COOPERATIVE AGREEMENT NO. C-7-1556

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

CITY OF GARDEN GROVE

FOR

THE CONSTRUCTION PHASE

OF THE

OC STREETCAR PROJECT

THIS COOPERATIVE AGREEMENT ("Agreement"), is effective this _____ day of _____, 2017, by and between the Orange County Transportation Authority, a public entity of the State of California (herein referred to as "AUTHORITY") and the City of Garden Grove, a municipal corporation duly organized and existing under the laws of the State of California (hereinafter referred to as "CITY"), each individually known as "Party" and collectively known as the "Parties".

RECITALS:

WHEREAS, the OC Streetcar Project ("Project") refers to the implementation of the OC Streetcar as illustrated in Exhibit A and as specifically described in this Agreement; and

WHEREAS, the Santa Ana/Garden Grove Streetcar Locally Preferred Alternative was identified by the CITY's City Council at its public meeting on August 5, 2014; and

WHEREAS, on August 11, 2014, the AUTHORITY's Board of Directors approved the AUTHORITY to construct the Project and be the implementing agency on all remaining phases of the OC Streetcar System, including operation and maintenance; and

WHEREAS, the CITY's City Council considered and approved the Project's locally preferred alternative at its public meeting on February 10, 2015; and

WHEREAS, the AUTHORITY and the CITY entered into a Memorandum of Understanding on September 22, 2015 for this Project (MOU); and

WHEREAS, the AUTHORITY and the CITY entered into a Design Agreement on May 9, 2016 for the design phase of this Project; and

WHEREAS, the AUTHORITY is a grantee of a Federal Transit Administration (FTA) grant and in cooperation with the FTA and the CITY, is proposing to design, construct, operate and maintain the OC Streetcar; and

WHEREAS, this Agreement defines the roles, responsibilities, commitments and obligations, for the AUTHORITY and the CITY as they relate to the construction of the Project including financial obligations; and

WHEREAS it is the intent of the AUTHORITY and the CITY that the CITY shall be acting at all times in respect to the Project as a Vendor as that term is used for federal funding requirements purposes; and

WHEREAS, the OC Streetcar Project becomes the "OC Streetcar System" upon the initiation of revenue service; and

WHEREAS, the Parties intend to enter into an agreement, prior to Revenue Service, to establish each Party's roles and responsibilities as they relate to the operations and maintenance of the OC Streetcar System; and

WHEREAS, the award of the Project to a Construction Contractor is subject to receipt of federal, state, and/or local funds adequate to carry out the provisions of the Project; and

WHEREAS, the AUTHORITY's Board of Directors authorized this Agreement on March 27, 2017; and

WHEREAS, the CITY's City Council approved this Agreement on _____;

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

ARTICLE 1. DEFINITIONS

"Betterment" means any work or items that are requested by the CITY or a third party that go beyond what is needed for the basic functioning of the Project. Betterments must i) not be prohibited

by a governing state or federal standard ii) not adversely impact the operation of the Project and iii) not unreasonably delay or interfere with the Project schedule. Notwithstanding the foregoing, none of the following shall be considered Betterments:

(a) A change in scope to which the Parties mutually agree, is necessary for the construction, operation or maintenance of the Project;

(b) A requirement of applicable law;

(c) A requirement of applicable CITY standards, in effect at the execution of the Design Agreement,;

(d) Any measures to mitigate environmental or other impacts of the Project arising from the construction or operation or maintenance of the Project, including measures identified in the Project's EIR or any required supplemental or addenda environmental report once cleared.

"CEQA" means California Environmental Quality Act.

"Construction Contractor" means the firms(s) procured by the AUTHORITY to construct the Project or portions of the Project.

"Day" or "Days" means calendar days unless a different meaning clearly appears from the context.

"Design Agreement" means Cooperative Agreement No. C-5-3807 between AUTHORITY and CITY for the design phase of the OC Streetcar Project, dated May 9, 2016, which sets forth the terms and conditions to which the OC Streetcar Project will be designed.

"Design Consultant" means the firm(s) procured by the AUTHORITY to perform preliminary and/or final design services to produce the Plans and Specifications.

"Effective Date" means the date this Agreement is executed by the Parties.

"OC Streetcar System" means the OC Streetcar passenger transportation system to be owned, operated, and maintained by the AUTHORITY, including all tracks, stations, streetcar vehicles, conduits, electrical lines, traction power poles, traction power substations, cross-span wires, streetcar

signal equipment, maintenance facilities and other functionally related and appurtenant equipment and facilities.

"Operations and Maintenance Agreement" means the cooperative agreement between the AUTHORITY and the CITY establishing the roles and responsibilities with respect to the operations and maintenance of the OC Streetcar.

"PE ROW" means the property owned by the AUTHORITY intended to be used for the OC Streetcar between Raitt Street and Harbor Boulevard.

"Plans and Specifications" means the Project plans, specifications, and special provisions prepared by the Design Consultant and/or the AUTHORITY providing the information necessary to construct the Project.

"Project Submittals" means all drawings, product data, test data, specifications, design submittals, schedules, cost estimates, erection drawings or similar documents which are produced by or on behalf of the AUTHORITY during the construction of the Project, and which relate to the requirements in the Plans and Specifications or otherwise affect the interests of the CITY under this Agreement.

"Ready to Bid" is a design package level of completeness indicating the design is complete, the CITY's comments have been addressed, all drawings and specifications have been affixed with a seal as required, and the title sheet has been signed by both the AUTHORITY and the CITY.

"Revenue Service" means the streetcar is operational and providing service to the public as intended.

"Site Plan Review" is the process by which the CITY reviews project development submittals and identifies the requirements and conditions of approval for a development project.

"Work Plan" is the CITY's staffing budget for the responsibilities identified in this Agreement and as provided for in Exhibit E.

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ARTICLE 2. COMPLETE AGREEMENT

A. This Agreement (which includes the above Recitals and those attachments incorporated herein by reference), the Design Agreement, Construction Agreement, and Operations and Maintenance Agreement executed or intended to be executed by the Parties that are incorporated herein by reference, constitute the entire terms and conditions for the subject matter addressed in this Agreement between the AUTHORITY and the CITY. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions of this Agreement. To the extent there is any conflict as between this Agreement and other agreements entered into by the Parties that are referenced herein, this Agreement shall control with respect to the subject matter covered herein.

B. The AUTHORITY's failure to insist on any instances of the CITY's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of the AUTHORITY's right to such performance or to future performance of such terms or conditions, and the CITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon the AUTHORITY except when specifically confirmed in writing by an authorized representative of the AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

C. The CITY's failure to insist on any instances of the AUTHORITY's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of the CITY's right to such performance or to future performance of such terms or conditions, and the AUTHORITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon the CITY except when specifically confirmed in writing by an authorized representative of the CITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

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ARTICLE 3. SCOPE OF AGREEMENT

This Agreement specifies the roles and responsibilities of the Parties as they pertain to the construction phase of the Project and subjects addressed herein. Both the AUTHORITY and the CITY shall cooperate and coordinate with the other in all activities covered by this Agreement and other supplemental agreements that may be required to facilitate purposes thereof.

ARTICLE 4. RESPONSIBILITIES OF THE AUTHORITY

The AUTHORITY shall carry out the responsibilities for the Project assigned herein to the AUTHORITY as such are further detailed in Exhibit B, entitled “Project Scope” and Exhibit C, entitled “Financial Obligations”.

ARTICLE 5. RESPONSIBILITIES OF THE CITY

The CITY shall carry out the responsibilities for the Project assigned herein to the CITY as such are further detailed in Exhibit B, entitled “Project Scope” and Exhibit C, entitled “Financial Obligations”.

ARTICLE 6. DELEGATED AUTHORITY

The actions required to be taken by the CITY in the implementation of this Agreement are delegated to its City Manager, or designee. The actions required to be taken by the AUTHORITY in the implementation of this Agreement are delegated to the AUTHORITY’s Chief Executive Officer or designee.

ARTICLE 7. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, the AUTHORITY and the CITY mutually agree that the AUTHORITY’s maximum cumulative payment obligation under this Agreement shall be Eighty Seven Thousand Five Hundred Four Dollars ($87,504), unless agreed to and amended in writing by both Parties.

ARTICLE 8. AUDIT AND INSPECTION

The AUTHORITY and the CITY shall maintain a complete set of records in accordance with generally accepted accounting principles for a period of time from when the record is first generated

until four (4) years after Project completion or until any on-going audit is completed. Upon reasonable notice, the CITY shall permit the authorized representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and other data and records of the CITY. The AUTHORITY may conduct an audit of such records at any time during the period in which the records are required to be maintained. The AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above provision with respect to maintenance of records and audits shall be included in all CITY contracted work which is paid for with Project funds.

ARTICLE 9. INDEMNIFICATION

A. To the fullest extent permitted by law, the CITY shall defend (at the CITY's sole cost and expense with legal counsel reasonably acceptable to the AUTHORITY), indemnify, protect, and hold harmless the AUTHORITY, its officers, directors, employees, and agents from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees, including but not limited to claims arising from injuries to or death of persons (the CITY's employees included), for damage to property, including property owned by the AUTHORITY, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent acts, omissions or willful misconduct of the CITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

B. To the fullest extent permitted by law, the AUTHORITY shall defend (at the AUTHORITY's sole cost and expense with legal counsel reasonably acceptable to the CITY), indemnify, protect, and hold harmless the CITY, its officers, directors, employees, and agents from and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney fees, including but not limited to claims arising from injuries to or death of persons (the AUTHORITY's employees included), for damage to property, including property owned by the CITY, or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the

negligent acts, omissions or willful misconduct of the AUTHORITY, its officers, directors, employees or agents in connection with or arising out of the performance of this Agreement.

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

ARTICLE 10. INSURANCE

A. AUTHORITY shall require its Construction Contractor to maintain general liability and automotive liability insurance coverages with minimum liability limits of no less than $2 Million per occurrence, and $5 Million in aggregate throughout Project construction covering all Project work performed under contact with the AUTHORITY. The Parties shall require all contractors retained to construct or inspect any portion of the Project, exclusive of Construction Contractor's subcontractors, to maintain general liability and automotive liability insurance coverages with minimum liability limits of no less than one million dollars ($1,000,000) per occurrence, and two million dollars ($2,000,000) in aggregate throughout Project construction unless otherwise agreed to by the Parties. The AUTHORITY shall require the Construction Contractor to maintain contractor's pollution liability insurance (CPL) with a total liability of no less than five million dollars ($5,000,000), per occurrence and ten million dollars ($10,000,000) in the aggregate. The CPL shall include coverage for cleanup costs, third-party bodily injury and property damage resulting from pollution conditions caused by contracting operations. The CPL shall also provide coverage for transportation and off-site disposal of materials, if any. All contractors shall carry Workers' Compensation as required by law. Each insurer shall be licensed to do business in California with an A.M. Best rating level of A-Class VII or better, unless otherwise agreed to by the Parties.

B. All policies of insurance required herein, other than Workers' Compensation insurance, shall name the CITY and AUTHORITY and their respective officers, agents and employees as additional insureds. An endorsement to that effect or a copy of the policy adding such additional insureds shall be required prior to the contractor commencing any Project construction. All such policies shall waive any right of subrogation as against the additional insureds and shall provide that

no policy shall be suspended, cancelled or reduced except after a minimum of 15 days prior written notice has been provided to CITY and AUTHORITY.

ARTICLE 11. ADDITIONAL PROVISIONS

A. Term of Agreement: This Agreement shall be in full force and effect from the Effective Date until one year past the first day of Revenue Service, unless earlier terminated as provided herein. The indemnification and defense obligations shall survive the termination of this Agreement.

B. Termination: In the event either Party materially defaults in the performance of their obligations under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the option to terminate this Agreement upon thirty (30) days prior written notice to the other Party. However, prior to any such termination, the non-defaulting Party shall have provided the defaulting Party written notice of the alleged default or breach, specifying the nature of the default and the cure. In the absence of a default that poses an immediate health and safety risk, the notice shall provide at least fifteen (15) days to cure such default or if the default cannot be cured in such time, a reasonable amount of time to cure the default, but in no event longer than forty-five (45) days unless the Parties agree otherwise.

C. Termination for Convenience: This Agreement may not be terminated by either Party except as specifically provided in this Agreement.

D. Termination for Lack of Funding: The AUTHORITY may, in its absolute discretion, terminate this Agreement in the event sufficient funding is not available to construct the Project.

E. Compliance: The AUTHORITY and the CITY shall comply with all controlling federal, state, and local laws, statues, ordinances and regulations of any governmental authority having jurisdiction over the Project.

F. Legal Authority: The AUTHORITY and the CITY represent that the persons executing this Agreement are authorized to execute this Agreement on behalf of their respective Parties and that, by so executing this Agreement each Party shall be formally bound to the provisions of this Agreement.

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

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

I. Force Majeure: Either Party shall be excused from performing its obligations under this Agreement due to any event beyond the control of the Party to the extent the event materially and adversely affects a Party's ability to perform its obligations under this Agreement and could not have been avoided by reasonable due diligence. Force Majeure events shall include, but not be limited to: (i) discovery of any resources or a change in law which requires a state or federal approval that was not previously required for the Project; (ii) regulatory and technical changes not previously required for the Project; (iii) fire, flood, earthquake, or other natural disaster; (iv) strikes and labor disputes of greater than 30 days; (v) delays caused by permitting agencies that exceed the reasonably anticipated review times; (vi) failure of utilities to relocate in a reasonable time; and (vii) war, terrorist activities, government sanctions, embargos, civil unrest, and material or labor shortages. A Party's performance will only be excused for the length of the delay and any reasonable time thereafter that is necessary to commence performance of a Party's obligations under this Agreement.

J. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment. Notwithstanding the foregoing, AUTHORITY may assign this Agreement to another public entity provided that it provides notice to

CITY at least six (6) months prior to the effective date of such assignment. The notice shall include evidence that such public entity is authorized by law to construct and/or operate the Streetcar System and has the financial capability, infrastructure and personnel to meet AUTHORITY's obligations under this Agreement. CITY shall approve such assignment within 45 days of such notice from AUTHORITY, unless CITY reasonably determines that the proposed assignee cannot meet the obligations of this Agreement. AUTHORITY shall provide such additional information as is reasonably required by CITY to make its determination.

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

L. Dispute Resolution: All disputes arising under this Agreement shall be resolved in accordance with the dispute resolution process in this Article. The Parties shall diligently cooperate with each other in an effort to resolve any dispute during the dispute resolution process. If a dispute arises under this Agreement, either Party may file a written request with the other Party to invoke the dispute resolution process. Upon receipt of such a request each Party shall designate a staff representative, which representatives shall meet within 14 days of the date of the written request in an effort to resolve the dispute. If the dispute has not been resolved within 14 days or any extension thereof mutually agreed upon by the Parties, the dispute shall be referred to each Party's Executive Director, who shall meet within 14 days of the referral in an effort to resolve the dispute. If the Executive Directors are unable to resolve the dispute within 14 days or any extension thereof mutually agreed upon by the Parties, then the dispute shall be referred to the AUTHORITY's Chief Executive Officer and the CITY's City Manager, who shall meet within 14 days of the referral in an effort to resolve the dispute. If the dispute remains unresolved within such 14 days or any extension thereof mutually agreed upon by the Parties, either Party may initiate litigation.

M. Litigation fees: Should litigation arise out of this Agreement for the performance thereof, each Party shall be responsible for its own costs and expenses, including attorney's fees.

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N. Notices: Any notices, requests, or demands made between the Parties pursuant to this Agreement shall be in writing and delivered by certified mail. Phone and e-mail may be used for convenience but are not considered as official notice. Notice information may be changed by either Party at any time upon written notification being received by the other Party of the change in notice information with the information provided below. Notices are to be directed as follows:

To CITY: City of Garden Grove 11222 Acacia Parkway Garden Grove, CA 92840	**To AUTHORITY:** Orange County Transportation Authority 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584
ATTENTION: Scott C. Stiles City Manager Tel: (714) 741-5379 E-Mail: sstiles@garden-grove.org	**ATTENTION:** Robert Webb Senior Contract Administrator Contracts Administration and Management Tel: (714) 560-5743 E-Mail: rwebb@octa.net
Cc: William E. Murray Public Works Director Tel: (714) 741-5379 E-Mail: wem@garden-grove.org	**Cc:** James G. Beil Executive Director, Capital Programs Tel: (714) 560-5646 E-Mail: JBeil@octa.net

O. Amendments: This Agreement may be modified or amended only by a written document executed by both the AUTHORITY and the CITY. Such document shall expressly state that it is intended by the Parties to amend specifically identified terms and conditions of this Agreement.

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P. Compliance with FTA Requirements: The CITY and AUTHORITY shall comply with all Federal Transit Administration (FTA) requirements, including but not limited to, Circular C 5010 1D and Circular 4220.1F as updated from time to time. The CITY shall include Exhibit D, entitled "Required Federal Clauses' in any contract entered into with any third party related to this Project.

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Q. Incorporation of Exhibits: This Agreement includes the exhibits listed below, all of which are incorporated herein by this reference and made part hereof as though fully set forth.

EXHIBIT A – PROJECT MAP

EXHIBIT B – PROJECT SCOPE

EXHIBIT C – FINANCIAL OBLIGATIONS

EXHIBIT D – REQUIRED FEDERAL CLAUSES

EXHIBIT E – CITY SUPPORT WORK PLAN

CITY OF GARDEN GROVE **ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: _____
Scott C. Stiles
City Manager

By: _____
Darrell Johnson
Chief Executive Officer

ATTEST:

By: _____
Teresa Pomeroy
City Clerk

Dated: _____

APPROVAL RECOMMENDED:

By: _____
James G. Beil
Executive Director, Capital Programs

Dated: _____

LIST OF EXHIBITS

Exhibit A – Project Map

Exhibit B – Project Scope

Exhibit C – Financial Obligations

Exhibit D – Required Federal Clauses

Exhibit E – City Support Work Plan

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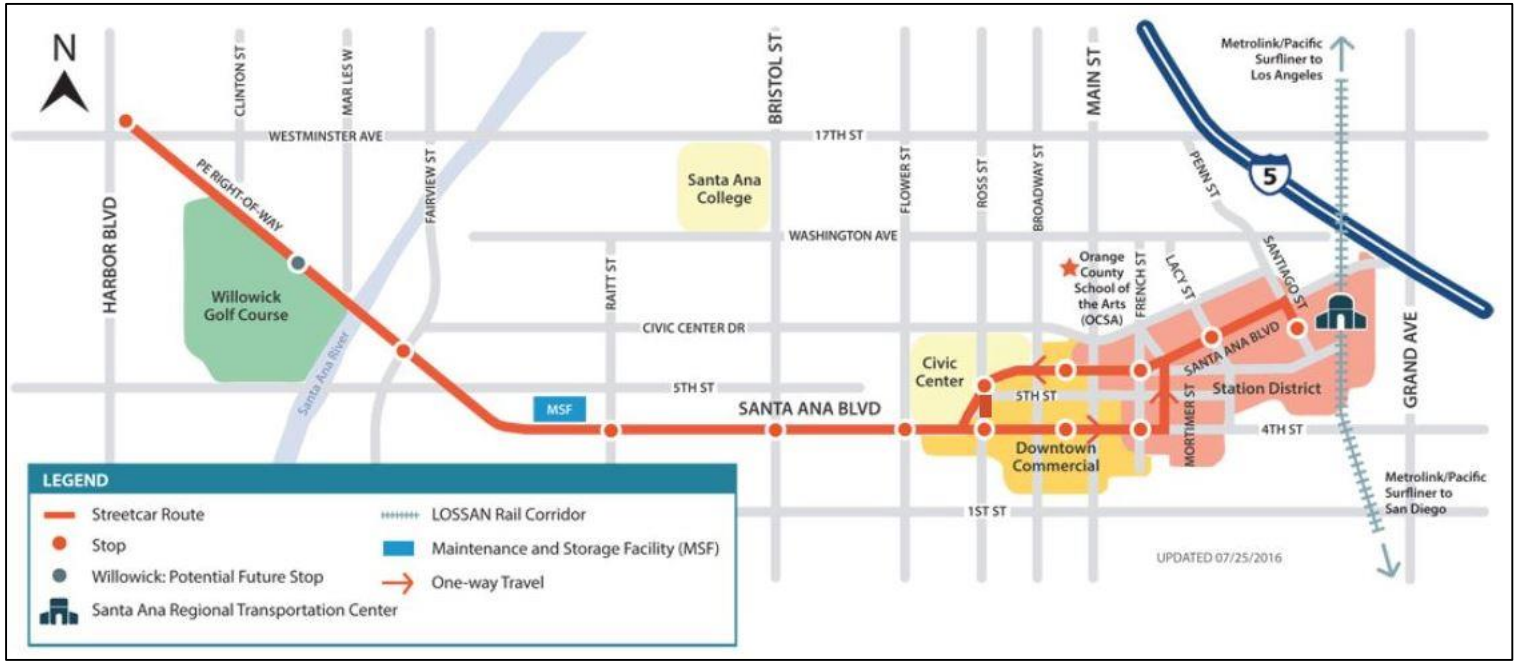
PROJECT MAP


N
CLINTON ST
MAR LES W
BRISTOL ST
MAIN ST
Metrolink/Pacific Surfliner to Los Angeles
WESTMINSTER AVE
17TH ST
PE RIGHT-OF-WAY
FAIRVIEW ST
Santa Ana College
FLOWER ST
ROSS ST
BROADWAY ST
PENN ST
5
HARBOR BLVD
WASHINGTON AVE
Willowick Golf Course
RAITT ST
Orange County School of the Arts (OCSA)
FRENCH ST
LACY ST
SANTIAGO ST
CIVIC CENTER DR
SANTA ANA BLVD
Civic Center
5TH ST
Station District
GRAND AVE
Santa Ana River
MSF
SANTA ANA BLVD
MORTIMER ST
4TH ST
Downtown Commercial
Metrolink/Pacific Surfliner to San Diego
1ST ST
UPDATED 07/25/2016
LEGEND
Streetcar Route
Stop
Willowick: Potential Future Stop
Santa Ana Regional Transportation Center
LOSSAN Rail Corridor
Maintenance and Storage Facility (MSF)
One-way Travel

PROJECT SCOPE

1.0 DEFINITIONS

Capitalized terms used herein shall have the same meaning as set forth in Article 1 of this Agreement.

2.0 STATEMENT OF MUTUAL SUPPORT

The CITY and the AUTHORITY hereby acknowledge their mutual support of the Project. Each Party agrees to cooperate with the other Party in a manner consistent with the commitments made and obligations assumed in this Agreement. Such cooperation and assistance shall include the dedication and reallocation of personnel, as required and is reasonably feasible, to meet Project goals including budget, schedule, and quality.

3.0 PROJECT MANAGEMENT

3.1 AUTHORITY MANAGEMENT

The AUTHORITY shall be responsible for project management. The AUTHORITY is responsible for the overall Project and to ensure that all federal and State requirements are met.

The AUTHORITY shall identify a single point of contact (the AUTHORITY Project Manager) for the Project. The AUTHORITY Project Manager will be empowered to make certain decisions on behalf of the AUTHORITY and will manage the AUTHORITY's responsibilities as defined in this Agreement. The AUTHORITY Project Manager or designee will provide the CITY clear and concise direction in situations where conflicting information is received from different AUTHORITY departments. All coordination with the AUTHORITY departments regarding the Project will be through the AUTHORITY Project Manager or designee.

3.2 CITY MANAGEMENT

The CITY shall identify a CITY Representative for the Project as a single point of contact for the Project. The CITY Representative will convey all direction provided by the CITY on behalf of the CITY and will manage the CITY's responsibilities as defined in this Agreement. The CITY Representative will provide the AUTHORITY with clear and concise direction in situations where

conflicting information is received from different CITY departments. All coordination with CITY departments regarding the Project will be through the CITY Representative, or designee, unless otherwise agreed upon by the CITY and the AUTHORITY. The CITY will make available a dedicated inspector with the technical expertise necessary to quickly respond and address concerns related to the day-to-day field construction oversight.

3.3 SCHEDULE

The CITY shall support the AUTHORITY in its efforts to meet Project milestones in order to achieve timely implementation of the Project. The AUTHORITY agrees to provide weekly updates of the two week look ahead schedule to accurately reflect upcoming construction activities. The CITY also agrees to cooperate and assist the AUTHORITY to mitigate adverse schedule conditions that jeopardize on-time Project completion.

3.4 REPORTING

The AUTHORITY will produce a monthly progress report providing an update on Project status, budget, schedule and other information agreed upon by the Parties. The AUTHORITY shall provide the CITY access to the monthly progress report electronically. The AUTHORITY agrees to provide the CITY progress and status updates related to the Project in a timely manner.

The CITY and AUTHORITY shall have joint access to the document management software used to track and monitor the Project.

3.5 RECORDS MANAGEMENT

The Parties shall maintain all Project records for a minimum of four (4) years or as required meeting the intent of Article 8 of this Agreement unless required otherwise to meet federal regulations.

4.0 CONSTRUCTION

The AUTHORITY is responsible for the advertisement, award and administration of Project construction and to carry out such efforts with AUTHORITY's staff, consultants and contractors all in accordance with the Plans and Specifications. The Project shall be awarded to the lowest responsive,

responsible bidder in accordance with the AUTHORITY's Board of Director's approved procedures for public works projects after a sealed bidding process.

4.1 CONSTRUCTION COORDINATION

The AUTHORITY is responsible for providing all direction to the Construction Contractor. Any CITY direction related to AUTHORITY Project construction shall be directed through the AUTHORITY's Project Manager or designee, who will coordinate with the Construction Contractor, supplier, inspector, or designer.

The CITY shall approve all construction phasing affecting CITY Right of Way including amendments to the Plans and Specifications.

4.2 BUSINESS ACCESS

The AUTHORITY shall to coordinate with the CITY and shall reasonably minimize impacts to vehicle and pedestrian access to affected businesses.

4.3 STREET CLOSURES & TRAFFIC CONTROL

The CITY recognizes that street closures are necessary for construction of the Project and will be identified to the extent possible in the Plans and Specifications. Regardless, the AUTHORITY is required to submit traffic control plans and possible street closures for CITY approval in advance to all street closures related to the Project. The AUTHORITY shall submit all requests for street closures, regardless of duration, a minimum of 30 days prior to the date of the proposed closure and the CITY shall approve, approve with conditions, or not approve such street closures within twenty-one (21) days of such submittals. Once a closure has been approved, AUTHORITY shall notify the public consistent with CITY traffic control requirements and Project Specifications.

The AUTHORITY will be responsible for all traffic signing and striping modifications and additions necessary to provide safe and efficient vehicular and pedestrian movements during the Project. All temporary traffic control shall be in compliance with the Work Area Traffic Control Handbook (latest edition) or the California Manual of Uniform Traffic Control Devices (latest edition) as applicable.

The AUTHORITY shall require that the Construction Contractor keep the traffic signal system in operations at all times during construction by providing temporary overhead wiring except for switchover shutdowns as described in the specifications. Additionally, the AUTHORITY shall require the Construction Contractor to comply with CITY approved working hours and shutdown periods. The AUTHORITY and CITY will coordinate to ensure that the appropriate Traffic Engineering staff are in attendance for all traffic related milestones.

4.4 WATER SERVICE SHUTDOWNS

All water service shutdowns shall be coordinated with the CITY Representative. CITY shall provide a list of all affected customers. Affected customers shall be notified in writing by the AUTHORITY at least two weeks in advance of all shutdowns and once more forty-eight (48) hours prior to shutdown. Information shall include date, time and duration of shutdown. Turning the water system mains on and off shall be performed by the CITY. Under no circumstances shall the Construction Contractor operate valves, hydrants, and other appurtenant equipment on the existing public water system.

4.5 PUBLIC NOTIFICATION

All public notifications will be coordinated with the CITY Representative. The AUTHORITY will make all public notifications required in advance for CITY utility shutdowns, road closures, and other activities related to the AUTHORITY's construction activities as required.

4.6 CONSTRUCTION ACCESS

The CITY shall grant the AUTHORITY access to CITY property outside of City rights of way to construct Project improvements consistent with the requirements provided in the Plans and Specifications.

4.7 CONSTRUCTION INSPECTION

All CITY and AUTHORITY inspections shall ensure compliance with the Project Plans and Specifications.

The AUTHORITY is responsible for the overall Project construction inspection. The CITY shall perform inspections related to CITY facilities, including but not limited to pavement, striping, traffic signals, water, sewer, storm drain, hardscape, street lighting, and landscaping. The CITY will coordinate with the AUTHORITY on any deficiencies observed.

4.8 PROJECT SUBMITTALS

In advance of construction the AUTHORITY and the CITY shall develop a mutually agreed upon submittal review process. The Parties agree to follow the process developed once the notice to proceed for construction has been issued to the Construction Contractor. If the CITY believes a submittal is materially incomplete and a complete response cannot be provided, written notice must be provided to the AUTHORITY identifying what information is missing and what information is necessary to complete a response.

4.8.1 Shop Drawings

Shop drawings will be submitted by the Construction Contractor to the AUTHORITY as required in the Plans and Specifications. Shop drawings generally require review and an acknowledgement of acceptance, rejection, or acceptance with modification. The AUTHORITY shall route all shop drawings related to CITY facilities for CITY approval.

4.8.2 Requests for Information

Requests for Information (RFI) are submitted by the Construction Contractor requesting information, clarification, or providing a recommendation for a design modification. The AUTHORITY shall address in writing all RFIs to the extent possible. All RFIs related to CITY facilities shall be routed to the CITY by the AUTHORITY for response approval.

4.8.3 Design Changes During Construction

Modifications to the Plans and Specifications shall be reviewed in the weekly construction meeting and those modifications related to facilities within the CITY Right of Way shall be approved by the CITY prior to issuance to the Construction Contractor.

4.9 CONSTRUCTION ACCEPTANCE

The AUTHORITY and the CITY shall jointly develop a procedure that allows the AUTHORITY and the CITY to review the progress of the Project, develop lists of items requiring correction, and otherwise determine that the Project is being completed in a satisfactory manner and consistent with the Plans and Specifications.

The AUTHORITY shall provide the CITY with as-built drawings of CITY facilities in PDF format. The AUTHORITY shall provide and maintain up-to-date as-built drawings as changes are implemented and complete project as-builts within three (3) months after the start of Revenue Service.

4.10 PERMITS

The CITY shall issue a Project permit and any riders thereto for the construction of the Project consistent with the Plans and Specifications. The CITY shall be responsible for reviewing and issuing encroachment and other applicable permits to third party utilities for the construction of the Project. The CITY shall issue permits within thirty (30) days contingent no corrections are needed. The AUTHORITY agrees to comply with the requirements for permits issued by the CITY; provided such requirements are typical for similarly situated persons or entities.

4.11 SAFETY

The AUTHORITY shall develop construction safety procedures for AUTHORITY and CITY employees conducting inspection or oversight activities on the Project. The CITY agrees to adhere to the construction safety procedures developed for the Project.

4.12 TESTING AND STARTUP

The AUTHORITY is responsible for the startup and testing of the constructed facilities. AUTHORITY shall coordinate with the CITY with respect to traffic control, signal adjustments, and other activities associated with activating the OC Streetcar System.

5.0 COORDINATION WITH CITY PROJECTS

5.1 CITY PROJECTS

If the CITY implements any capital projects within the Project construction limits, notification shall be sent to the AUTHORITY identifying the location of the project and timing of the implementation. The CITY and AUTHORITY agree to coordinate construction activities recognizing, the OC Streetcar Project cannot be negatively impacted by the initiation of an adjacent project.

The AUTHORITY will make its Construction Contractor aware of other CITY projects that may impact or may have impacts on Project construction to the extent notified by the CITY of such projects. The AUTHORITY shall provide in its contract with the Construction Contractor that to the extent reasonably feasible that the Construction Contractor will coordinate its activities with contractors working on CITY projects and will not interfere with such work or cause damage thereto; provided that such coordination and/or non-interference does not result in any change orders, delay Project construction, create safety concerns or otherwise cause an increase in the cost of Project construction.

The CITY shall include language in any contract for work which may impact or require coordination with Project construction that requires its contractors to coordinate their activities with the Project construction and to perform such work in a manner which does not interfere with Project construction or cause any damage to such Project construction.

5.2 INFRASTRUCTURE IMPACTS

Within the construction limits of the Project, if the CITY damages AUTHORITY infrastructure or the AUTHORITY damages CITY infrastructure, the Party causing the damage shall notify the other Party in a timely manner, but in no event more than 24 hours after such Party becomes award of the damage. The Party causing the damage shall take reasonable steps to mitigate the extent of the damage. The Parties shall diligently cooperate with each other in an effort to determine the cost of the damage, the steps required to repair the damage and the cost responsibility for such damage. Disputes between the Parties arising out of such damage that are not timely resolved, shall be subject

to the dispute resolution process set forth in this Agreement. In the event the matter is submitted to dispute resolution, either Party may, in its sole discretion, choose to repair damage to its own infrastructure. If it is determined during the dispute resolution process that the other Party bears the cost responsibility for the repairs, that Party shall pay all reasonable costs and expenses incurred in making such repairs within 45 days of receipt of an invoice which reasonably specifies the repair work performed and cost thereof.

6.0 PUBLIC INVOLVEMENT

The AUTHORITY shall lead Project public involvement. The AUTHORITY shall develop and implement a public awareness campaign (PAC) in collaboration with and including input from the CITY that includes business outreach to advise businesses, residents, elected officials, motorists, and media of Project status. The AUTHORITY shall report on activities and collateral material development during the Project. The AUTHORITY shall keep the CITY informed on PAC events, notices, and Project updates.

FINANCIAL OBLIGATIONS

1.0 DEFINITIONS

Capitalized terms used herein shall have the same meaning as set forth in Article 1 of this Agreement.

2.0 PROJECT FUNDING

Except for Betterments, the AUTHORITY is responsible for securing and administering all federal, state, and local funding for the Project and for all Project costs.

3.0 BETTERMENTS

3.1 BETTERMENT REQUESTS

Betterment requests submitted by the CITY to the AUTHORITY shall be established as separate cooperative agreements or as amendments to existing cooperative agreements under the framework established herein. CITY shall be responsible for the cost of all Betterments it submits. The following steps for including a Betterment in the Project are:

1. The CITY shall submit to the AUTHORITY a Betterment request in writing. Each request shall include a detailed scope of work including identification of work the CITY intends to self-perform.
2. The AUTHORITY shall review the Betterment request and prepare and submit to the CITY a proposal identifying scope clarifications, design costs, construction costs, and administration/management costs.
3. The CITY shall review the AUTHORITY's Betterment proposal. If acceptable, the CITY shall submit written authorization for the AUTHORITY to move forward. If further negotiations are necessary before authorization is provided, the CITY and the AUTHORITY shall negotiate and update the proposal to accurately reflect the negotiated terms and conditions. The AUTHORITY reserves the right to decline Betterment requests that materially impact the Project schedule.

4. All Betterment reimbursements by the CITY shall be lump sum and shall equal the agreed upon budget amount. The AUTHORITY agrees to segregate the Betterment with respect to accounting and cost reporting.

Design work done by the AUTHORITY's Design Consultant on a Betterment, and incorporated into the Plans and Specifications, shall be constructed by the AUTHORITY's Construction Contractor, as part of the Project construction effort.

3.2 BETTERMENT REIMBURSEMENT

The CITY's reimbursement of AUTHORITY costs associated with a Betterment shall be on a lump sum basis. Each Betterment cooperative agreement shall identify the timing and methodology for reimbursement.

4.0 CITY COSTS

4.1 CITY SUPPORT SCOPE

4.1.1 City Staff Support

CITY staff support is CITY staff time spent in direct support of the Project as identified in Exhibit B and includes, but is not limited to, administering the CITY's support efforts, Project meetings, construction package reviews related to Project Submittal review, construction oversight activities, construction inspection activities related to water supply inspections, traffic control reviews, and public outreach efforts. The City Representative is responsible for managing CITY staff support on the Project and shall ensure time charged is reasonable and necessary to the Project. Support costs are only for Project construction and shall be reimbursed only to the extent incurred after issuance by AUTHORITY of the notice to proceed, including any form of limited notice to proceed, to the Construction Contractor. The notice to proceed is written authorization for the Construction Contractor to begin work. The AUTHORITY shall provide the CITY written notice that a notice to proceed has been issued for construction and that CITY staff support charges shall discontinue under the Design Agreement and proceed under this Agreement.

4.1.2 City Consultant Services

Consultant services used by the CITY on behalf of the Project shall be coordinated with and approved by the AUTHORITY. Existing contracts the CITY intends to use for Project support must be submitted to AUTHORITY for review. AUTHORITY will review such contracts for compliance with FTA requirements; to ensure there is not duplication of effort; to ensure they do not pose unsatisfactory risks to Project schedule and/or budget; to ensure no existing conflicts of interests; and for eligibility for reimbursement. The CITY agrees to follow the AUTHORITY's requirements for contract modifications or task order language, if applicable, prior to advancing Project support work.

The CITY agrees to include information regarding conflict of interest with current AUTHORITY contracts and future AUTHORITY procurements related to the Project in all CITY support procurements.

4.2 CITY WORK PLAN BUDGET

4.2.1 City Staff Support

The CITY staff support budget has been developed by identifying positions, hours, and rates in the categories shown in the City Support Work Plan ("Work Plan") in Exhibit E.

AUTHORITY will reimburse CITY for actual CITY staff support costs incurred in accordance with the Work Plan budget. Actual costs include all eligible CITY direct and indirect costs that are supported by documentation that meets federal requirements. The applied indirect cost recovery rate applied to direct labor costs shall be established following federal regulations and be either the deminimus rate or documented in a cost allocation plan approved by a federal agency or Caltrans. The cost to develop a Cost Allocation Plan to determine an indirect cost recovery rate is not eligible for reimbursement.

4.2.2 Periodic Cost Reviews

The AUTHORITY and the CITY agree to regularly monitor CITY costs expended in comparison to the CITY support budget and the remaining effort anticipated. A formal review of funds expended

shall be conducted quarterly by the Parties. In the event the remaining level of effort required, as agreed to by the Parties, exceeds the remaining budget, the Work Plan Budget shall be updated through an amendment to this Agreement.

4.3 INVOICING PROCEDURES

Prior to invoicing, the CITY shall provide the AUTHORITY with an updated schedule of staff, their anticipated role on the Project, their salary and benefit labor rates, and supporting payroll documentation. This schedule will be used in the review of invoices. This schedule shall be updated as necessary to reflect staff that will be listed in any invoice submitted to the AUTHORITY. Each month, the CITY shall submit an invoice to the AUTHORITY for actual costs incurred the prior month. Invoices shall be submitted within 30 days of the end of the monthly invoice period. Invoices shall be submitted in duplicate to AUTHORITY's Accounts Payable office. The CITY may also submit invoices electronically to the AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. The AUTHORITY shall remit payment within thirty (30) days of the receipt and approval of each complete invoice. Each invoice shall include the following information:

1. Reference to Agreement No. C-7-1556;
2. The time period covered by the invoice;
3. An identification of the execution date of this Agreement;
4. Work Plan budget and cumulative invoice amount;
5. Hours worked per person in the invoiced period;
6. Burdened Rate per person invoiced;
7. Indirect cost recovery rate applied to the total cost of CITY direct labor, if applicable;
8. Current invoice payment amount due;
9. Signed personnel timesheets that are also signed and certified by management as eligible, reasonable, and necessary to the Project; labor detail report generated from the CITY's accounting system that shows total hours charged to the Project by employee each week.

10. Description of work performed adequate to correlate hours shown and work performed, signed and certified by management as eligible, reasonable, and necessary to the Project;
11. Consultant invoices for the invoice period with the same information as required above and shall be accompanied with proof of payment, and
12. Other information requested by the AUTHORITY to reasonably substantiate the validity of an invoice.

5.0 FEES

5.1 PERMIT FEES

The AUTHORITY, and/or its Construction Contractor(s), shall not be charged for the CITY's fixed cost permit issuance fees for building and street work permits deemed necessary for the Project.

5.2 DEVELOPMENT IMPACT FEES

The AUTHORITY shall pay for CITY adopted and third party development impact fees such as water and sewer connections, among others, which are related to site improvements for individual stations, maintenance facilities and other similar structures supporting the Project.

REQUIRED FEDERAL CLAUSES FOR THIRD PARTY AGREEMENTS

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

ARTICLE 1. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between the AUTHORITY and FTA , as they may be amended or promulgated from time to time during this Agreement. CONSULTANT's failure to comply shall constitute a material breach of contract.

ARTICLE 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA assisted project for which this Agreement's work is being performed. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on CONSULTANT to the extent the Federal Government deems appropriate.

B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on CONSULTANT, to the extent the Federal Government deems appropriate. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 4. CIVIL RIGHTS ASSURANCE

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

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

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

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT 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 CONSULTANT of CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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

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

1. *Withholding of payments to CONSULTANT under the Agreement until CONSULTANT complies; and/or*
2. *Cancellation, termination, or suspension of the Agreement, in whole or in part.*

F. Title VI of the Civil Rights Act. In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d *et seq*. and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI regulations.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq*., prohibits discrimination against qualified individuals with disabilities in all programs,

activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

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

ARTICLE 5. DBE CONTRACT PROVISIONS FOR FTA-ASSISTED CONTRACTS WITH DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS

I. DBE Participation

It is the Consultant's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and the Orange County Transportation Authority's (Authority's) DBE program developed pursuant to these regulations. Particular attention is directed to the following:

A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
C. 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.
D. Consultant must not claim DBE participation as attained until the amount to be claimed is paid and fully adheres to DBE crediting provisions.

If the Consultant has committed to utilize DBE(s) in the performance of this DOT-assisted contract, the Consultant's submitted ***"***DBE Participation Commitment Form***"*** will be utilized to monitor Consultant's DBE commitments, unless otherwise directed and/or approved by the Authority prior to the Consultant effectuating any changes to its DBE participation commitment(s) *(Refer to Subsection H: "Performance of DBE Subconsultants")*.

Consultant must complete and submit all required DBE documentation to effectively capture all DBE utilization on the Authority's DOT-assisted contracts whether achieved race neutrally or race consciously. Even if a Consultant has not committed to utilize DBE(s) in the performance of this contract, the Consultant must execute and submit all required DBE forms and other related documentation as specified under this contract or as otherwise requested by the Authority. No changes to the Consultant's DBE Commitment must be made until proper protocols for review and approval of the Authority are rendered in writing.

To ensure full compliance with the requirements of 49 CFR, Part 26 and the Authority's DBE Program, the Consultant must:

A. Take appropriate actions to ensure that it will continue to meet the DBE Commitment at the minimal level committed to at award or will satisfy the good faith efforts to meet the DBE Commitment, when change orders or other contract modifications alter the dollar amount of the contract or the distribution of work. The Consultant must apply and report its DBE goal commitments against the total Contract Value, including any contract change orders and/or amendments.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Authority has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs".

The project is subject to these stipulated regulations and the Authority's DBE program. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-assisted contracting opportunities.

Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.

Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.

Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

Help remove barriers to the participation of DBEs in DOT-assisted contracts.

Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

Consultant must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant.

Any terms used in this section that are defined in 49 CFR, Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations must prevail.

III. Authority's DBE Policy Implementation Directives

Pursuant to the provisions associated with federal regulation 49 CFR, Part 26, the Disadvantaged Business Enterprise (DBE) program exists to ensure participation, equitable competition, and assistance to participants in the USDOT DBE program. Accordingly, based on the Authority's analysis of its past utilization data, coupled with its examination of similar Agencies' Disparity Study and recent Goal Methodology findings the Authority has implemented the reinstatement of the DBE program utilizing both race-conscious and race-neutral means across the board as all protected groups participation have been affected using strictly race neutral means on its FTA-assisted contracts.

The Authority reinstates the use of contract goals and good faith efforts. Meeting the contract-specific goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, is a condition of award. Additionally, contract-specific goals are now specifically targeted at DBEs (*DBEs owned and controlled by Black Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, Asian-Pacific Americans, Sub-Continent Asian Americans, and Women*). In the event of a substitution, a DBE must be substituted with another DBE or documented adequate good faith efforts to do so must be made, in order to meet the contract goal and DBE contract requirements.

I. Definitions

The following definitions apply to the terms used in these provisions:

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

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

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

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

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

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

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

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

F. Women, regardless of ethnicity or race.

4. ***"Owned and Controlled"*** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

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

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

7. ***"Fraud"*** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty. The Authority may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR, Part 31. The Authority may refer the case to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

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

A. "Social Disadvantage"

1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
2. The individual must demonstrate that he/she has personally suffered social disadvantage.
3. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

B. "Economic Disadvantage"

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

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

   With respect to the individual:
   - availability of financing bonding capability
   - availability of outside equity capital
   - available markets

   With respect to the individual and the business concern:
   - personal and business assets
   - personal and business net worth
   - personal and business income and profits

IV. Submission of DBE Information and Ongoing Reporting Requirements (Post-Award)

If there is a DBE goal on the contract, Consultant must complete and submit the following DBE exhibits (forms) consistent with Consultant DBE Goal Commitment within the specified timelines. Even if no DBE participation will be reported, the Consultant must execute and return the form:

1. "Monthly DBE Subconsultant Commitment and Attainment Report Summary and Payment Verification " (Form 103)

The purpose of this form is to ensure Consultant DBE commitments are attained, properly reported and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work/service. This form further serves to collect DBE utilization data required under 49 CFR, Part 26.

The Consultant is required to complete and submit a Form 103 to the Authority by the 10th of each month until completion of the contract. The Consultant must submit its first Form 103 following the first month of contract activity. Upon completion of the contract, the Consultant must complete and submit a "Final: Monthly DBE Subconsultant Commitment and Attainment Report Summary and Payment Verification" (Form 103) to facilitate reporting and capturing actual DBE attainments at conclusion of the contract.

The Form 103 must include the following information:

A. General Contract Information – Including Contract Number and Name, Prime Consultant and the following:

1. Original Contract Amount
2. Running Total of Change Order Amount
3. Current Contract Amount
4. Amount Paid to Consultant during Month
5. Amount Paid to Consultant from Inception to Date
6. DBE Contract Goal
7. Total Dollar Amount of DBE Commitment
8. DBE Commitment as Percentage of Current Contract Amount

B. Listed and/Proposed Consultant/Subconsultant Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:

1. DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.

2. DBE Firm Contract Value Information:
Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.

2. Consultant Assurance of Full Compliance with Prompt Payment Provisions Consultant to sign the prompt payment assurance statement of compliance contained within the Form 103. Consultant is to further maintain and submit at the request of Authority a detailed running tally of related invoices submitted by DBE(s) and Non DBE(s), including dates of invoice submission, dates accepted and corresponding dates and amount of payments made. The Payment and Retention Reporting tally must also include:

DBE(s) and Non DBE(s) Invoice Number, Invoice Amount, Invoice Date, Prime Consultant's Invoice Number that incorporated the corresponding DBE and Non DBE invoice(s) for billing purposes, Date of Invoice submission to Authority, Date and amount Authority paid on Prime Consultant's Invoice. The report must also reflect a breakout of retention withheld (including retention as specified in subcontract agreement(s) and disputed invoice retention) and retention payments made, check number and date paid to DBE and Non DBE.

Consultant is advised not to report the participation of DBE(s) toward the Consultant's DBE attainment until the amount being claimed has been paid to the DBE. Verification of payments and/or a signed Verification of Payment by the applicable DBE or Non DBE must be submitted with Form 103 to authenticate reported payments.

3. DBE Subcontract Agreements

The Consultant must submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. The Consultant must immediately notify the Authority in writing of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

4. "Monthly DBE Trucking Verification" Form

Prior to the 10th of each month, the Consultant must submit documentation on the "Monthly DBE Trucking Verification" Form to the Authority showing the amount paid to DBE trucking companies. The Consultant must also obtain and submit documentation to the Authority showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contactor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The Consultant must also obtain and submit documentation to the Authority showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month.

5. "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subconsultants"

Upon completion of the contract, a summary of these records must be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subconsultants" and certified correct by the Consultant or the Consultant's authorized representative, and must be furnished to the Engineer. The form must be furnished to the Authority within ninety (90) days from the date of contract acceptance. The amount of $10,000 will be withheld from payment until a satisfactory form is submitted.

6. "Disadvantaged Business Enterprises (DBE) Certification Status Change"

If a DBE Sub is decertified during the life of the project, the decertified Subconsultant must 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 must notify the Consultant in writing with the date of certification (Attach DBE certification/Decertification letter). The Consultant must furnish the written documentation to the AUTHORITY.

Upon completion of the contract, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the Consultant indicating the DBEs' existing certification status. If there are no changes, please indicate “No Changes”. The certified form must be furnished to the Authority within ninety (90) days from the date of contract acceptance.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of Proposal submission:

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.

2. A DBE may participate as a Prime Consultant, Subconsultant, joint venture partner with a Prime or Subconsultant, vendor of material or supplies, or as a trucking company.

3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
    A. The CUCP web site, which can be accessed at http://www.californiaucp.com; or the Caltrans “Civil Rights” web site at http://www.dot.ca.gov/hq/bep.

5. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

1. When a DBE is proposed to participate in the contract, either as a Prime Consultant or Subconsultant, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.

2. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be credited toward the Prime Consultant’s DBE attainment.

3. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
    A. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
    B. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.

4. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward the prime Consultant's DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:

    A. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
    B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
    C. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

5. Consultant may count the participation of DBE trucking companies toward DBE attainment, as follows:

    A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
    B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
    C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
    D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
    E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
    F. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and

identification number of the DBE.

6. If the Consultant listed a non-certified 1st tier Subconsultant to perform work on this contract, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE Consultant performs the

   installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

VII. Performance of DBE Subconsultants

DBEs must perform work or supply materials as listed in the "DBE Participation Commitment Form" specified under "*DBE Proposal Submission Requirements"* of these special provisions. Do not terminate a DBE listed Subconsultant for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the AUTHORITY.

The AUTHORITY grants authorization to use other forces or sources of materials for requests that show any of the following justifications (written approval from the AUTHORITY must be obtained prior to effectuating a substitution):

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a Consultants' license and listed DBE does not have a valid license under Consultants License Law.
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 the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

If a listed DBE Subconsultant is terminated, you must make good faith efforts to find another DBE Subconsultant to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution. The AUTHORITY does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

VIII. Additional DBE Subconsultants

In the event Consultant identifies additional DBE Subconsultants or suppliers not previously identified by Consultant for DBE participation under the contract, Consultant must notify

the Authority by submitting "Request for Additional DBE Firm" to enable Consultant to capture all DBE participation. Consultant must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

IX. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in the Authority's federally - assisted contracts. Proposers are cautioned against knowingly and willfully using "fronts." 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, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

X. Consultant's Assurance Clause Regarding Non-Discrimination

In compliance with State and Federal anti-discrimination laws, the Consultant must affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Consultant must affirm that they will consider, and utilize Subconsultants and vendors, in a manner consistent with non-discrimination objectives.

XI. Prompt Payment Clause

Upon receipt of payment by Authority, Consultant agrees to promptly pay each Subconsultant for the satisfactory work performed under this Agreement, no later than seven (7) calendar days. Consultant agrees further to return retainage payments to each Subconsultant within thirty (30) calendar days after the Subconsultant's work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from Consultant showing payment has been made to the Subconsultants. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by Authority.

In accordance with 49 CFR part 26.29 "Prompt Payment Provisions" (DBE Final Rule) the Authority will elect to utilize the following method to comply with the prompt payment of retainage requirement:

Hold retainage from the Consultant and provide for prompt and regular incremental acceptances of portions of the Consultant, pay retainage to prime Consultants based on these acceptances, and require a contract clause obligating the Consultant to pay all retainage owed to the Subconsultants for satisfactory completion of the accepted work within thirty (30) days after payment to the Consultant.

Failure to comply with this provision or delay in payment without prior written approval from Authority will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two (2%) percent of the invoice amount due per month for every month that payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by Consultant under this Agreement. Each subcontract must require the Subconsultant to make payments to sub-Subconsultants and suppliers in a similar manner.

XII. Administrative Remedies and Enforcement

Consultant must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. Consultant's failure to comply constitutes a material breach of contract, wherein the Authority will impose all available administrative sanctions including payment withholdings, necessary to effectuate full compliance. In instances of identified non-compliance, a Cure Notice will be issued to the Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

The Consultant must be given ten (10) working days from the date of the Cure Notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the Authority to reconsider the Authority's DBE determination. Failure to respond within the ten (10) working day period must constitute a waiver of the Consultant's right to appeal. If the Consultant files an appeal, the Authority, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If, after review of the Consultant's appeal, the Authority decides to uphold the decision to impose DBE administrative remedies on the Consultant, the written determination must state the specific remedy(s) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of contract and is subject to administrative remedies, including, withholding at minimum of two (2%) percent of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all withholdings.

In addition to administrative remedies defined in this section, the Authority is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.

ARTICLE 6. ACCESS TO RECORDS AND REPORTS

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

shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 7. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

ARTICLE 8. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 9. FLY AMERICA REQUIREMENTS

CONSULTANT agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipient of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. CONSULTANT agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

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

B. CONSULTANT shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipping originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of lading in English for each shipment of cargo described in paragraph 0 of this Article to AUTHORITY (through CONSULTANT in the case of subcontractor bills-of-lading)

and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 11. PROHIBITED INTERESTS

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

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

ARTICLE 12. ALCOHOL AND DRUG POLICY

A. CONSULTANT agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C sections 701-707, (the Drug Free Workplace Act of 1988),which is attached to this Agreement as Exhibit B, and produce any documentation necessary to establish its compliance with sections 701-707.

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

ARTICLE 13. PRIVACY ACT

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

ARTICLE 14. CONFLICT OF INTEREST

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

ARTICLE 15. CODE OF CONDUCT

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

ARTICLE 16. PROTEST PROCEDURES

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

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

ARTICLE 17. TERMINATION

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

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

ARTICLE 18. RECYCLED PRODUCTS

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

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

ARTICLE 19. DEBARMENT & SUSPENSION:

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

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

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

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

ARTICLE 20. DISPUTES

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

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

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

ARTICLE 21. CLEAN WATER REQUIREMENTS

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

ARTICLE 22. CLEAN AIR

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

ARTICLE 23. LOBBYING

CONSULTANT's who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The following additional provisions apply to all purchases over $150,000

ARTICLE 24. BUY AMERICA

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

B. A Certificate of Compliance, conforming to the provisions of this Article shall be furnished for steel and iron materials. The certificates, in addition to certifying that the materials

comply with the specifications, shall specifically certify that all manufacturing processes for the materials occurred in the United States, except for the exceptions listed herein.

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

CITY SUPPORT WORK PLAN

OC Streetcar
City of Garden Grove Work Plan
Construction Phase Support Budget

3/15/2017

Department	2018 - 2020 Project Coordination	Design & Permit Reviews	Const. Oversight & Submittal Reviews	Public Outreach
City of Garden Grove	$27,856	$9,300	$46,614	$3,734
Total	$87,504			

Total Budget Amount **$87,504**

Note:
The Work Plan establishes the budget for this AGREEMENT; actual costs will be determined based upon actual hours expended, direct and indirect rates and consultant costs as outlined in Exhibit C.