respect to its Processing of SANDAG's Sensitive Information that meet or exceed the requirements of SANDAG's data security requirements and, to the extent such practices and standards are consistent with and not less protective than the foregoing requirements, are at least equal to applicable best industry practices and standards;
 - b. Provide technical and organizational safeguards against accidental, unlawful or unauthorized access to or use, destruction, loss, alteration, disclosure, transfer, commingling or Processing of such information that ensure a level of security appropriate to the risks presented by the Processing of SANDAG's Sensitive Information and the nature of such Sensitive Information, consistent with best industry practice and standards;
 - c. Take all reasonable measures to:
 - i. Secure and defend all locations, equipment, systems and other materials and facilities employed in connection with the scope of work against "hackers" and others who may seek, without authorization, to disrupt, damage, modify, access or otherwise use Consultant's systems or the information found therein;
 - ii. Prevent (a) SANDAG and its Authorized Users from having access to the data of other customers or such other customer's users of any Hosted Services; (b) SANDAG's Sensitive Information from being commingled with or contaminated by the data of other customers or their users of any Hosted Services; and (c) unauthorized access to any SANDAG's Sensitive Information;
 - Continuously monitor its systems for potential areas where security could be breached;
 - Immediately report to SANDAG any breach of security or unauthorized access to SANDAG's Sensitive Information that Consultant detects or becomes aware of;
 - Use diligent efforts to remedy such breach of security or unauthorized access in a timely manner and deliver to SANDAG a root cause assessment and future incident mitigation plan with regard to any breach of security or unauthorized access affecting any Sensitive Information of SANDAG that sets out written details regarding Consultant's investigation of such incident and, upon SANDAG's written request, provide a second more in-depth investigation and results of its findings;

- Refrain from notifying, for or on behalf of SANDAG or any Authorized User, any regulatory authority, consumer or other Person of any such security breach or unauthorized access unless SANDAG specifically requests in writing that Consultant do so; and
 - If such security breach or unauthorized access results from any act or omission of Consultant or any Consultant personnel, promptly reimburse SANDAG for all reasonable costs and expenses SANDAG may incur in providing any notification of such security breach or unauthorized access.
 - Without limiting the generality of the foregoing, Consultant and SANDAG will work together to formulate a plan to rectify all security breaches and unauthorized access concerning SANDAG's Sensitive Information.
2. Unauthorized Access. Consultant shall not access, and shall not permit any access to, the SANDAG Data, in whole or in part, whether through Consultant's systems or otherwise, without SANDAG's express prior written authorization. Such authorization may be revoked by SANDAG in writing at any time in its sole discretion. Any access to the SANDAG Data shall be solely in accordance with the terms and conditions, and in no case exceed the scope of, the SANDAG's authorization pursuant to this Section. All SANDAG-authorized connectivity or attempted connectivity to SANDAG Data or systems shall be only through SANDAG's security gateways and firewalls and in compliance with SANDAG's security policies as expressed by the SANDAG Director of Technical Services or his/her designee.
 3. Consultant Systems. Consultant shall be solely responsible for the information technology infrastructure, including all computers, software, databases, electronic systems (including database management systems) and networks used by or for Consultant to access SANDAG Data or systems or otherwise in connection with the scope of work (SANDAG Systems) and shall prevent unauthorized access to the SANDAG Systems through Consultant's systems.
 4. Security Audits. During the Term and for five years thereafter, Consultant shall:
 - a. Maintain complete and accurate records relating to its data protection practices and the security of any of SANDAG's Sensitive Information, including any backup, disaster recovery or other policies, practices or procedures relating to SANDAG's Sensitive Information and any other information relevant to its compliance with this Section; and upon SANDAG's request, make all such records, appropriate personnel and relevant materials available during normal business hours for inspection and audit by SANDAG or its authorized representative, provided that SANDAG shall: (i) give Consultant reasonable prior notice of any such audit; (ii) undertake such audit no more than once per calendar quarter, except for good cause shown; and (iii) conduct or cause to be conducted such audit in a manner designed to minimize disruption of Consultant's normal business operations and that complies with the terms and conditions of all data confidentiality, ownership, privacy, security and restricted use provisions of this Agreement. SANDAG may, but is not obligated to, perform such security audits, which shall, at SANDAG's option and request, include penetration and security tests, of any and all Consultant Systems and their housing facilities and operating environments.

- b. **Regulatory and Compliance Audits.** Any authorized representative of any regulatory agency, taxing authority or private entity that functions in a quasi-regulatory manner that has jurisdiction over SANDAG in connection with its regulatory functions (each, a "Regulator") shall, upon request, have the same audit rights as those set forth in foregoing Subsection, provided that no condition or restriction stated herein shall apply to any Regulator to the extent it is contrary to applicable law. Consultant shall cooperate with all individuals conducting such audits and comply with all reasonable recommendations that result from such inspections, tests and audits within reasonable time frames. Without limiting any of Consultant's other obligations under this Section, if Consultant engages a third-party auditor to perform a Statement on Standards for Attestation Engagements No. 16 (SSAE 16) audit of Consultant's operations, information security program or disaster recovery/business continuity plan, Consultant shall provide a copy of the audit report to SANDAG promptly within five Business Days after Consultant's receipt of such report. Any such audit reports shall be Consultant's Sensitive Information.
- c. **Nonexclusive Remedy for Security Breach.** Any failure of the Consultant to meet the requirements of this Agreement with respect to the security of any SANDAG Data or other Sensitive Information of SANDAG, including any related backup, disaster recovery or other policies, practices or procedures, is a material breach of this Agreement for which SANDAG, at its option, may terminate this Agreement immediately on written notice to Consultant without any notice or cure period, and Consultant shall promptly reimburse to SANDAG any fees prepaid by SANDAG prorated to the date of such termination.

E Redundancy, Data Backup, and Disaster Recovery

- 1. Consultant shall, in accordance with the provisions of this Section, maintain or cause to be maintained disaster avoidance procedures designed to safeguard the SANDAG Data and SANDAG's other Sensitive Information, Consultant's Processing capability and the availability of any portion of the scope of work constituting Hosted Services, in each case throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder. The force majeure provisions the Agreement shall not limit Consultant's obligations under this Subsection.
- 2. **Redundant Hosting and Connectivity.** Consultant shall simultaneously operate a mirror system at a hardened data center facility in the United States that is geographically remote from the primary system on which any software that is a deliverable for SANDAG or Hosted Services that are hosted by Consultant (the "Secondary Backup Facility") that may be called for in the scope of work. Except for its location and housing facility, the mirror system shall: (a) be identical in all respects to the primary system; (b) have hardware and software, network connectivity, power supplies, backup generators and other similar equipment and services that operate independently of the primary system; (c) have fully current backups of all SANDAG Data stored on the primary system; and (d) have the ability to provide the Hosted Services in accordance with this Agreement and the specifications during the performance of routine and remedial maintenance or any outage or failure of the primary system fails. Consultant shall operate, monitor and maintain such mirror system so that it may be activated within 24 hours of any failure of the Hosted Services to be available.

3. Data Backup. Consultant shall conduct or have conducted contemporaneous backups of SANDAG Data and perform or cause to be performed other periodic backups of SANDAG Data on at least a daily basis and store such backup SANDAG Data in a commercially reasonable location and manner within the United States and, in addition, no less than daily at the Secondary Backup Facility. On written notice from SANDAG and, in any case, on a monthly/daily basis, Consultant shall provide SANDAG with a copy of the backed up SANDAG Data in such machine-readable format as SANDAG reasonably requests. Consultant shall provide all monthly/daily backups at its sole cost and expense. No backup of SANDAG Data shall be counted in allotting or calculating any data storage actually used or permitted to be used by SANDAG or any associated payment or fee.
4. Disaster Recovery/Business Continuity. Throughout the Term and at all times in connection with its actual or required performance of the scope of work hereunder, Consultant shall:
 - a. Maintain a Business Continuity and Disaster Recovery Plan for any Hosted Services (the "Plan"), and implement such Plan in the event of any unplanned interruption of the Hosted Services. Consultant's current Plan, revision history, and any reports or summaries relating to past testing of or pursuant to the Plan will be provided to SANDAG upon request. Consultant shall actively test, review and update the Plan on at least a quarterly basis using industry best practices as guidance. Consultant shall provide SANDAG with copies of all such updates to the Plan promptly upon request. All updates to the Plan shall be subject to the requirements of this Section; and
 - b. Provide SANDAG with copies of all reports and summaries resulting from any testing of or pursuant to the Plan promptly after Consultant's receipt or preparation thereof. If Consultant fails to reinstate the Hosted Services within the periods of time set forth in the Plan, SANDAG may, in addition to any other remedies available hereunder, in its sole discretion, immediately terminate this Agreement as a non-curable default under the Termination provisions of the Standard Services Agreement.

STANDARD FEDERAL PROVISIONS FOR FEDERAL TRANSIT ADMINISTRATION

Any subcontract entered into as a result of the Agreement, shall contain all the provisions of these Standard Federal Provisions. Use of the term "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As a FTA grantee, SANDAG is required to inform the Contractor of the following information:

I. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the relevant Grant Agreement or Cooperative Agreement between SANDAG and FTA in connection with the performance of this Agreement. Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Contractor or any other third-party contractor.

II. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801, et seq., and United States DOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this Agreement. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes 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, as amended, on the Contractor to the extent the federal government deems appropriate. The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

III. ENERGY EFFICIENCY

Consultant agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

IV. PROHIBITED INTERESTS

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising therefrom.

If Consultant will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, Consultant will be required to submit a statement to SANDAG certifying that Consultant has no financial or other interest in the outcome of the Project (40 CFR 1506.5[c]).

V. TITLE VI CIVIL RIGHTS ACT OF 1964

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

A Compliance with Regulations

The Contractor and any subcontractors shall comply with the requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); 49 U.S.C. 5332 and DOT Regulations, "Non-Discrimination in Federally-Assisted Programs of the DOT -- Effectuation of Title VI of the Civil Rights Act," 49 CFR 21, and any implementing requirements FTA may issue, 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 contract.

B Nondiscrimination

The Contractor, subrecipient, 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 C.F.R. 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 Agreement 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.

C Solicitations for Subcontractors, including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiations made by the Contractor 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 Contractor of the Contractor's obligations under this Agreement and the regulations relative to nondiscrimination described in the Agreement.

D Information and Reports

The Contractor shall provide all information and reports required by the regulations or directive 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 Recipient or the FTA to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information is required or a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to SANDAG or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E Sanctions for Noncompliance

In the event of noncompliance, SANDAG shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Agreement until the Contractor complies.
2. Cancellation, termination, or suspension of the contract, in whole or in part.

F Incorporation of Provisions

The Contractor shall include the provisions of Sections A through E of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as SANDAG or FTA may direct as a means of enforcing such provisions including sanctions for non-compliance provided; however, in the event a Contractor becomes involved, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request SANDAG to enter into such litigation to protect the interests of SANDAG, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

VI. EMPLOYEE PROTECTIONS

A Non-construction Contracts Exceeding \$2,500

The Contractor shall comply with the following employee protection requirements:

1. In accordance with Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 327 through 332, Contractor shall assure that, for the Project, the wages of every mechanic and laborer will be computed on the basis of a standard work week of 40 hours and that each worker will be compensated for work exceeding the standard work week at a rate of not less than 1.5 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Contractor agrees that determinations pertaining to these requirements will be made in accordance with the applicable United States DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally-Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-Construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR 5.
2. The requirements of this Subsection do not apply to third-party contracts for the purchase of supplies, materials, or articles ordinary available on the open market.

B State and Local Government Employees

Contractor shall ensure that the minimum wage and overtime provisions of the Fair Labor Standards Act, as amended, 29 U.S.C. 206 - 207, apply to employees performing work involving commerce, including such state and local government employees as public transit authority employees, participating in the Project. Consequently, each participant that is a state or local government agrees to comply with the Fair Labor Standards Act's minimum wage and overtime requirements for employees performing work in connection with the Project.

C Transit Employee Protective Arrangements

Applicable to Each Contract for Transit Operations Performed by Employees of a Contractor Recognized by FTA to be a Transit Operator. The Contractor shall comply with the following requirements applicable to transit operations performed in connection with the Project:

1. Standard Transit Employee Protective Arrangements. To the extent that transit operations are involved, the Contractor shall carry out the Project in compliance with terms and conditions determined by the Secretary of Labor to be fair and equitable to protect the interests of employees affected by the Project and to meet the requirements of 49 U.S.C. 5333(b), and United States guidelines at 29 CFR 215,

and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in that United States DOL certification. That the DOL certification and any documents cited therein are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The requirements of this Subsection, however, do not apply to formula assistance Projects for the elderly and persons with disabilities authorized by 49 U.S.C. 5310(a)(2) or to formula assistance Projects for non-urbanized areas authorized by 49 U.S.C. 5311.

2. Transit Employee Protective Arrangements for Projects Authorized by 49 U.S.C. 5310(a)(2) for the Elderly and Persons with Disabilities. If the Secretary of Transportation has determined or determines in the future that employee protective arrangements required by 49 U.S.C. 5333(b) are necessary or appropriate for public body subrecipients under the Project, the Contractor shall carry out the Project in compliance with the terms and conditions determined by the Secretary of Labor to meet the requirements of 49 U.S.C. 5333(b), and DOL guidelines at 29 CFR 215, and any amendments thereto. These terms and conditions are identified in the DOL certification of transit employee protective arrangements to FTA, the date of which is included in the Grant Agreement or Cooperative Agreement. The Contractor shall carry out the Project in compliance with the conditions stated in the DOL certification. The DOL certification and any documents cited there in are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement.
3. Transit Employee Protective Arrangement for Projects Authorized by 49 U.S.C. 5311 in Non-Urbanized Areas. The Contractor shall comply with the terms and conditions of the Special Warranty for the Non-Urbanized Area Program agreed to by the Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by DOL or any revision thereto.

VII. CARGO PREFERENCE - PROCUREMENTS INVOLVING EQUIPMENT, MATERIALS, OR COMMODITIES TRANSPORTED BY OCEAN VESSELS

A Applicability

46 U.S.C. 1241(b)(1) and 46 CFR 381 impose the United States cargo preference requirements on the shipment of foreign made goods and shall apply to this procurement.

1. The Contractor shall utilize privately owned United States-flagged commercial vessels to ship at least 50 percent of the gross tonnage (competed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flagged commercial vessels.
2. The Contractor shall furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipments originating outside United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in Paragraph A above to the Recipient (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration,

400 Seventh Street, S.W., Washington, D.C. 20590, marked with appropriate identification of the Project.

B Application to Subcontracts

The Contractor shall insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

VIII. REPORTING, RECORD RETENTION, ACCESS

A Reports

At a minimum, the Contractor agrees to provide SANDAG and FTA those reports required by the United States DOT grant management rules and any other reports SANDAG or the federal government may require.

B Record Retention

The Contractor shall, during the course of the Project and for five years thereafter, maintain intact and readily accessible all data, documents, reports, records, contracts, and supporting materials relating to the Project as SANDAG or the federal government may require for the Project.

C Access to Records

Upon request, the Contractor shall permit the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Contractor and its contractors pertaining to the Project. In accordance with 49 U.S.C. 5325(a), the Contractor shall require each third-party contractor whose contract award is not based on competitive bidding procedures as defined by the Secretary of Transportation to permit the Secretary of Transportation and the Comptroller General of the United States, or their duly authorized representatives, to inspect all work, materials, payrolls, and other data and records involving that third-party contract and to audit the books, records, and accounts involving that third-party contract as it affects the Project.

IX. SEISMIC SAFETY - CONSTRUCTION OF NEW BUILDINGS OR ADDITIONS TO EXISTING BUILDINGS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

X. 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 Agreement (including the FTA Master Agreement applicable to the year in question) between SANDAG and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

XI. DISADVANTAGED BUSINESS ENTERPRISES

A FTA Disadvantaged Business Enterprise Program

SANDAG is a subrecipient of FTA funds. In conformance with 49 CFR 26 SANDAG is required to implement a Minority-Conscious DBE program of limited application. The minority-conscious component of the SANDAG FTA DBE program includes all six DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.

B FTA DBE Commitment

SANDAG set a DBE goal range on the procurement and will be setting DBE goals at the time Task Order proposals are requested when federal funding will be utilized.

C DBE Procurement and Agreement Requirements

Contractor shall comply with the provisions in the RFP attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".

XII. INCORPORATION OF FEDERAL AND STATE GUIDELINES

All relevant federal and state grant provisions and guidelines, as presently written or as changed during the life of this Agreement, bearing on this Agreement, are hereby wholly incorporated by reference herein and made a part of this Agreement and take precedence over any inconsistent terms of this Agreement. Any subcontract entered into as a result of this Agreement shall contain all of the provisions of this Section.

Specific guidelines shall be those prescribed by "Federal Transit Administration Master Agreement" (Form FTA-MA) 49 CFR 18, and FTA Circular 4220.1F, "Third-party Contracting Requirements" and 2 CFR 200.

XIII. DRUG AND ALCOHOL PROGRAM

During the performance of this Agreement Contractor agrees to implement a drug and alcohol program that is compliant with 49 CFR 653 - 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States DOT, the Caltrans, or SANDAG to inspect the facilities and records association with the implementation of the drug and alcohol testing program, as required under Parts 653 and 654, and review the testing process.

XIV. EQUIPMENT PURCHASES USING FEDERAL FUNDS

A Required Prior Authorization

Prior authorization in writing by the Project Manager shall be required before Contractor enters into any non-budgeted purchase order or subcontract exceeding \$3,000 for supplies, equipment, or subcontractor services. If the non-budgeted purpose will cause the Project budget to exceed the Maximum Amount of the Agreement, then prior approval from the SANDAG Executive Director is also required. Contractor shall provide an evaluation of the necessity or desirability of incurring such costs. For purchase of any item, service or consulting work not covered in the Payment or Fee Schedule and exceeding \$3,000, with prior authorization by the Project Manager, three competitive quotations must be submitted with the request or the absence of bidding must be adequately justified.

B Inventory Records

Contractor shall maintain an inventory record for each piece of non-expendable equipment purchased or built with funds provided under the terms of this Agreement. The inventory record of each piece of such equipment shall include the date acquired, total cost, serial number, model identification (on purchased equipment), and any other information or description necessary to identify said equipment. Non-expendable equipment so inventoried are those items of equipment that have a normal life expectancy of one year or more and an approximate unit price of \$5,000 or more. In addition, theft-sensitive items of equipment costing less than \$5,000 shall be inventoried. A copy of the inventory record must be submitted to SANDAG on request by SANDAG.

C Disposal of Equipment at Contract Termination

At the conclusion of the Agreement or if the Agreement is terminated, Contractor may either keep the equipment and credit SANDAG in an amount equal to its fair market value or sell such equipment at the best price obtainable, at a public or private sale, in accordance with established procedures, and credit SANDAG in an amount equal to the sales price. If the Contractor elects to keep the equipment, fair market value shall be determined, at the Contractor's expense, on the basis of a competent, independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to SANDAG and Contractor. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by SANDAG.

D Federal Funds Credit

Title 2, CFR, Part 200 requires a credit to federal funds when participating equipment with a fair market value greater than \$5,000, is credited to the Project.

XV. COMPLIANCE WITH EXECUTIVE ORDER 11246

During the performance of this Agreement, Contractor agrees as follows:

A Nondiscrimination

Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation or national origin. Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination

B Equal Consideration

1. Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
2. Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of

Executive Order 11246 (Johnson, 1965) and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

3. Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations, and relevant orders of the Secretary of Labor.

C Reports

Contractor will furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

D Noncompliance

In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

E Inclusion of Provisions in Subcontracts

Contractor will include the provisions of Paragraphs A through F in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States." (Sec. 202 amended by Executive Order 11375 [Johnson, 1967], 32 FR 14303, 3 CFR 1966-1970 Comp., p. 684, Executive Order 12086 [Carter, 1978], 43 FR 46501, 3 CFR 1978 Comp., p. 230)

XVI. COST PRINCIPLES - APPLICABLE TO ALL CONTRACTS IN EXCESS OF \$25,000

Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., shall be used to determine the allowability of individual items of cost, except on negotiated contracts procured under a Request for Proposals, which shall instead be governed by 48 CFR 15.

Contractor also agrees to comply with federal procedures in accordance with 2 CFR Part 200.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under application sections of 48 CFR 15, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq. and/or 2 CFR 200, are subject to repayment by the Contractor to SANDAG.

XVII. NON-COLLUSION - APPLICABLE TO ALL CONTRACTS IN EXCESS OF \$25,000

Title 23, U.S.C., Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or

on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. 1746, is attached.

XVIII. DEBARMENT AND SUSPENSION - APPLICABLE TO ALL CONTRACTS EXCEEDING \$25,000

SANDAG and the Contractor shall comply with the requirements of Executive Orders 12549 (Reagan, 1986) and Executive Order (Bush, 1989), "Debarment and Suspension," 31 U.S.C. 6101 note; and United States DOT regulations on Debarment and Suspension at 49 CFR 29. Contractor shall be registered in the SAM.gov website. SAM is an Official United States Government database of awardees of federal funds. There is NO fee for Contractor to register for this site.

Unless otherwise permitted by FTA, SANDAG shall refrain from awarding any third-party contract of any amount to or enter into any subagreement of any amount with a party included in the "United States General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs," implementing Executive Order 12549 and Executive Order 12689, "Debarment and Suspension" and 49 CFR 29. The list also includes the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible for contract award under statutory or regulatory authority other than Executive Order 12549 and Executive Order 12689.

Before entering into any subagreement with a subrecipient, SANDAG shall obtain a debarment and suspension certification from each prospective recipient containing information about the debarment and suspension status and other specific information about the subrecipient and its "principals," as defined at 49 CFR 29.105(p). An example of the appropriate certification is contained in this bid package.

Before entering into any third-party contract exceeding \$25,000, SANDAG shall obtain a debarment and suspension certification from each third-party contractor containing information about the debarment and suspension status of that third-party contractor and its "principals," as defined at 49 CFR 29.105(p). SANDAG also shall require each third-party contractor to refrain from awarding any third-party subcontract of any amount (at any tier) to a debarred or suspended subcontractor, and to obtain a similar certification from any third-party subcontractor (at any tier) seeking a contract exceeding \$100,000. An example of the appropriate certification is contained in this bid package.

SANDAG shall provide FTA a copy of each conditioned debarment or suspension certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. Until FTA approval is obtained, SANDAG shall refrain from awarding a third-party contract or entering into a subagreement with any party that has submitted a conditioned debarment or suspension certification.

XIX. TECHNICAL RESTRICTIONS ON THE ACQUISITION OF INTELLIGENT TRANSPORTATION SYSTEM PROPERTY AND SERVICES

If this Agreement involves the acquisition of Intelligent Transportation System (ITS) property and/or services, then the ITS property and services must comply with the national ITS architecture and standards to the extent required by Section 5307(c) of SAFETEA-LU, FTA notice, "FTA National ITS Architecture Policy on Transit Projects," 66 CFR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Third-party contracts involving ITS must also

contain provisions to ensure compliance with these, just listed, Federal Requirements. (FTA Circular 4220.1F.).

FEDERAL PROVISIONS FOR FTA PROCUREMENTS IN EXCESS OF \$100,000

Use of the term "Contractor" herein shall refer to "Consultant" as defined in the Agreement. As a FTA grantee, SANDAG is required to inform the Contractor that "Buy America" is applicable to Public Works, Acquisition of Goods, or Rolling Stock Procurements exceeding \$100,000

I. BUY AMERICA REQUIREMENTS

"Buy America" requirements are set forth in Section 165 of the Federal Surface Transportation Act of 1982, and the FTA regulations implementing Section 165 (49 CFR 661). Information on "Buy America" requirements (49 CFR 661) is available for review at the SANDAG office.

A Steel or Manufactured Products

Any steel or manufactured product used in projects supported by FTA funds must be produced in the United States unless the Secretary of Transportation determines that one of the following exceptions applies:

1. Applying this provision would be inconsistent with the public interest.
2. The materials and products required for a project are not produced in the United States either in sufficient quantity or not of the quality required for this Project.
3. Including domestically produced material will increase the cost of the contract by more than 25 percent.

Note: In calculating the cost of components under the terms of this provision, labor costs involved in the final assembly are not to be included.

B Rolling Stock

Where an FTA grantee is purchasing buses or other rolling stock (including train control, communication, and traction power equipment), the cost of components produced in the United States is more than 60 percent of the cost of all the components of the rolling stock or equipment, and final assembly of the stock or equipment has taken place in the United States.

C Exceptions and Adjustments

In reference to the exceptions above, FTA requires that the bid for nondomestic items must be adjusted by the appropriate differential (10% or 25%) and then the adjusted overall bid prices compared to determine if the inclusion of domestic materials will increase the "overall Project contract." When both "rolling stock" and "non-rolling stock" are being procured in a single contract, the appropriate differentials will be applied to the different items only and not to the overall bid price.

1. Thus, the foreign purchased components of the individual bid items will be adjusted upward, for purposes of determining Buy America compliance only, by 10 percent for rolling stock and 25 percent for non-rolling stock, thereby increasing the contractor's cost proposal item by the adjusted amount, thereby adjusting the overall total bid price.
2. The revised bid amount will be the basis for determining the lowest bid.
3. Within five days of written notification, the Contractor shall provide the necessary information to substantiate the cost of nondomestic items and the factual basis for

the claim of exception to the requirements of Section 165(a) of the Surface Transportation Assistance Act of 1982 and the regulations in 49 CFR 661.

D Submittals and Waivers

1. In the Buy America Certificate (FTA), Alternative 'A' or 'B,' must be completed and submitted with the proposal. A proposal which does not include either Alternative 'A' or 'B' or which includes both Alternative 'A' and Alternative 'B' may be considered nonresponsive.
2. A waiver from the Buy America provision may be sought by the Contractor if grounds for the waiver exist. Inclusion of the Alternative 'B' certificate in a bid constitutes an application by the Contractor for an exception to the Buy America requirement applicable to this type of contract. If a bid includes the Alternative 'B' certificate and an exception is not granted by FTA, the bid will be considered nonresponsive.

II. ENVIRONMENTAL REQUIREMENTS

A General Applicability

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[H]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1968), and Environmental Protection Agency (EPA) regulations (40 CFR 15) which prohibit the use under nonexempt federal contracts, grants, or loans of facilities included on the EPA list of Violating Facilities. Contractor shall report violations to FTA and to the United States EPA Assistant Administrator for Enforcement (ENO329).

B Environmental Regulations

The successful Contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the Project. Some, but not all, of the major federal laws that may affect the Project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.; the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., and scattered sections of 29 U.S.C.; the Clean Water Act, as amended, scattered sections of 33 U.S.C. and 12 U.S.C.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601 et seq. Contractor recognizes that United States EPA, Federal Highway Administration (FHWA), and other agencies of the federal government have issued and are expected in the future to issue regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, Contractor agrees to adhere to, and impose on its subcontractors and third-party contractors, any such federal requirements as the federal government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and SANDAG. Contractor acknowledges that this list does not constitute Contractor's entire obligation to meet all federal environmental and resource conservation requirements.

C Environmental Protection

Contractor shall comply with the applicable requirements of NEPA of 1969, as amended, 42 U.S.C. 4321 et seq., in accordance with Executive Order 12898 (Clinton, 1994), "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 40 CFR 1500 et seq.; and joint

FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR 771, and 49 CFR 622.

If Contractor will be preparing an environmental impact statement under National Environmental Policy Act, and an awarded Agreement will include federal funding, the Contractor will be required to submit a statement to SANDAG certifying that the Contractor has no financial or other interest in the outcome of the Project, 40 CFR 1506(c).

D Air Quality

Contractor 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. Specifically:

1. Contractor shall comply with applicable requirements of U.S. EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 CFR 51(T); and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 CFR 93. To support the requisite air quality conformity finding for the Project, Contractor shall implement each air quality mitigation and control measure incorporated in the Project. Contractor agrees that any Project identified in a SIP as a Transportation Control Measure will be wholly consistent with the description of the design concept and scope of the Project described in the SIP.
2. United States EPA also imposes requirements implementing the Clean Air Act, as amended, which may apply to transit operators, particularly operators of large transit bus fleets. Thus, Contractor should be aware that the following United States EPA regulations, among others, may apply to this Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 CFR 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 CFR 86; and "Fuel Economy of Motor Vehicles," 40 CFR 600.
3. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor, subrecipient, or itself to FTA and the appropriate United States EPA Regional Office.

E Clean Water

1. Contractor 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.
2. Contractor agrees to report and require each third-party contractor and subcontractor at any tier to report any violation of these requirements resulting from any Project implementation activity of a third-party contractor (at any tier), subcontractor (at any tier), or itself to FTA and the appropriate United States EPA Regional Office.

F Use of Public Lands

Contractor agrees that no publicly-owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national,

state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 U.S.C. 303.

G Mitigation of Adverse Environmental Effects

Contractor agrees that, if the Project should cause adverse environmental effects, the successful Contractor will take all reasonable steps to minimize those effects in accordance with 49 U.S.C. 5324(b), and all other applicable federal laws and regulations; specifically, the procedures of 23 CFR 771, and 49 CFR 622. Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 U.S.C. 303) and with any conditions the federal government has imposed in its finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. As soon as the federal government and Contractor reach agreement on any deferred mitigation measures, those measures will then be incorporated by reference and made part of the Grant Agreement or Cooperative Agreement between FTA and SANDAG. Contractor agrees that any mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the federal government.

H Consultant Certification

If Contractor will be preparing an environmental impact statement on behalf of SANDAG under NEPA, Contractor certifies, as required by 40 CFR 1506.5(c), by signing this Agreement, that it has no financial or other interest in the outcome of the Project.

III. RESTRICTIONS ON LOBBYING

A No Use of Federal Funds

SANDAG and Contractor shall not use federal assistance funds to support lobbying.

B Certification

In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 CFR 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has:

1. Received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352.
2. If applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

C Required Disclosure

The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party

contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying (Part 5).

**STANDARD FEDERAL PROVISIONS FOR FEDERAL HIGHWAY ADMINISTRATION
(NON-CONSTRUCTION)**

I. COMPLIANCE WITH FEDERAL HIGHWAY ADMINISTRATION REQUIREMENTS

This Agreement is subject to a financial assistance contract between SANDAG and the FHWA. All references to "Contractor" herein shall refer to "Consultant" as defined in the Agreement.

II. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The federal government shall not be subject to any obligations or liabilities to any third-party contractor, or any other person not a party to the Grant Agreement or Cooperative Agreement between SANDAG and FHWA in connection with the performance of this Agreement.

Notwithstanding any concurrence provided by the federal government in or approval of any solicitation, subagreement, or third-party contract, the federal government continues to have no obligations or liabilities to any party, including Consultant or any other third-party contractor.

III. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. 3801 et seq. and United States DOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this contract. Accordingly, by signing the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the contract. In addition to other penalties that may be applicable, the Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claims, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Contractor to the extent the federal government deems appropriate.

The Contractor also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government in connection with an urbanized area formula Project financed with federal assistance authorized by 49 U.S.C. 5307, the government reserves the right to impose on the Contractor the penalties of 18 U.S.C. 1001 and 49 U.S.C. 5307(n)(1), to the extent the federal government deems appropriate.

IV. TITLE VI COMPLIANCE

During the performance of this Contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

A Compliance with Regulations

The Contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the DOT, 49 CFR 21, as they may be amended from time to time (the Regulations), which are herein incorporated by reference and made a part of this Contract.

B Nondiscrimination

The Contractor, with regard to the work performed by it during the term of the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

C Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor 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 Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color sex, age, or national origin.

D Information and Reports

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

E Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the recipient shall impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Agreement until the Contractor complies.
2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F Incorporation of Provisions

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

V. LABOR

During the performance of this Agreement, the Contractor agrees as follows:

A Non-Discrimination

The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, age, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship. The Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

B Equal Consideration

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

C Notice to Worker's Representatives

The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under Section 202 of Executive Order 11246 (Johnson, 1965), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D Compliance with orders of Secretary of Labor

The Contractor will comply with all provisions of Executive Order 11246 and with the rules, regulations, and relevant orders of the Secretary of Labor.

E Furnishing of Information and Reports

The Contractor will furnish all information and reports required by Executive Order 11246 and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the FHWA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

F Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part. The Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

G Inclusion of Labor Provisions in Subcontracts

The Contractor will include the provisions of paragraphs A through F herein, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246. Such provisions shall be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Secretary of Labor or the FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

H Additional Requirements

Attention also is directed to the requirements of the California Fair Employment and Housing Act (Government Code Sections 12900 through 12996 - Stat. 1980, Chapter 992), to the regulations promulgated by the Fair Employment and Housing Commission to implement said Act, and to the nondiscrimination, affirmative action and equal employment opportunity requirements in this Agreement.

VI. STANDARD EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

A Equal Employment Opportunity

In connection with the execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin. The Contractor shall ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

B As used in this exhibit:

1. "Director" means the SANDAG Executive Director.
2. "Employer Identification Number" means the federal Social Security number used on the Employer's Quarterly Federal Tax Return, United States Treasury Department Form 941.
3. "Minority" includes:
 - a. African American (all persons having origins in any of the African American racial groups not of Hispanic origin)
 - b. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central, or South American or other Spanish Culture or origin, regardless of race)
 - c. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands [this area includes China, Japan, Korea, the Philippine Islands, and Samoa])
 - d. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

C Separate Goals

A single goal for minorities and a separate single goal for women may have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

D Prohibition on Use of Goals to Discriminate

The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

E Debarred Contractors

The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

The Contractor shall carry out such sanctions and penalties for violation of the provisions in this exhibit and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by SANDAG. If Contractor fails to carry out such sanctions and penalties it shall be in violation of the Agreement and Executive Order 11246 as amended.

If the Contractor fails to comply with the requirements of the Executive Order, the Implementing Regulations, or the Agreement, SANDAG will retain an amount equal to ten percent of the estimated value of the work performed during the previous month (exclusive of mobilization) from the next monthly estimate, except that such retention shall not exceed \$10,000, nor be less than \$1,000. The retention for failure to comply with this section will be released on a monthly estimate for partial payments following the date that the Contractor fulfills its obligations under the provisions of this exhibit.

F Monitoring Requirements

The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company Equal Employment Opportunity policy is being carried out, to submit reports relating to the provisions hereof and to keep records. Records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractor shall not be required to maintain separate records.

G No Limitation

Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance.

VII. NONCOLLUSION

Title 23, U.S.C., Section 112, requires as a condition precedent to approval by the Federal Highway Administrator of the contract for this work that Contractor file a sworn statement executed by, or on behalf of, the person, firm, association, or corporation to whom such contract is to be awarded, certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the submitted bid. A form to make the non-collusion affidavit statement required by Section 112 as a certification under penalty of perjury rather than as a sworn statement as permitted by 28 U.S.C. 1746, is attached.

VIII. LOBBYING

A No Use of Federal Funds

SANDAG and Contractor shall not use federal assistance funds to support lobbying.

B Certification

In accordance with 31 U.S.C. 1352 and United States DOT regulations, "New Restrictions on Lobbying," 49 CFR 20, if the Project exceeds \$100,000, FTA will not make any federal assistance available to the Contractor until FTA has:

1. Received the Contractor's certification that the Contractor has not and will not use federal appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any federal department or agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal grant, cooperative agreement, or any other federal award from which funding for the Project is originally derived, consistent with 31 U.S.C 1352.
2. If applicable, the Contractor's statement disclosing any lobbying with nonfederal funds that has taken place in connection with obtaining any federal financing ultimately supporting the Project.

C Required Disclosure

The Contractor agrees to provide SANDAG a copy of each lobbying disclosure statement with the accompanying lobbying certification provided by a prospective third-party contractor at any tier or subrecipient at any tier. The form is Certification of Restrictions on Lobbying (Part 5).

IX. DISADVANTAGED BUSINESS ENTERPRISES

A FHWA Disadvantaged Business Enterprise Program

SANDAG is a subrecipient of FHWA funds through Caltrans. In conformance with 49 CFR 26, and directives and guidance issued by Caltrans, SANDAG is required to implement a minority-conscious DBE program of limited application. The minority-conscious component of the Caltrans FHWA DBE program includes all six DBE groups: African American, Hispanic American, Subcontinental Asian American, Asian Pacific Islander, Native American, and Women.

B FHWA DBE Commitment

SANDAG set a DBE goal range on the procurement and will be setting DBE goals at the time Task Order proposals are requested when federal funding will be utilized.

C DBE Procurement and Agreement Requirements

Contractor shall comply with the provisions in the RFP attachment entitled "Notice Regarding Disadvantaged Business Enterprise Requirements and Instructions".

X. MISCELLANEOUS

A Taxes

SANDAG is not exempt from sales tax.

B Environmental Violations

For all contracts and subcontracts in excess of \$100,000, Contractor agrees to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[H]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11378 (Johnson, 1967), and EPA regulations (40 CFR 15) which prohibit the use under nonexempt federal contracts, grants or loans, of facilities included on the EPA List for Violating Facilities. Contractor shall report violations to FHWA and to the United States EPA Assistant Administrator for Enforcement (EN0329).

The Contractor and suppliers shall submit evidence that the governing air pollution criteria will be met. This evidence will be retained for on-site examination by FHWA.

C Energy Efficiency

The Contractor shall comply with the California State Energy Conservation Act issued in compliance with the Energy Policy and Conservation Act (P.L. 94-163).

D Prohibited Interests

No member, officer, or employee of a local public body, during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No member of or delegate to the Congress of the United States shall be admitted to a share or part of this Agreement or to any benefit arising there from.

E Buy America

Contractor should be familiar with the "Buy America" requirements of the Surface Transportation Assistance Act of 1982 (Section 165) and the Intermodal Surface Transportation Efficiency Act of 1991 Sections 1041(a) and 1048(a), and the regulations adopted pursuant thereto and set forth in Federal Form 1273. Information on "Buy America" requirements is available for review at the SANDAG office. In conformance with the law and regulations, all manufacturing processes for steel and iron materials furnished for incorporation into the work on this Project shall occur in the United States; with the exception that pig iron and processed, pelletized and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for such steel and iron materials. The application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or enhances the value of steel or iron materials shall be considered a manufacturing process subject to the "Buy America" requirements.

A Certificate of Compliance shall be furnished for steel and iron materials. The certificates, 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 above exceptions.

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

F Cargo Preference - Use of United States Flag Vessels

Contractor agrees:

1. To utilize privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved, whether 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.
2. To furnish within 30 days following the date of loading for shipment originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph 1 above to the Project Manager (through the prime contractor in case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20230, marked with appropriate identification of the Project.
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this clause.

G Statement of Eligibility

Contractor shall execute the Eligibility Certificate for Federally Funded Projects which is Part 1 of the Certifications for Federally Funded Contracts. The Contractor also shall have executed by its subcontractors a Subconsultant's Statement of Eligibility, which is Part 4 of the Certifications for Federally Funded Contracts for each designated subcontractor. All Subcontractor's Statement of Eligibility forms will be made a part of the Agreement.

H Clean Air and Water Requirements

Contractor shall comply with Section 508 of the federal Clean Water Act and Section 306 of the federal Clean Air Act.

I Debarred Bidders (49 CFR 29)

Contractor, including any of its officers or holders of a controlling interest, is obligated to inform the recipient whether or not it is or has been on any debarred bidder's list maintained by the United States Government. Should the Contractor be included on such a list during the performance of this Project, it shall so inform SANDAG.

Contractor shall include in all contracts with designated subcontractors, an obligation to declare whether or not the subcontractor, including any of its officers or holders of a controlling interest, is or has been on any debarred bidder's list maintained by the United States Government. Should a subcontractor be included on such a debarred bidder's list in the past, is now on such a list, or is placed on such a list during the performance of this Agreement, it shall so inform the Contractor. Contractor shall notify SANDAG of any subcontracts with debarred contractors.

J Audit and Inspection of Records

Contractor agrees that SANDAG, the Comptroller General of the United States, or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project. Further, Contractor agrees to maintain all required records for at least three years after grantees make final payments and all other pending matters are closed.

K Privacy

To the extent that Contractor at any tier, any subcontractor at any tier, or their employees administers any system of records on behalf of the federal government, the contractor at any tier, and their employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. 552.

L Energy Conservation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conversation Act, 42 U.S.C. 6321 et seq.

M Access Requirements for Persons with Disabilities

Contractor agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; 49 U.S.C. 5301(d); and the following federal regulations, including any amendments thereto:

1. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR 37
2. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR 27
3. DOT regulations, "ADA Accessibility Specifications for transportation Vehicles," 49 CFR 38
4. DOT regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR 35
5. DOT regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR 36
6. GSA regulations, "Accommodations for the Physically Handicapped," 41 CFR 101-119
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR 1630
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR 64(F)

N Federal Changes

Contractor shall at all times comply with all applicable FHWA regulations, policies, procedures, and directives, including without limitation those listed directly or by reference in Federal Form 1273 or this Agreement, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

O Subletting or Assigning the Contract

1. Contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original Agreement price, excluding any specialty items designated by

SANDAG or Caltrans. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by its own organization (23 CFR 635).

- a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor.
 - b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.
2. The Agreement amount upon which the requirements set forth in this subsection are computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.
 3. Contractor shall furnish
 - a. A competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the Agreement requirements, and is in charge of all construction operations (regardless of who performs the work).
 - b. Such other of its own organizational resources (supervision, management, and engineering services) as the Director determines is necessary to assure the performance of the Agreement.
 4. No portion of the Agreement shall be sublet, assigned or otherwise disposed of except with the written consent of the Director, or authorized representative, and such consent when given shall not be construed to relieve Contractor of any responsibility for the fulfillment of the Agreement. Written consent will be given only after the Director has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the Agreement.

P Safety: Accident Prevention

1. In the performance of this Agreement, Contractor shall comply with all applicable federal, state, and local laws governing safety, health, and sanitation (23 CFR 635). Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SANDAG Project Manager may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the Agreement.
2. It is a condition of this Agreement, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this Agreement, that Contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

Q False Statements Concerning Highway Projects

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on federal-aid highway Projects, it is essential that all persons concerned with the Project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the Project is a violation of federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the Project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more than \$10,000 or imprisoned not more than 5 years or both."

XI. CERTIFICATIONS

A Certification Regarding Debarment, Suspension, Ineligibility, And Voluntary Exclusion

By signing and submitting its proposal, Contractor provided the certification set out below and reaffirms it by executing the Agreement. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this Agreement. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the determination of SANDAG whether to enter into this Agreement. Contractor's failure to furnish a certification or an explanation shall disqualify such firm/person from participation in this Agreement.

1. The certification in this subsection is a material representation of fact upon which reliance was placed when SANDAG determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans, or SANDAG may terminate this Agreement for cause of default.

2. Contractor shall provide immediate written notice to SANDAG if at any time Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this subsection and the Debarment and Suspension Certificate, which is Part 3 of the Certifications for Federally Funded Contracts, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (Reagan, 1986). Contractor may contact SANDAG for assistance in obtaining a copy of those regulations.
4. Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Agreement, unless authorized by SANDAG.
5. Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided in this Agreement, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.
7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, SANDAG may terminate the Agreement for cause or default.

B Certification Regarding Debarment, Suspension, Ineligibility, Voluntary Exclusion-Primary Covered Transactions

Consultant certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.
2. Have not within a three-year period preceding submission of its proposal been convicted of or had a civil judgment rendered against them for commission of fraud

or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses.
4. Have not within a three-year period preceding submission of its proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
5. Where Contractor is unable to certify to any of the statements in this certification, such prospective participant shall provide SANDAG a written explanation prior to execution of the Agreement.

C Instructions for Certification - Lower Tier Covered Transactions:

(Applicable to all subcontracts, purchase orders, and other lower-tier transactions of \$25,000 or more - 49 CFR 29)

1. The certification in this clause is a material representation of fact upon which reliance was placed when this Agreement or a related contract was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, Caltrans or SANDAG with which this Agreement originated may pursue available remedies, including suspension and/or debarment.
2. The prospective lower tier participant shall provide immediate written notice to the person to which its bid/proposal was submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.
3. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
4. The prospective lower tier participant agrees by submitting its bid/proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by SANDAG.
5. The prospective lower tier participant further agrees by submitting a bid/proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
6. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List.

7. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
8. Except for transactions authorized by SANDAG, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, Caltrans, or SANDAG may pursue available remedies, including suspension and/or debarment.

D Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its bid/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. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its bid/proposal.

FINAL REPORT – UTILIZATION OF ALL SUBCONTRACTORS, UNDERUTILIZED/DISADVANTAGED BUSINESS ENTERPRISES AND SMALL BUSINESSES

(Caltrans EXHIBIT 17-F FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES (DBE) AND FIRST-TIER SUBCONTRACTORS)

Contract No.	County	Location	Project Description					Federal Aid Project No.	Administering Agency SANDAG			Contract Start/NTP	Contract End Date			
Task/Job Order No.												TO/JO Start/NTP	TO/JO End Date			
Prime Consultant/Contractor (Company Name)		Prime Consultant/Contractor Business Address					Business Ownership by Minority Code					Final Contract or Task/Job Order Paid Amount \$				
		Address:					BA - Black American	NA - Native American	APA - Asian Pacific American							
		City, State, Zip Code:					W - Woman	HA - Hispanic American	SCA - Subcontinent Asian American			Federal Funding Type (If Applicable)				
SUBCONSULTANT(S)/ SUBCONTRACTOR(S)	SB / DBE CERTIFICATE		CONTRACT/TASK/JOB ORDER PAYMENTS										FTA <input type="checkbox"/>		FHWA <input type="checkbox"/>	
			TOTAL PAYMENTS*				TOTAL PAYMENTS BY MINORITY GROUP									
	SB Cert #	DBE Cert #	SB	DBE	UDBE *** (if applicable)	Non-Certified	APA	BA	HA	NA	SCA	W	Unpaid Retention (if applicable)	Date Work Complete	Date of Final Payment	Work Performed/ Material Provided
Name <small>(Certified PRIME)</small>																
Address																
Description of work																
Name																
Address																
Description of work																
Name																
Address																
Description of work																
Name																
Address																
Description of work																
\$ -	\$ -	Total Payments		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	DBE Goal Attainment	0%	
%	%													UDBE Goal Attainment	0%	
Original U/DBE Commitment	Original SB Commitment													SB Participation	0%	

*If Sub is SB, DBE and/or UDBE, enter the total dollar amount in all three fields

***The decision of which column to use for entering the U/DBE dollar value is based on which program was applied to the Contract/TO/JO. For procurements advertised after August 1, 2014, only a DBE program applies and DBE payments only need to be entered in the DBE column. For procurements advertised prior to August 1, 2014, a UDBE (FTA) or DBE (FHWA) program may apply. Under the FTA UDBE program, payments to the Asian-Pacific American (APA) minority group can not be included in the UDBE payment column, only the DBE payment column. Please refer to the instructions for additional details on completing the UDBE payment column.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
CONSULTANT/CONTRACTOR REPRESENTATIVE NAME	BUSINESS PHONE NUMBER	DATE
TO THE BEST OF MY KNOWLEDGE THE ABOVE INFORMATION IS COMPLETE AND CORRECT		
SANDAG PROJECT MANAGER'S NAME	BUSINESS PHONE NUMBER	DATE

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS:

SANDAG Contract Number and Task/Job Order boxes - Enter the SANDAG contract and Job/Task Order number if applicable.

Location - Enter project location by city and county.

Project Description - Provide description of project.

Federal-Aid Project Number - Enter the Federal-Aid Project Number.

Local Agency - SANDAG name entered as agency that is funding the contract/Job Order/Task Order.

Contract Start and End Dates - Enter the date the contract/Job Order/Task Order was started or Notice to Proceed was issued and then date project completed.

Prime Contractor/Consultant - Enter the contractor/consultant's firm name.

Business Address - Enter the contractor/consultant's business address.

Final Contract Amount - Enter the total final amount for the contract/Job Order/Task Order as applicable.

Federal Funding Type - Mark box for FTA and/or FHWA if applicable.

DBE/SB Company Name and Business Address - Enter the name, address, and phone number of all subcontracted contractors/consultants. Also, enter the prime contractor/consultant's name and phone number, if the prime is a DBE.

Description of Work, Services, or Materials Supplied - Enter description of work, services, or materials provided. Indicate all work to be performed by DBEs including work performed by the prime contractor/consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.

DBE Certification Number - Enter the DBE's Certification Identification Number. Leave blank if subcontractor is not a DBE.

Contract Payments - Enter the subcontracted dollar amount of the work performed or service provided. Include the prime contractor/consultant if the prime is a DBE. The Non-DBE column is used to enter the dollar value of work performed by firms that are not certified DBE or for work after a DBE becomes decertified.

Date Work Completed - Enter the date the subcontractor/subconsultant's item work was completed.

Date of Final Payment - Enter the date when the prime contractor/consultant made or will make the final payment to the subcontractor/subconsultant for the portion of work listed as being completed.

Original DBE Commitment Amount - Enter the total DBE participation listed in Bidder DBE Commitment Form (Construction) or Consultant Contract DBE Commitment Form.

Total Payments - Enter the sum of the "Contract Payments" Non-DBE and DBE columns. Report total payments, including unpaid retention, made to ALL subconsultants/subcontractors and ALL certified SB, DBE, and/or UDBE firms regardless of tier or whether the firm was originally listed for goal credit. If actual U/DBE utilization (or item of work) was different than that approved at time of award, provide comments on a separate page. If no subconsultants/subcontractors were utilized, enter "N/A" in the Name field. If retention is being withheld at the time of completing this report, enter the total amount in the "Unpaid Retention" column.

Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.

Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.

Phone - Enter the area code and telephone number of the person signing the form.

Date - Enter the date the form is signed by the contractor/consultant's preparer.

SANDAG Representative's Signature - A SANDAG Representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.

SANDAG Representative's Name - Enter the name of the SANDAG Representative signing the form.

Phone - Enter the area code and telephone number of the SANDAG representative signing the form.

Date - Enter the date the form is signed by the SANDAG Representative.

CONSULTANT CONTRACT OR TASK ORDER COMMITMENT

(Caltrans Exhibit 10-O2 Consultant Contract DBE Commitment)

(Use to Show Commitment At Time of Task Order Execution)

1. Local Agency: SANDAG 2. Task Order DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
SANDAG to Complete this Section			\$
20. SANDAG Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____ SANDAG certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
_____ 23. SANDAG Representative's 24. Date _____ 25. SANDAG Representative's Name 26. Phone _____ 27. SANDAG Representative's Title			14. TOTAL CLAIMED DBE PARTICIPATION IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. _____ 15. Preparer's Signature 16. Date _____ 17. Preparer's Name 18. Phone _____ 19. Preparer's Title

DISTRIBUTION: 1. Original – SANDAG
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of any FHWA funds on contract/task order.

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

- 1. Local Agency** - SANDAG name entered as agency that is funding the contract or Task Order.
- 2. Contract DBE Goal** - Enter the contract or Task Order DBE goal percentage set by SANDAG.
- 3. Project Description** - Enter the project description.
- 4. Project Location** - Enter the project location.
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime consultant is a certified DBE.
- 7. Total Contract Award Amount** - Enter the total contract or Task Order award dollar amount for the prime consultant.
- 8. Total Dollar Amount for ALL Subconsultants** - Enter the total dollar amount for all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 9. Total number of ALL subconsultants** - Enter the total number of all subcontracted consultants. SUM = (DBEs + all Non-DBEs). Do not include the prime consultant information in this count.
- 10. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE.
- 11. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date proposals are due to SANDAG.
- 12. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 13. DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE.
- 14. Total Claimed DBE Participation** - \$: Enter the total dollar amounts entered in the "DBE Dollar Amount" column. %: Enter the total DBE participation claimed ("Total Participation Dollars Claimed" divided by item "Total Contract Award Amount"). If the total % claimed is less than the Contract/Task Order DBE Goal, an adequately documented Good Faith Effort (GFE) is required.
- 15. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 16. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 17. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 18. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 19. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

SANDAG SECTION

- 20. SANDAG Contract Number** - Enter the SANDAG contract and/or Task Order number.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. SANDAG Representative's Signature** - The person completing this section of the form for SANDAG must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the SANDAG Representative.
- 25. SANDAG Representative's Name** - Enter the name of the SANDAG Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.

27. SANDAG Representative Title - Enter the position/title of the SANDAG Representative certifying the consultant's DBE commitment form.

SURPLUS DBE UTILIZATION

(List only firms and amounts that exceed the Task Order DBE goal and for which Consultant does not wish to be contractually committed to for purposes of meeting its DBE Commitment.)

Consultant to Complete this Section			
Consultant Name: _____ SANDAG Contract No. _____ SANDAG Task Order No. _____ Date: _____			
DBE Firm Information			
Description of Services to Potentially Be Provided by DBE	DBE Firm Name and Contact Information	DBE Cert. Number	Estimated Surplus DBE Dollar Amount
Estimated Total Dollars for Surplus DBE Utilization			\$ _____
Notes: 			_____ Preparer's Signature _____ Preparer's Name (Print) _____ Preparer's Title _____

DBE CERTIFICATION STATUS CHANGE

(Caltrans Exhibit 17-O DBE Certification Status Change)

1. SANDAG Contract/JO/TO Number:			2. Federal-Aid Project Number:		
3. Local Agency:			4. Contract Completion Date:		
5. Contractor/Consultant:		6. Business Address:		7. Final Contract Amount:	
8. Contract Item Number	9. DBE Contact Information	10. DBE Certification Number	11. Amount Paid While Certified	12. Certification/Decertification Date (Letter Attached)	13. Comments

If there were no changes in the DBE certification of subcontractors/subconsultants, indicate on the form.

I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT			
14. Contractor/Consultant Representative's Signature	15. Contractor/Consultant Representative's	16. Phone	17. Date
I CERTIFY THAT THE CONTRACTING RECORDS AND ON-SITE PERFORMANCE OF THE DBE(S) HAS BEEN MONITORED			
18. SANDAG Representative's Signature	19. SANDAG Representative's Name	20. Phone	21. Date

DISTRIBUTION: Original – SANDAG, Copy – Caltrans District Local Assistance Engineer. Include with Final Report of Expenditures

ADA NOTICE: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (916) 445-1233, Local Assistance Procedures Manual TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

INSTRUCTIONS –DBE CERTIFICATION STATUS CHANGE

1. Local Agency Contract/JO/TO Number - Enter the SANDAG contract number and Job or Task Order number if applicable.
2. Federal-Aid Project Number - Enter the Federal-Aid Project Number.
3. Local Agency - SANDAG name entered as agency that is funding the contract.
4. Contract Completion Date - Enter the date the contract/Job Order or Contractor was completed if applicable.
5. Contractor/Consultant - Enter the contractor/consultant's firm name.
6. Business Address - Enter the contractor/consultant's business address.
7. Final Contract Amount - Enter the total final amount for the contract, Job Order or Task Order.
8. Contract Item Number - Enter contract item for work, services, or materials supplied provided. Not applicable for consultant contracts.
9. DBE Contact Information - Enter the name, address, and phone number of all DBE subcontracted contractors/consultants.
10. DBE Certification Number - Enter the DBE's Certification Identification Number.
11. Amount Paid While Certified - Enter the actual dollar value of the work performed by those subcontractors/subconsultants during the time period they are certified as a DBE.
12. Certification/Decertification Date (Letter Attached) - Enter either the date of the Decertification Letter sent out by the Office of Business and Economic Opportunity (OBEO) or the date of the Certification Certificate mailed out by OBEO.
13. Comments - If needed, provide any additional information in this section regarding any of the above certification status changes.
14. Contractor/Consultant Representative's Signature - The person completing the form on behalf of the contractor/consultant's firm must sign their name.
15. Contractor/Consultant Representative's Name - Enter the name of the person preparing and signing the form.
16. Phone - Enter the area code and telephone number of the person signing the form.
17. Date - Enter the date the form is signed by the contractor/consultant's preparer.
18. SANDAG Representative's Signature - A SANDAG representative must sign their name to certify that the contracting records and on-site performance of the DBE(s) has been monitored.
19. SANDAG Representative's Name - Enter the name of the SANDAG representative signing the form.
20. Phone - Enter the area code and telephone number of the person signing the form.
21. Date - Enter the date the form is signed by the SANDAG representative.

REQUEST TO ADD SUBCONSULTANT AND/OR BENCH FIRM FORM

SANDAG Contract No. : _____ Prime Consultant Name: _____

This request is to (mark all that apply):

- Add a new subconsultant – **complete Section 1 below**
- Remove an existing subconsultant - **complete Section 2 below**

SECTION 1: ADDITION OF NEW SUBCONSULTANT

1. Subconsultant Name: _____

2. Is this subconsultant a DBE? Yes* No

*If subconsultant is a DBE, by signing below you confirm that you have checked the CUCP database to ensure the subconsultant will perform work that is covered by their DBE certification.

3. Services required of subconsultant (must be within scope of contract): _____

4. Dollar amount of work (if known): \$ _____

5. Reason for addition:

- Needed to meet U/DBE goal
- Service is not available from current team
- Other (justification required): _____

6. List three firms Prime Consultant contacted for consideration and attach a summary or copies of responses with cost proposal:

Firm Name:			
Contact:			
Phone:			
Email:			
Date of Contact:			

7. Describe why this subconsultant was selected (e.g.: qualifications, experience, price, availability). Price must be a factor.

-
8. Attach the following required forms:
- Bidder's List
 - Commitment Letter from Subconsultant
 - EEO Certification
 - Personnel Request Form (as required per contract)
 - For Federal Funding Only:
 - Statement of Eligibility
 - Cert. of Restrictions on Lobbying (only if subconsultant contract \geq \$100K)

9. If U/DBE goal/commitment applies (federal funds are involved) attach:
- Local Agency Prime U/DBE Commitment form OR
 - Good Faith Effort documentation

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience. Required federal provisions, if applicable, are included in our contract with this subconsultant and the subconsultant is aware it may be subject to audit.

Print Name

Signature

Date

SECTION 2: REMOVAL OF EXISTING SUBCONSULTANT*

1. Subconsultant Name: _____

2. Is this subconsultant a DBE? Yes* No

*Removal of a U/DBE subconsultant may affect U/DBE commitment

3. Services provided by subconsultant (as listed in contract): _____

4. Dollar amount of work (as listed in contract): _____

5. Reason for removal:

Unavailable

Unwilling to perform work

Unable to perform work

Other (justification required): _____

I certify that the removal of this subconsultant is consistent with the terms and conditions of the underlying contract.

Print Name

Signature

Date

THIS SECTION FOR SANDAG STAFF ONLY

Contract Manager

I am satisfied that this subconsultant is qualified and responsible and that its rates are fair and reasonable based on my professional experience.

Print Name

Signature

Date

Manager of Contracts & Procurement

I am satisfied that the addition/removal of this subconsultant is consistent with the terms and conditions of the underlying contract and the rates of this subconsultant are fair and reasonable.

Print Name

Signature

Date

Manager of Small Business Development* (Required only if adding or removing a DBE subconsultant)

The addition/removal of this DBE subconsultant is consistent with the requirements of 49 CFR Part 26.

Print Name

Signature

Date

SANDAG OFFICE SPACE USER AGREEMENT

I, _____, ("Contractor's employee"), am an employee of _____ ("Contractor"). Contractor has been hired by the San Diego Association of Governments (SANDAG) to provide services under SANDAG Contract No. _____ ("Contract"). Contractor intends to have contractor's employee work from SANDAG's office space during portions of the Contract term. In order to ensure that the staff and interests of SANDAG are protected, Contractor's employee is required to agree to the following terms:

- A. Contractor's employee is not a SANDAG employee or agent and understands that he/she cannot act as a SANDAG representative or enter into any agreement or contract on behalf of SANDAG.
- B. Contractor's employee is not eligible for any SANDAG benefits. Contractor's employee may contribute to the SANDAG coffee fund if he/she chooses to use SANDAG break room supplies.
- C. Contractor's employee will maintain confidentiality and not disclose confidential information that he/she may have access to while working under the Contract. Contractor's employee may have access to databases and records storage areas that contain confidential information from law enforcement, records that could be used in an investigation or litigation, records containing bank and credit card account numbers, records specifically marked "trade secret" or "confidential," or personnel or identity information.
- D. Contractor's employee agrees that he/she is forbidden from accessing any confidential databases or records storage areas without specific authorization from a SANDAG manager. Contractor's employee may not disclose any confidential or sensitive information to Contractor or any other entity or person who is not a SANDAG employee without first approval from the SANDAG project manager.
- E. Contractor's employee agrees that if at any point during the term of the contract he/she is working for an entity that is in litigation with or has an adversarial position to SANDAG, he/she must immediately notify the SANDAG Office of General Counsel.
- F. Contractor's employee will provide SANDAG with his/her home address and phone number in order to enable SANDAG to contact him/her in the event of an emergency such as a fire or security breach.
- G. Contractor's employee may purchase a parking card if he/she chooses to park in the SANDAG office building. SANDAG will not validate parking for contractor's employee or his/her guests.
- H. Contractor's employee may receive an ACCESS card and door security codes to the offices of SANDAG to be used only for the purposes of fulfilling his/her SANDAG-related business purposes on SANDAG premises. Contractor's employee has a duty to ensure that nonauthorized persons do not gain access through use by Contractor's employee of his/her access privileges.
- I. Contractor's employee's access to SANDAG premises or other premises he/she may need to access to perform work under the contract is limited to the areas where he/she has official business and the common areas, such as break rooms.
- J. Contractor's employee will comply with SANDAG policies forbidding unlawful harassment and discrimination and acknowledges receiving training on harassment and discrimination prevention from Contractor.
- K. Contractor's employee will comply with SANDAG policy prohibiting workplace violence.
- L. Contractor's employee will comply with the SANDAG policy prohibiting use of drugs or alcohol while performing work under the Contract.

- M. Contractor's employee will report and seek to avoid any possible conflict of interest that may be presented by access to information because of his/her use of SANDAG office space. Contractor's employee acknowledges that he/she has received training from contractor regarding ethical business practices and avoidance of financial or organization conflicts of interest in accordance with the terms of the contract.
- N. Contractor's employee agrees that access to and use of SANDAG computer systems and other data may be restricted and will be monitored by SANDAG. Contractor's employee agrees to such monitoring.
- O. Contractor's employee will not use any SANDAG stationary, business cards, Email address signatures, or any other practice or methodology that may mislead the public into believing contractor's employee has an employment relationship with SANDAG or has authority to act on behalf of SANDAG. Contractor's employees that wear clothing displaying one or more SANDAG-owned logos shall also wear a prominent nametag that clearly designates the person as an employee of the Consultant in order to not mislead the public.

By signing below I agree to all of the terms set forth in this agreement, which is effective this:

_____ day of _____ 20 _____

Contractor's Employee

**CONSULTANT EMPLOYEE IN PROJECT MANAGEMENT ROLE - CONFLICT OF INTEREST AND
CONFIDENTIALITY STATEMENT**

PROCUREMENT/CONTRACT NUMBER: _____

PROJECT NAME: _____

CONSULTANT NAME: _____

APPLICABILITY: Applicable to employees of the Consultant identified above who are in project management roles that make recommendations or influence/make decisions involving the SANDAG contracting process at any stage. This includes, but is not limited to, Consultant employees involved in drafting scopes of work, independent cost estimates, procurement evaluation criteria or specifications; selection of vendors or equipment on behalf of SANDAG; approval of invoices or payments to third parties, oversight of a third parties work product, or any other project management activity on behalf of SANDAG that requires the Consultant's employee to be free of financial bias, compromised loyalty to the best interests of SANDAG, or organizational conflict of interest.

- I am an employee of a consultant under contract to the local agency that is responsible for the procuring and administering of one or more consultant/vendor contracts pursuant to my employer's contract with SANDAG.
- I have project management responsibilities for SANDAG as an employee of Consultant and my title is listed below.
- I hereby certify as follows:
 1. I will not directly or indirectly participate in, manage, or oversee any consultant/vendor selection procurement process in which the consulting firm of which I am employed is competing as a consultant or subconsultant.
 2. I will not directly or indirectly influence any employee, staff member, or other individual participating in any consultant selection procurement process in which the consulting firm of which I am employed is as a consultant or subconsultant.
 3. I will not directly or indirectly participate in, manage, or oversee any SANDAG contract that is with the consulting firm of which I am employed, regardless of whether the involvement of my employer in the contract is as a consultant or subconsultant. Among other things, this includes my not being involved in managing the work; and not approving changes in the schedule, scope, deliverables or invoices.
 4. I understand that if I am involved in any SANDAG contract that is with the consulting firm of which I am employed, in violation of 1. or 2. above, that SANDAG will no longer be eligible for Federal or State reimbursement because of my involvement.
 5. I understand that I am not allowed to accept gifts (tickets, meals, travel, etc.) with an aggregate value of more than \$50 per year from a third-party consultant/vendor that may compete for or be paid SANDAG public funds if I had any project management role pursuant to the procurement/contract(s) identified above relating thereto.
 6. I understand that I will be required to file a Disclosure of Financial Interests (Form 700) in accordance with requirements in Government Code Section 1090
- I certify that I have read 2 CFR 200.112 and 23 CFR 1.33 and I agree not to participate in selection, or in the award or administration of a SANDAG contract if a conflict of interest, real or apparent, would be involved. Note: SANDAG is a Caltrans subgrantee and a Federal Transit Administration grantee.

49 CFR 18.36(b)(3)

- (3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
- (i) The employee, officer, or agent,
 - (ii) Any member of his immediate family,
 - (iii) His or her partner, or
 - (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.
- I fully understand that it is unlawful for a person to utilize any SANDAG information, which is not a matter of public record, for private gain.
- I fully understand that any violation of the above could be a basis for ineligibility of reimbursement of State or Federal project funds and agree that I will immediately report any potential or actual violation of the above to the SANDAG Office of General Counsel.

Name of Firm: _____

Signature _____ Date _____

Printed Name: _____

Title: _____

Distribution: 1 copy to Contract File

POLICY ON USE OF TECHNOLOGY AND ELECTRONIC RESOURCES BY SANDAG “NON-EMPLOYEES”

I. SCOPE OF POLICY

The policy applies to individuals who are not employees of SANDAG, or “non-employees.” For purposes of this policy the term “non-employee” includes business or project partners, consultants, independent contractors, and staffing agency employees. This policy is intended to apply to all SANDAG technology and electronic resources, including, but not limited to: computer systems, software, hardware, servers, networks, electronic mail, cell phones, and computing devices paid for, in whole or in part (including reimbursement of expenses), by SANDAG, Internet services, Intranet, voicemail system, facsimile machines, and photocopiers. The term “computing devices” includes, but is not limited to smart phones, PDAs, electronic tablets, and other similar devices. This policy applies to all non-employee users of SANDAG technology and electronic resources whether or not they are using SANDAG technology or electronic resources during or after work hours; or whether or not they access the technology or resources from SANDAG premises or some other location.

II. NO EXPECTATION OF PRIVACY

Non-employee users should not expect that the information placed on or through SANDAG electronic resources is private. By using SANDAG technology and electronic resources, users consent to the monitoring discussed in this policy, without any additional notice. SANDAG may not require or request a non-employee to (1) disclose a username or password to access personal email/social media; (2) access his or her personal email/social media in the presence of a SANDAG representative or other non-employee; or (3) divulge any personal email/social media unless it is reasonably believed that content on the email/social media is relevant to an investigation of allegations of a non-employee’s misconduct or violation of law, or to access a SANDAG-issued electronic device.

Following is a list of some, but not all, circumstances under which a user’s activities may be disclosed to others. Note that with regard to computers, information on all drives may be accessed or monitored, not just data on the shared drives.

- In order to ensure SANDAG technology and electronic resources are not misused, SANDAG may monitor or investigate computer files, electronic messages, voicemail, Internet use, and all other information kept or accessed by users on its technology or electronic resources (collectively referred to as ‘information’) to determine whether a user has misused these resources. Users should not expect information stored on or accessed from SANDAG electronic resources to be private, even if passwords, account codes, or other security measures are utilized. Information may be monitored regardless of its origin or content.
- Any information retained on or accessed from SANDAG property may be disclosed to outside parties, including law enforcement authorities, in the event of an investigation, request for public records, or legal process.
- When a non-employee user is absent, unavailable, or their relationship with SANDAG has ended, another user may need to access information kept on the unavailable user’s or former user’s computer or voicemail.
- Scans by law enforcement agencies and SANDAG Information Systems (IS) staff are made on an ongoing basis to check for malware, viruses, or other illegal access or use of SANDAG information or equipment that may have been initiated by persons inside or outside SANDAG.

III. UNACCEPTABLE USE

The use of SANDAG technology and electronic resources is a privilege that may be revoked at any time. SANDAG will not tolerate misuse of its property. Nothing in this policy is meant to prohibit use of electronic resources for labor activities or First Amendment speech permitted by law. Conduct that may result in breach of a consultant, independent contractor, or staffing agency’s contract with SANDAG and/or revocation of privileges includes, but is not limited to:

- Damage, theft, duplication, or unauthorized alteration of hardware or software.
- Placement of unlawful information, computer viruses, or harmful programs on or through an electronic resource.
- Obtaining, downloading, viewing, or otherwise gaining access to information or materials which may be deemed unlawful, harmful, abusive, obscene, pornographic, descriptive of destructive devices, or which are harmful matter as defined in California Penal Code Section 313(a), or which are otherwise objectionable under current SANDAG policies or applicable laws.
- Violation of the federal Communications Decency Act or any other federal or state law applicable to computer and/or telecommunications systems.
- Use of SANDAG electronic resources for personal gain, commercial purpose outside of SANDAG's business purposes, or political or religious activity.
- Use of SANDAG electronic resources to unlawfully harass other persons. Examples: display or transmission of messages containing ethnic slurs, racial comments, off-color jokes, cartoons with sexual content, or anything that may conflict with the SANDAG policy of providing a workplace sensitive to diversity and free of discrimination, harassment, and disrespect.
- Unauthorized use, review, duplication, dissemination, removal, damage, or alteration of files, passwords, computer systems, or programs, or other property of SANDAG, a business, or any governmental agency to conduct improper activities, including but not limited to "hacking."
- Use of copyrighted, trademarked, or patented data, software or other materials without permission from the owner, including, but not limited to, use of data downloaded from the Internet and the creation or maintenance of archival copies of materials obtained through the Internet, unless such materials are in the public domain. This includes use of SANDAG owned logos or trademarks without approval from the Director of Communications or a member of the Executive Team.
- Placing confidential, sensitive, or proprietary information in electronic messages or on the Internet.
- Creating or utilizing chain letters, chat rooms, or other Multiple User Dimensions ("MUDs"), with the exception of those bulletin boards or electronic mail groups that may be used for specific work-related communications.
- Use of social networking sites such as Facebook, Twitter, or Linked-In, or other Internet blogging sites during work hours for non-SANDAG business is forbidden if the time taken to do so or the content of the posting could be disruptive to SANDAG business. Posting to SANDAG's social networking sites may only be authorized by SANDAG's management.
- Posting information on the Internet or in electronic mail or electronic mail attachments that does not reflect the standards and policies of SANDAG. Non-employees are expected to be respectful of SANDAG, SANDAG employees, and other non-employees, member agencies, and the public. If a non-employee represents himself or herself on the Internet as a SANDAG consultant or independent contractor, he/she is expected to ensure the page content complies with professional standards of conduct. Non-employees are prohibited from accessing, posting, or placing any content using SANDAG property that associates SANDAG with illegal, unethical, or unprofessional activity.
- Establishing Internet or other external network connections that could allow unauthorized persons to gain access to SANDAG systems and information. These connections include, but are not limited to, the establishment of hosts with public modem dial-ins, World Wide Web home pages, File Transfer Protocol sites, and peer-to-peer networking (file-sharing) nodes.
- Downloading information or visiting websites that are likely to contain computer viruses or other malware.
- Spending excessive time browsing the Internet for non-SANDAG-work related information or sending personal e mail during work periods. This includes time spent texting, instant-

messaging, blogging, tweeting, or viewing Facebook, Linked-In, or similar social networking sites.

- Use of SANDAG resources for non-SANDAG- work related matters that take up too much disk or memory space on an electronic resource, slow down the electronic resource's ability to process data, or deplete SANDAG office supplies.

IV. USE OF TECHNOLOGY WHILE OPERATING A VEHICLE

SANDAG non-employees are prohibited from utilizing an electronic device such as a cell phone without hands-free equipment while operating a vehicle to conduct SANDAG business. Non-employees also are prohibited from sending text messages or emails while operating a vehicle if they are using the vehicle to conduct SANDAG business.

V. DISCLOSURE OF SANDAG INFORMATION OR DATA

SANDAG non-employees who transfer or copy information or data from SANDAG technology or electronic resources to devices that are not owned or controlled by SANDAG must exercise caution to prevent SANDAG information or data from being hacked or otherwise disclosed. In the event any SANDAG information or data is disclosed to unauthorized persons, or electronic resources containing SANDAG information or data is hacked, lost or stolen, the non-employee must notify the SANDAG Information Systems Manager within 24 hours.

VI. CONSEQUENCES OF VIOLATING THIS POLICY

The consequences for violating this policy include, but are not limited to, termination of the non-employee's contract between SANDAG and the non-employee's employer, termination of the non-employee's services for SANDAG, and/or referral to legal authorities for prosecution under California Penal Code Section 502 or other applicable laws.

VII. REPORTING OF ABNORMALITIES OR MISUSE

Users should report any misuse, abnormality, or security breach as soon they observe it. Abnormalities or breaches of security should be reported to the Information Systems Manager within 24 hours, preferably immediately. If any user observes a misuse, such as an electronic communication containing obscene or harassing language, or unauthorized access to electronic resources by a consultant or independent contractor, the user should report the misuse to the SANDAG Information Systems Manager.

VIII. FOR FURTHER INFORMATION

For additional guidance on the use of technology and electronic resources by non-employees at SANDAG, please consult with a member of the SANDAG Information Systems team.



Acknowledgement

use of technology and electronic resources

by SANDAG "Non-Employees"

I understand that the Use of Technology and Electronic Resources by SANDAG "Non-Employees" policy covers me as a "non-employee" per the definition stated in the policy. I further understand that the policy is applicable to, but not limited to, computer systems, software, hardware, servers, networks, electronic mail, cell phones, computing devices, paid for, in whole or in part (including reimbursement of expenses) by SANDAG. Collectively, these devices are referred to in the policy as "technology and electronic resources." In addition, the policy covers Internet services, Intranet, voicemail systems, facsimile machines, scanners and photocopiers on SANDAG premises and/or within SANDAG control.

I understand that the technology and electronic resources provided by SANDAG are to be used for official SANDAG business. These resources shall only be used for legal purposes and shall not be used in any manner or for any purpose that is illegal, dishonest, threatening, or inconsistent with law, any contract between SANDAG and me or my employer, or SANDAG policy.

I understand that by using the technology and electronic resources provided by SANDAG I should not have an expectation of privacy. Any information placed on, created on, or transmitted in or through these resources belongs to SANDAG, and that information, as well as any information accessed from these resources, may be monitored, searched, accessed, used, disclosed, and/or preserved by SANDAG. The assignment or use of a User ID and/or password is not an indicator of privacy.

I understand that in the event any SANDAG information or data is disclosed to unauthorized persons, or equipment containing SANDAG information or data is hacked, lost or stolen, I must notify the SANDAG Information Systems Manager within 24 hours.

I have read the policy, will comply with all of the terms and conditions set forth therein, avoid activities described in the Unacceptable Uses section, and will ensure that my use of SANDAG technology resources complies with the policy.

Questions regarding the policy, or reports of abnormalities or misuse, should be directed to the SANDAG Information Systems Manager.

Print Name: _____

Title/Employer: _____

Signature: _____ Date: _____



PART 5 - GLOSSARY

A&E: Architecture and Engineering.

Agreement: The contract between SANDAG and Contractor or Consultant awarded pursuant to this RFP.

BAFO: Best and Final Offer, which can be requested from one or more proposers by SANDAG during the negotiations process for a contract document.

Bench: Small Business and/or Disadvantaged Business Enterprises that have provided SANDAG with their rates and requested that prime contractors be notified of their interest in working as subcontractors on SANDAG projects in stated areas of specific expertise.

Business Day: Monday through Friday except for the following holidays as they are observed per the California Government Code: New Year's Day, Martin Luther King Day, Presidents' Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after, and Christmas Day.

Caltrans: The California Department of Transportation.

Contractor or Consultant: Interchangeable terms that when started with an uppercase "C" refer to the prime consultant or prime contractor that will provide the services either directly or through the use of Subcontractors or Subconsultants pursuant to the Agreement.

CFR: Code of Federal Regulations.

CGL: Commercial General Liability.

CIS: Compliance Information System.

CM: Construction Management.

COI: Certificate of Insurance.

Confidential Information: information in any form that is not generally known and that is treated as confidential by a party, including business, financial, statistical, and non-public personal information, trade secrets, know-how, applications, documentation, schematics, procedures, as well as PII, information covered by legal privilege, and other proprietary information that may be disclosed or incorporated in materials or products provided to one party by the other, whether or not intentionally or unintentionally disclosed, and whether or not such information is subject to legal protections or restrictions.

CPR: Certified Payroll Records.

CUCP: California Unified Certification Program; a State-run program that certifies firms as DBEs, eliminating the need for firms to obtain certifications from multiple agencies.

DBE: Disadvantaged Business Enterprise; a for-profit small business concern owned and controlled by a socially and economically disadvantaged person as defined in 49 CFR 26.5 and as certified by the CUCP.

Deliverables: Services and work products required to be provided to SANDAG under the Agreement.

DGS: Department of General Services

DIR: The State of California's Department of Industrial Relations

DISCO: Diversity in Small Contractor Opportunities

DOL: Department of Labor

DOT: The federal Department of Transportation.

DUNS Number: The 9-digit number assigned by Dun and Bradstreet, Inc. to identify unique business entities.

DVBE: Disabled Veteran Business Enterprise

ECI: Employment Cost Index

EEO: Equal Employment Opportunity

Engineer: The person designated by SANDAG to have responsibility for planning and supervising all technical aspects of the work under this Agreement, including development of specifications, acceptance of goods, and approval of payment. **Notice to Proceed:** a document from SANDAG instructing a Contractor that the Agreement has been executed and to commence delivery of the goods and services to be provided.

EPA: Environmental Protection Agency.

FPR: Final Proposal Revisions.

FHWA: Federal Highway Administration.

FRA: Federal Railroad Administration.

FTA: Federal Transit Administration.

FUR: Final Utilization Report – Utilization of All Subconsultants/Subcontractors, Underutilized/Disadvantaged Business Enterprises and Small Businesses

GFE: Good Faith Effort - the effort that must be made by a Proposer to utilize a sufficient number of DBEs. GFE documentation must be submitted by a Proposer when it is unable to meet the DBE goal on federally-funded work.

LCMS: Labor Compliance Monitoring System.

MTS: Metropolitan Transit System.

NAICS: North American Industry Classification System.

NCTD: North County Transit District.

NEPA: National Environmental Policy Act.

Notice to Proceed: A document from SANDAG instructing a Contractor that the Agreement has been executed and that work under the Agreement is to commence

PCI: Personal Credit Information.

PII (Personally Identifiable Information): information that can be used to identify a specific individual, either alone or when combined with other private or public information that can be linked in some way to a specific individual.

Project Manager: The individual identified by SANDAG as SANDAG's primary contact for the receipt and management of the goods and services required under the Agreement.

Proposer: The company or entity submitting a proposal to supply SANDAG with services in response to this solicitation and which, if selected for award, will be known as the Contractor or Consultant.

Repair Work: Tasks required to return a facility or infrastructure to proper operating condition.

SaaS: Software as a Service.

SANDAG: San Diego Association of Governments.

SANDAG Data: All information, data, and other content, including Confidential Information and other information whether or not made available by SANDAG or SANDAG's agents, representatives or users, to a Contractor or potential Contractor or their employees, agents, representatives or Subcontractors, and any information, data and content directly derived from the foregoing, including data reflecting user access or use.

SAM: System for Award Management.

SB: A Small Business or Small Business Enterprise as defined in 13 CFR 121.

SIP: State Implementation Plan.

Subcontractor or Subconsultant: Interchangeable terms that refer to a firm contracted by the prime consultant to perform a portion of the scope of work for the prime consultant.

Task Order: A contract document from SANDAG authorizing Contractor to provide goods and/or services in excess of \$10,000 that is issued under the terms and conditions of an established Agreement.

Technical Specification: Part of the overall design documents for a project, setting forth the features, characteristics, standards, quantities and other criteria for products and services to be used by the Contractor in undertaking work and completing a project.

Work Order: A contract document from SANDAG authorizing Contractor to provide goods and/or services for \$10,000 or less in value that is issued under the terms and conditions of an established Agreement.

U.S.C.: United States Code