



**REQUEST FOR PROPOSALS
FOR
CITY OF MONROVIA
FOR
COMPREHENSIVE SAFETY ACTION PLAN
AND BICYCLE MASTER PLAN UPDATE**

Issue Date: September 19, 2024

Proposal Due: 6:00 p.m. on Thursday, October 17, 2024

City of Monrovia Public Works
600 S. Mountain Avenue
Monrovia, CA 91016

Notice of Federal Participation:

Financial assistance for the services described in this Request for Proposals (RFP) will be partially provided using funds from the Federal Highway Administration (FHWA) Safe Streets and Roads for All (SS4A) program and will be subject to all applicable FHWA required federal provisions and certifications.

Disadvantaged Business Enterprise:

A separate contract goal of **6%** Race Conscious Disadvantaged Business Enterprise participation has been established for this procurement.

BACKGROUND

The City of Monrovia (City), located 20 miles northeast of Los Angeles in the San Gabriel Valley, is a foothill community with a population of 37,931 residents (2020 Census) and approximately 83 miles of streets.

On October 12, 2023, the City received funding from the Los Angeles County Metropolitan Transportation Authority (Metro) through the FHWA SS4A Program. This program supports the development of a Comprehensive Safety Action Plan (Action Plan) that identifies significant roadway safety concerns and outlines the implementation of projects and strategies to address these issues. The goal is to create a holistic strategy to prevent roadway fatalities and serious injuries. Several state and federal funding sources now require the adoption of such a plan to ensure funding for transportation projects that prioritize safety for all road users.

The City of Monrovia seeks proposals from qualified professional planning and/or engineering consulting firms to develop an Action Plan and update the City's current Bicycle Master Plan. This RFP outlines the scope of work, selection process, and required proposal content. Proposals will be evaluated based on qualifications, experience, implementation plan, cost, and other criteria set forth in this RFP. The City reserves the right to select firm(s) based criteria that best serves its interests.

PROJECT DESCRIPTION

The City of Monrovia is requesting proposals from qualified firms to develop Monrovia's own Action Plan, as defined by the SS4A program. In conjunction with the Action Plan, Monrovia also seeks to update the City's current Bicycle Master Plan. This planning effort will assist in identifying and prioritizing safety projects and programs in Monrovia. The final Action Plan must align with the Federal Department of Transportation's (USDOT) Safe System Approach and meet requirements for future SS4A Demonstration and Implementation Grant funding as well as other funding programs, such as the State's Highway Safety Improvement Program (HSIP).

The plan must reflect all goals and actions outlined in the City of Monrovia's SS4A funding agreement and grant narrative, attached in **Attachment A**, which includes the following deliverables:

- City of Monrovia Action Plan
 - Citywide Congestion and Collision Analysis
 - Analyze all 39 signalized intersections, identifying inefficiencies and proposing solutions, as well as assessing the potential for Intelligent Transportation System (ITS) technology implementation.
- Updated Bicycle Master Plan
 - Update the outdated Bicycle Master Plan to reflect current development patterns and bicycle/pedestrian traffic conditions. The plan is linked below: <https://www.cityofmonrovia.org/home/showdocument?id=19453>

The SS4A website and documents detailing the Safe System Approach and eligibility requirements for future SS4A Implementation Grant funding are linked below:

- 2022 Safe Streets and Roads for All Notice of Funding Opportunity: <https://www.transportation.gov/sites/dot.gov/files/2022-08/SS4A-NOFO-FY22-Amendment-1.pdf>
- 2022 Safe Streets and Roads for All Self Certification Worksheet: https://www.transportation.gov/sites/dot.gov/files/2022-06/SS4A_Self_Certification_Worksheet.pdf
- SS4A Website: <https://www.transportation.gov/grants/SS4A>

PROJECT SCHEDULE

The schedule* for the procurement of consulting services for this project is as follows:

- | | |
|--|-------------------------------|
| ● RFP Document Released | September 19, 2024 |
| ● Deadline for Questions | October 3, 2024 by 6:00 p.m. |
| ● Submittal Deadline | October 17, 2024 by 6:00 p.m. |
| ● (Optional) Interviews for Selected Firms | October/November |
| ● City Council Approval | November/December |

*These dates are subject to change at City's discretion.

For any questions or requests to be added to the interested parties list, please email Sophia Sousa at ssousa@monroviaca.gov.

The project should be completed within 12 months of contract execution.

PROPOSAL REQUIREMENTS

1. Cover letter: Summarize the content of your firm's proposal in a clear and concise manner.

2. **Background:** Provide a summary of your firm's background and project qualifications.
3. **Project Understanding:** Provide a brief statement of your firm's understanding of the project.
4. **Firm's Experience and References:** List the three most relevant projects or service contracts held by the firm within the last five years.
5. **Staff's Experience:** Provide resumes and pertinent experience for all key project staff.
6. **Sub-consultant's Experience:** List all proposed sub-consultants and their qualifications, experiences, and involvement in this project.
7. **Schedule:** Provide a detailed schedule including all tasks and deliverables.
8. **Cost Proposal:** Provide a fee proposal, broken down by task, with a total not-to-exceed fee. Include separate fee proposals for optional tasks, and a schedule of current hourly rates for additional work if necessary. Specify tasks, time, and expenses included within the not-to-exceed fee.

SCOPE OF SERVICES

The selected firm will work under the direction of the City of Monrovia Public Works staff to provide professional planning and engineering services. The Consultant shall perform the following tasks and key services:

1. **Project Management**

Kick-off Meeting

The Consultant shall lead an initial meeting to discuss the overall vision for the Action Plan and updated Bicycle Master Plan. The agenda will include, at a minimum, the project's goals, objectives, tasks, and timeline, the expectations of the City, and grant requirements. At the meeting, the parties will outline a plan for completing all tasks. All key staff will be required to attend. Detailed meeting minutes shall be provided and distributed for comments. The Consultant shall be responsible for providing all contract management throughout the development of the plans.

Project Check-in Meetings

The Consultant shall conduct collaborative monthly project team meetings. All parties will work together to monitor project progress, prepare for next steps, discuss completed tasks, conduct problem-solving, and ensure the project remains within the designated timeframe as well as within budget. Detailed meeting minutes shall be provided and distributed for comments.

Schedule

Upon receipt of a notice-to-proceed from the City, the Consultant shall prepare a detailed project schedule to be used by the project team. This schedule shall be presented to the City's project manager for comment and be updated on an as-needed basis throughout the design process.

Communication

The Consultant shall work closely with the City, stakeholders, and sub-consultants (if any) to uphold the project schedule and budget. The Consultant shall assist the City with identifying potential stakeholders and facilitate coordination with such stakeholders throughout the duration of the project. The Consultant shall meet as needed with the City to discuss the project, monitor project progress, prepare for upcoming tasks, debrief on completed tasks, and any required problem-solving to ensure the project remains on schedule and within budget

Quality Control

The consultant shall be accountable to deliver what is outlined in this request for proposals. Every deliverable shall go through a thorough quality control/quality assurance process prior to being submitted to the City for review. Each subsequent submittal shall have a response to comments included for reference. Any deliverable that contains substantive errors or omissions will be rejected. No additional compensation shall be provided for resubmittals after poor quality deliverables. The Consultant shall deliver a high quality product within budget and on schedule.

Grant Reporting

The consultant shall assist the City with the completion of quarterly reports, ensuring they meet regional and federal reporting requirements, including the final quarterly report after Council adoption of the plans. This will consist of up to five reports throughout the duration of the project.

Deliverables

- 1.1. Project kick-off meeting
 - 1.2. Finalized Scope of Work
 - 1.3. Project management and associated meeting agendas and minutes throughout the duration of the project
 - 1.4. Assist City staff with the completion of quarterly reports in accordance with Metro and Federal Highway Administration reporting requirements
2. Benchmarking of Existing Plans, Policies, and Programs
The Consultant shall assess the City's and region's current plans, policies, guidelines, resources, and maintenance programs that address traffic and pedestrian safety and provide recommendations for improvement. These shall include but not be limited to:
- Monrovia General Plan

- Monrovia Land Use Element
- Monrovia Circulation Element
- Monrovia Housing Element
- Monrovia Environmental Justice Element
- Monrovia Bicycle Master Plan
- Monrovia Pedestrian Safety Improvement Study
- Metro 2020 Long Range Transportation Plan
- Metro Public Transportation Agency Safety Action
- Southern California Association of Governments (SCAG) Connect SoCal
- Caltrans Strategic Highway Safety Plan
- United States Department of Transportation National Roadway Safety Strategy

The consultant shall reference the Safe System Benchmarking Tool identified in Federal Highway Administration's Primer on Safe System Approach for Pedestrians and Bicyclists during the benchmarking of existing plans, policies, and programs. Find the document linked here:

- <https://highways.dot.gov/safety/pedestrian-bicyclist/safety-tools/safe-system-approach-pedestrians-and-bicyclists-primer>

Deliverables

- 2.1. Review and document current plans, policies, guidelines, resources, and maintenance programs related to traffic and pedestrian safety
 - 2.2. Complete Safe System Benchmarking Tool
 - 2.3. Inventory of opportunity areas and recommendations for safety improvements among plans, policies, guidelines, resources, and maintenance programs as a section of the draft Action Plan
3. Data Collection and Analysis

Citywide Congestion and Collision Analysis

The Consultant shall collect and analyze collision data for the most recent 5-year period to inform both the Action Plan and updated Bicycle Master Plan. The consultant shall use, at a minimum, information from the following sources:

- Statewide Integrated Traffic Records System (SWITRS) database
- Transportation Information Mapping System (TIMS)
- Monrovia Police Department accident reports, not included in the SWITRS database
- Monrovia claims history from the last five years related to bicycle and pedestrian safety
- Interviews with local law enforcement/fire department personnel for historical and personal observations of problem areas, accident frequency, and types
- Interviews with individual property owners in key areas with personal observational data regarding problem areas, accident frequency, and types.

The consultant shall analyze the existing conditions and historical trends to baseline the level of fatal and serious injury crashes. The consultant shall review locations with reported crashes and identify the severity, most likely contributing factors to the collision, roadway characteristics (such as traffic volume, cross-sections, speed limits, streetlights, traffic signals, etc.) and collision types. The consultant shall review and identify traffic patterns, mode share, roadway features, crash types, driver factors, and environmental conditions, with special attention to fatalities and serious injuries, including those involving bicyclists and pedestrians.

The consultant shall identify any trends and/or areas in need of additional, more detailed analysis. The consultant shall develop maps of higher risk locations and corridors by creating a high-injury network that highlights the portions of the City's roadway network responsible for disproportionate numbers of collisions, if any.

The consultant shall perform a citywide congestion analysis at each of the City's 39 traffic signals. The consultant shall record current traffic patterns, volumes, and speeds for vehicle, bicycle, and pedestrian movement. This consultant shall compare existing signal timing with current traffic patterns and evaluate efficiency. The consultant shall provide project recommendations for improvement where applicable. The consultant shall collect any other data related to or necessary for the City to pursue Intelligent Transportation System technology at the City's traffic signals, including, but not limited to, improved synchronization or smart traffic signals.

Updated Bicycle Master Plan

The consultant shall use collision, congestion, and movement data collected during the citywide collision and congestion analysis to inform recommendations for the updated Bicycle Master Plan. The consultant shall identify a high-injury network for collisions involving bicyclists and pedestrians. The consultant shall compare current data with data and recommendations described in the City's existing Bicycle Master Plan. The consultant shall make revisions where applicable and provide updated recommendations for bicycle and pedestrian safety improvements and projects.

Equity Analysis

The Consultant shall prepare an equity analysis focused on initial impact assessments of the proposed projects and strategies, taking into consideration neighboring communities' demographics. The Consultant shall also identify the proportion of recommendations and projects that serve underserved communities, as defined by the Federal Highway Administration, within and near Monrovia.

Deliverables

- 3.1. Complete collision analysis summary with visualizations detailing trends and high-priority areas, high-injury network map, recommendations for safety improvements, and project list as a section of the draft Action Plan

- 3.2. Congestion analysis, recommendations for improved signal timing and efficiency at each of the City's 39 traffic signals as a section of the draft Action Plan
 - 3.3. Collision and congestion analysis profile for Mountain Avenue with recommendations for safety improvements and project list as a section of the draft Action Plan
 - 3.4. Equity analysis results and subsequent recommendations as a section of the draft Action Plan
 - 3.5. Analysis of existing bicycle and pedestrian travel, safety conditions, recommendations for safety improvements, and project list to be included in the updated Bicycle Master Plan
4. Public Outreach and Community Engagement
The Consultant shall *include in the proposal* a list of recommended methods, strategies, and activities to be implemented throughout the duration of the project that prioritize equitable community participation and solicitation of feedback. The Consultant shall work with the City to develop a plan for public outreach and community engagement to ensure the public is both aware of the project and involved in the planning process. The Consultant shall develop materials in both English and Spanish.
- Deliverables:*
- 4.1. Community outreach and engagement plan
 - 4.2. Any agendas, notes, flyers, graphics, communications, etc. developed/used during public outreach and community engagement
 - 4.3. Summary of all feedback received as a section of the draft Action Plan and updated Bicycle Master Plan
5. Implementation Strategy/Applications for Future Funding
The Consultant shall develop a strategy for implementing the safety measures, recommendations, and projects identified and proposed in the Action Plan and updated Bicycle Master Plan, as well as monitoring safety outcomes to evaluate which measures are most effective. This strategy shall include the facilitation of demonstration activities, as defined by the Federal Highway Administration. Demonstration activities are temporary, short-term safety improvements which inform Action Plans by testing proposed project and strategy approaches to determine future benefits and future scope. For a list of eligible activities, visit: <https://www.transportation.gov/grants/ss4a/planning-and-demonstration-activities>
- The consultant shall identify measures that can be included in regular, City-issued maintenance cycles, potential updates to City design standards to better align with safety best practices, and eligible projects that can be funded by:
- 1) Future cycles of the SS4A Program Planning and Demonstration Grants and Implementation Grants (priority); and

- 2) Caltrans Local Highway Safety Improvement Program, Caltrans Active Transportation, and other relevant grant opportunities for implementing the projects outlined in the Action Plan and Updated Bicycle Master Plan.

The Consultant shall assist the City with the completion of these grant applications by using information collected during the analysis and projects recommended in the Action Plan and updated Bicycle Master plan.

Deliverables:

- 5.1. Implementation strategy for proposed recommendations, safety improvements, and project list as a section of the draft Action Plan and updated Bicycle Master Plan
 - 5.2. Grant application assistance
6. Draft and Final Action Plan and Updated Bicycle Master Plan

Draft Action Plan and Updated Bicycle Master Plan

The Consultant shall develop the Draft Action Plan and Draft Updated Bicycle Master Plan, which will include the analysis of data collected, outreach performed, methodology and project selection, recommendations, list of projects, concept designs, cost estimates, fact sheets, and phased implementation plan for addressing the improvements.

Presentation of Draft Plan

The Consultant shall present the Draft Action Plan and Draft Updated Bicycle Master Plan to key stakeholders, including community groups, City staff, and City Council. The Consultant shall gather feedback from all stakeholders and make appropriate revisions.

Final Action Plan and Updated Bicycle Master Plan

The Consultant shall develop the Final Action Plan and Updated Bicycle Master Plan for review and approval by the City Council. The final documents shall include next steps for environmental work, permitting, and engineering, and will be presented at one Monrovia City Council Meeting.

Council Review and Adoption

Once the Final Action Plan and Updated Bicycle Master Plan are deemed complete, an item will be placed on the City Council agenda for a publicly held meeting. City Council will vote to adopt the plans and incorporate them into the City's planning documents.

Deliverables:

- 6.1. Administrative Draft Action Plan and Draft Updated Bicycle Master Plan with at least one round of consolidated, non-conflicting revisions that address public, City Staff, and City Council input
- 6.2. Final Action Plan and Updated Bicycle Master Plan in PDF and Word files and one hard copy

NOTICE OF FEDERAL PARTICIPATION

Financial assistance for the services described in this RFP will be partially provided using funds from the FHWA. Any contract and subcontract to provide the services described in this RFP will be subject to the funding agreement in **Attachment A** between the City and Metro for the provision of FHWA SS4A program and will be subject to all applicable “FHWA Required Federal Provisions and Certifications” as described in **Attachment B**. Firms shall complete and submit all certifications provided in this attachment with their proposals.

DISADVANTAGED BUSINESS ENTERPRISE

A separate contract goal of **6%** Race Conscious Disadvantaged Business Enterprise participation has been established for this procurement. The City, as a recipient of federal financial assistance, is required to implement Metro’s Disadvantaged Business Program in accordance with federal regulation 49 CFR Part 26, as described in the “RC-DBE Instructions for Metro Subrecipient Agencies” in **Attachment C**. Firms are required to meet this goal or demonstrate Good Faith Efforts as a condition of the award of this Contract. Firms able to meet this goal shall complete and submit with their proposal the “Bidders List” and “Local Agency Proposer RC-DBE Commitment” forms located in **Attachment C**. Firms unable to meet this goal shall complete and submit with their proposal the “RC-DBE Information – Good Faith Efforts” form located in **Attachment C**.

EVALUATION CRITERIA / METHOD OF SELECTION

A Consultant Selection Committee of City personnel will be responsible for the selection of the consultant to be recommended to the City Council for an award of contract. The City will review all proposals and will develop a short-list of the most qualified consultants, based on relevant project experience, organizational structure and resources, staff qualifications and experience, and price. The City may request consultants to participate in a brief oral interview and presentation of their proposal. The City Council will have the opportunity to award a contract, if warranted.

Consultants that are selected for interviews will be notified at least one week (seven calendar days) in advance of the interview date. The week of the interview date is tentatively established and is included in the project schedule portion of this document. Inability of a firm to make their scheduled interview will exclude said firm from the procurement process.

The City reserves the right to accept or reject any or all proposals, and the right to waive any irregularities or informalities in any Proposal or in the bidding procedure. The City reserves the right to be the sole judge of the merits and qualifications of the services and/or items offered, and the ability of bidder to responsibly perform. The City may accept other than the lowest bid offered based on the evaluation criteria and interviews. Proposal may not be withdrawn for a period of 90 days after the time proposals are due.

The scoring criteria is listed on the following page:

PROTESTS

Protests regarding any aspect of this RFP, the solicitation process, or the proposed award of a contract must be submitted in accordance with the following procedures.

Types of Protests

There are three basic types of protests, based on the time in the procurement cycle when they occur. Differences in the protest process between these three types, if any, are noted.

- Pre-bid or Solicitation Phase Protest is received prior to the bid opening or proposal due date. A Pre-bid Protest must be received by the City within five (5) days of the date specified for the City's Final Addenda and Answers to be issued. Depending upon when the protest is received and the CITY's review, the City may or may not delay the bid opening or proposal due date.
- Pre-award Protest is a protest against making an award and is received after receipt of proposals or bids, but before award of a contract. A Pre-award Protest must be submitted to the City following the content and submission procedures specified herein within three (3) working days of the date the protester learned or should have learned of the basis of protest. Pre-award Protests must be received by the City prior to the agency's formal action on the contract award. Depending upon when the protest is received and the agency's review, the City may or may not delay the contract award.
- Post-award Protest is received after award of a contract. A Post-award Protest must be submitted to the City following the content and submission procedures specified herein within five (5) working days of the date the protester learned or should have learned of the basis of appeal. A Post-award Protest must not be based on the same set of facts rejected in a Pre-award Protest.

Content and Submission of Protests

Protests must contain the following information:

- Description of the solicitation or contract and number;
- Name of protestor with address, contact information, phone numbers and email addresses;
- Detailed statement of the grounds for protest; and
- Statement of the proposed relief or remedy.

Protests must be submitted in writing via facsimile copy, email with hard-copy back-up, USPS, FedEx or other package delivery service, or hand-delivered to:

City of Monrovia
Office of the City Clerk
415 S. Ivy Avenue
Monrovia, CA 91016
FAX: 626-303-6618
Email: CC@monroviaca.gov

Grounds for Protest

A protest may be submitted on one or more of the following grounds:

1. The CITY failed to follow the procedures or requirements in this RFP;
2. That there has been a violation of conflict of interest laws as provided by California Government Code section 87100 et seq.; or
3. That there has been a violation of State or Federal law.

Evaluation and Decision on Protest

Upon receipt of a protest, the City of Monrovia will review the grounds for the protest and provide a written response addressing in detail each substantive issue raised in the protest. A copy of the protest and the City's decision will be transmitted to the protester. The City Manager for the City of Monrovia is the responsible official for evaluation of protests and has the authority to make the final determination in matters of protest. The decision of the City of Monrovia will be final.

Should material information become available subsequent to the City Manager's decision on a protest or, if the protester believes that an error has been made of law or regulation, the protester may request reconsideration of that decision by formal notice to the City Manager within five (5) working days of the date of the original protest decision.

Qualifications	Points Possible
City of Monrovia business license	
1. Qualifications of the individual or firm.	15
2. Practical, recent experience completing comprehensive safety action plans (and/or projects of a similar nature) for agencies of a similar nature or size to City of Monrovia.	15
2. Practical, recent experience completing bicycle master plans (and/or projects of a similar nature) for agencies of a similar nature or size to City of Monrovia.	15
4. Demonstrated ability to meet project deadline; Proposed work schedule; Timeframe for delivery of service.	15
5. Demonstrated ability to provide transportation-related grant writing services and secure funding for agencies of a similar nature or size to City of Monrovia.	10
6. Demonstrated ability of key personnel.	10
7. Cost of services.	10
8. References of past clients.	10
Total Points	100

COST PROPOSAL

All respondents shall include a detailed cost proposal that includes a not to exceed, lump sum price for the base scope of work, individual lump sum prices for each optional item, and a lump sum price for the complete scope of work, as provided in these documents, along with a proposed schedule of hourly rates for additional work requested by the City. The proposal shall also include a line item summary breakdown of the proposed estimated costs for the project, a schedule of performance, an hourly rate schedule, and other pertinent cost information. The cost proposal will be utilized as a baseline for contract negotiations and is subject to change during the contract negotiation process.

CONTRACT NEGOTIATIONS

After establishing the final rankings, the City may negotiate a contract with the most qualified firm. The goal of the negotiation is to agree on a final contract that delivers to the local agency the services or products required at a reasonable cost and within an agreed upon time frame. The items that would typically be negotiated include:

- Work plan
- Schedule, including contract begin/end dates and milestones
- Tasks to be completed
- Assigned personnel (experience, classification, wage rate)
- Cost items, payments, and fees

The City reserves the right to cancel or modify this RFP with or without an award of contract. There is no guarantee that the City will place the requested service under contract.

CONTRACT TERMS

A draft of the City's standard Consultant Services Agreement is included in this document as **Attachment D** for reference. A mandatory requirement is that all consultants agree to execute the City's standard contract without amendment. Modifications to the contract will not be considered.

ADDITIONAL TERMS

Modification or Withdrawal of Submittals

Any proposal may be withdrawn or modified prior to the submittal deadline by written request to the City.

Confidentiality

Prior to award of contract, all proposals will be deemed confidential. After award of contract, all proposals will become public record.

Insurance Requirements

The Consultant Service Agreement, **Attachment D**, includes all insurance requirements that must be met by the selected consultant in order to execute an agreement with the City. The City will not modify or reduce the insurance policy requirements.

Discretion and Liability Waiver

The City reserves the right to reject all proposals or to request and obtain supplementary information from one or more applicants as deemed necessary for City staff to analyze the proposals. The distribution of this RFP does not bind the City to award an agreement.

The City is not liable for costs incurred by the consultant related to the preparation of the proposal and the application process. The consultant, by submitting a response to this RFP, waives all rights to protest or seek any legal remedies whatsoever regarding any aspect of this RFP.

All proposals shall be binding for a period of 90 days after the proposal due date.

Relevant Project Documents

Any project documents that the City considers to be relevant to creating a proposal for the services outlined above will be made available on the City website and distributed to the interested parties list. To register for the interested parties list and receive regular updates, please email Sophia Sousa at ssousa@monroviaca.gov. Staff will answer questions and/or provide additional documentation upon request throughout the RFP process. All questions must be sent by October 3, 2024 by 6:00 p.m.

Sole Point of Contact

The City has designated a sole point of contact responsible for administering this procurement and addressing any questions, concerns, or issues with the RFP document and process. Any inquiries should be directed to the contact listed below; other staff members or Council Members of the City of Monrovia should not be contacted.

Sophia Sousa, Management Analyst
Phone: (626) 932-5512
Email: ssousa@monroviaca.gov.

PROPOSAL SUBMITTAL

Please submit all proposals electronically by 6:00 p.m. on October 17, 2024 to bids@monroviaca.gov.

ATTACHMENT A

AWARD NUMBER: 693JJ32340090
FIS NUMBER: 700512
CFDA: 20.939

AGMT# 9200000000SS4A03
SAM UEI: EJFRLAQNN918
SAM SEARCH: 10/12/2023

SAFE STREETS AND ROADS FOR ALL PROGRAM FUNDING AGREEMENT

This Funding Agreement for Safe Streets and Roads for All Program Funds (the “Agreement”) is dated for reference purposes only October 12, 2023, and is by and between the City of Monrovia (the “Agency”) and the Los Angeles County Metropolitan Transportation Authority (“LACMTA”).

RECITALS

- A. Section 24112 of the Infrastructure Investment and Jobs Act (Pub. L. 117-58, November 15, 2021; also referred to as the “Bipartisan Infrastructure Law”) established the new Safe Streets and Roads for All (“SS4A”) discretionary program that supports the development, completion, or supplementation of a comprehensive safety action plan (“Action Plan”) that identifies the most significant roadway safety concerns in a community and the implementation of projects and strategies to address roadway safety issues.
- B. On June 23, 2022, the LACMTA Board adopted the Metro Street Safety, Data Sharing and Collaboration Policy and Action Plan to establish partnerships with Agencies as they design and implement safer and complete streets, and authorized staff to seek external funding to elaborate on and implement the policy and Action Plan and assist local jurisdictions in developing and funding vital street and road safety projects throughout Los Angeles County.
- C. On February 1, 2023, the United States Department of Transportation (the “USDOT”) announced the grant awards under the fiscal year (FY) 2022 SS4A program. The awards include \$21,494,665 to support projects to be implemented by LACMTA or their subrecipients.
- D. On August 22, 2023, a grant agreement by and between the USDOT, the Federal Highway Administration (the “FHWA”), and the LACMTA was executed designating LACMTA as the recipient of FY 2022 SS4A funds to support the LACMTA Action Plan, which in part provides \$177,360 in funding to the Agency for the Monrovia Action Plan (the “Project”).
- E. As the recipient of SS4A funds, the LACMTA as a pass-through entity shall negotiate and execute Agreements with agencies as subrecipients and shall monitor the activities with respect to performance of work and compliance, by providing technical assistance, financial management, internal controls, and oversight.
- F. The total cost for the Project described in the Scope of Work (the “SOW”), attached as Exhibit “A”, hereto is estimated to be \$221,700 (“Estimated Cost”).
- G. The Agency has agreed to provide the required local match of \$44,340 (the “Local Match”), as described in the Financial Plan that is attached as Exhibit “B”, and any additional funding

required to complete the Project.

- H. LACMTA assumes no responsibility for the funding of any portion of the Project. LACMTA is only acting as a pass-through conduit for the Agency.
- I. The Agency understands that the Federal Funds provided herein must be expended within the Term of this Agreement as specified in Section 13.1 and that it must have obtained any environmental clearance required by federal regulations to use the Federal Funds.
- J. The parties desire to execute this Agreement so LACMTA may pass through the Federal Funds received from the Federal Grant to the Agency to satisfy the requirements under 2 CFR 200.332 and are subject to the terms and conditions specified in Part I of this Agreement and applicable Federal laws and regulations referenced in Part II of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

The terms and conditions and applicable Federal laws and regulations of this Agreement consist of the following and each is incorporated by reference herein as if fully set forth herein:

1. Part I – Terms and Conditions
2. Part II – Applicable Federal Laws and Regulations
3. Exhibit A – Scope of Work
4. Exhibit B – Financial Plan
5. Exhibit C – Subrecipient Procurement Certification

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the dates indicated below:

LACMTA:

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

By: for [Signature] 2/22/2024
Stephanie N. Wiggins Date
Chief Executive Officer

APPROVED AS TO FORM:

DAWYN R. HARRISON
County Counsel

By: [Signature] 11/6/23
Deputy Date

GRANTEE:

CITY OF MONROVIA

By: [Signature] 1/18/24
Dylan Feik Date
City Manager

APPROVED AS TO FORM (OPTIONAL):

By: [Signature] 1/16/2024
Date
General Counsel

PART I
TERMS AND CONDITIONS

1. Title of the Project (the "Project"): Monrovia Action Plan
2. The Agency shall complete the Project as described in the Scope of Work, and in accordance with the Federal Grant requirements of the FHWA and this Agreement. The Scope of Work for the Project is included with this Agreement as Exhibit A. The Scope of Work includes a description of the Project and a detailed description of the work to be completed by the Agency including, without limitation, Project milestones consistent with the set schedule. Work shall be delivered in accordance with that schedule unless otherwise agreed to by the parties in writing. If the Agency is consistently behind schedule in meeting milestones or in delivering the Project, then LACMTA will have the option to terminate this Agreement for default as described in Section 17.
3. The Agency has **four (4) years** after the Agreement is executed to expend the funds unless otherwise authorized by LACMTA.
4. The Agency acknowledges that the Action Plan will be made publicly available, and the Agency agrees that it will publish the final Action Plan on a publicly available website.
5. The Agency is required to comply with all applicable Federal laws and regulations as referenced in Part II.
6. Non-compliance with the terms and conditions or applicable Federal laws and regulations referenced in Part II of this Agreement may result in remedial action, termination of the SS4A grant, disallowing costs incurred for the Project, requiring the Agency to refund to the FHWA the SS4A grant funds, and reporting the non-compliance in the Federal-government-wide integrity and performance system.
7. **QUARTERLY PROGRESS REPORTING REQUIREMENTS**

7.1 The Agency must complete and submit well documented quarterly progress reports. Progress report data must be submitted to LACMTA within 15 days after the end of each quarter for the calendar year. Agencies are required to use the SS4A Quarterly Progress Report template for submissions to LACMTA. The due dates are as follow:

- (i) Quarter 1: January 1 – March 31- Due April 15.
- (ii) Quarter 2: April 1 – June 30- Due July 15.
- (iii) Quarter 3: July 1 – September 30- Due October 15.
- (iv) Quarter 4: October 1 – December 31- Due January 15.

7.2 LACMTA will measure grant performance against the stated Project scope, schedule, budget, and deliverables in the Scope of Work included in the Agreement. Poor performance may be grounds for termination of the Agreement and revocation of the grant funds. The first reports shall be due to LACMTA within 15 days following the first full quarter after the date of execution of this Agreement.

8. REQUEST FOR REIMBURSEMENT

8.1 The Agency shall contribute at least the statutorily or other required local contribution of matching funds (other than Federal Funds and any other USDOT funds), if any is specified within this Agreement or any attachments hereto, toward the actual costs of the Project.

8.2 Not more frequently than quarterly, the Agency will prepare and submit to the LACMTA a certified request for reimbursement on the approved SS4A Reimbursement Request Form accompanied by the SS4A Quarterly Progress Report, for allowable Project costs incurred and paid for by the Agency consistent with the Project's SOW. Advance payments by LACMTA are not allowed.

8.3 Each Request for Reimbursement shall report the total of eligible Project expenditures, include a supporting summary of expenses that includes a detailed breakout of all costs incurred (i.e. direct labor, fringe benefits, contract costs, indirect costs, other direct costs), specify the percentage and amount of the Federal share and the Agency share of costs, and include any invoices paid along with proof of payment (i.e. check stubs, receipts).

8.4 If applicable, the first Request for Reimbursement shall also be accompanied by a report describing any tasks specified in the SOW document which were accomplished prior to the Effective Date of this Agreement, which costs could be credited toward the required Local Match provided that LACMTA has provided prior written approval for such expenditures to the Agency.

8.5 LACMTA will retain ten percent (10%) of each invoice amount until LACMTA has evaluated the Agency's performance according to the criteria specified by LACMTA and the data provided by the Agency and has determined that all contract requirements under this Agreement have been satisfactorily fulfilled. This includes confirmation that all proposed enhancements to existing subregional plans are completed, and/or the proposed Action Plan is made publicly available and is published on a publicly available website. The Agency shall invoice LACMTA for reimbursement of the 10% retention separately.

8.6 The Agency will request reimbursement for costs that are allowable under the applicable cost provisions of Title 2 of the Code of Federal Regulations(2 C.F.R.) Part 200, Subpart E., and should consult with LACMTA's SS4A Program Manager for questions regarding non-reimbursable expenses.

8.7 Total payments shall not exceed the Funding Amount specified in this Agreement. No Request for Reimbursement will be processed by LACMTA for expenses incurred after the Termination Date of this Agreement.

8.8 If any amounts paid to the Agency are disallowed or not reimbursed by the FHWA for any reason, the Agency shall remit to LACMTA the disallowed or reimbursed amount(s) within 30 days from receipt of LACMTA's notice. All payments made by LACMTA hereunder are subject to the audit provisions contained herein and within the Federal Grant.

8.9 The Agency shall comply with and ensure that work performed under this

Agreement is done in compliance with all applicable provisions of federal, state, and local laws, statutes, ordinances, rules, regulations and procedural requirements, including without limitation, Federal Acquisition Regulations (FAR) and the applicable requirements and regulations of LACMTA. The Agency acknowledges responsibility for obtaining copies of and complying with the terms of the most recent federal, state, or local laws and regulations and LACMTA requirements, including any amendments thereto.

8.10 All requests for reimbursement must first be approved by the SS4A Program Manager prior to submission for payment. Once approved, requests for reimbursement shall be transmitted to LACMTA's Accounts Payable Department using one of the following two options:

Option 1) E-mail:

AccountsPayable@Metro.net
AGMT# 9200000000SS4A03

Option 2) Standard Mail:

Los Angeles County Metropolitan Transportation Authority
P.O. Box 512296
Los Angeles, CA 90051-0296
Attention: Accounts Payable, AGMT# 9200000000SS4A03

9. START AND END DATE OF REIMBURSABLE ACTIVITIES

Unless written notification is otherwise provided by the LACMTA, the start date of reimbursable activities is August 22, 2023, the date the USDOT, FHWA, and LACMTA executed an agreement designating LACMTA as the recipient of FY 2022 SS4A funds to support the Project. Actual reimbursement of eligible work cannot occur until LACMTA and the Agency execute this Agreement. The end date of reimbursable activities is the Termination Date of this Agreement.

10. DISBURSEMENT OF FUNDS

10.1 To the extent LACMTA receives Federal Funds pursuant to the Federal Grant, LACMTA shall forward Federal Funds in an amount not to exceed \$177,360 (the "Funding Amount") to the Agency subject to the terms and conditions of the Federal Grant and this Agreement.

10.2 Payments to the Agency will be processed by LACMTA within a reasonable time period, but in no event more than sixty (60) calendar days after receipt of a Request for Reimbursement meeting the requirements of Section 8 above.

10.3 The Agency shall be subject to, and shall comply with, all requirements of the Federal Grant and other applicable requirements of the United States Department of Labor (USDOL), USDOT, FHWA, and LACMTA as required by LACMTA to fulfill its responsibilities as the grantee under the Federal Grant and as the pass-through agency.

10.4 Disbursements shall be made on a reimbursement basis in accordance with the provisions of this Agreement.

10.5 LACMTA will make all disbursements electronically unless an exception is requested in writing. Disbursements via Automated Clearing House (ACH) will be made at no cost to the Agency. The Agency must confirm they are registered in the LACMTA payment system to receive ACH payments or must complete the ACH form and submit such form to LACMTA before reimbursement payments can be made.

10.6 Expenses that are not invoiced by the termination date specified in Section 13.1 below are not eligible for reimbursement.

11. ALLOWABLE COSTS

11.1 Allowable Project costs will be accepted only if they meet the requirements of 2 C.F.R. Part 200, Subpart E.

11.2 Allowable Project costs will be accepted only for planning and demonstration of an Action Plan, including costs to develop, complete, or supplement an Action Plan, and supplemental planning and/or demonstration activities that inform the development of a new or existing Action Plan.

11.3 Implementation costs shall not be considered eligible costs for reimbursement, which include infrastructure, behavioral, design, development, and/or operational activities identified in an Action Plan.

11.4 Indirect costs shall not be considered eligible costs for reimbursement unless all the following requirements are met by the Agency: i) provide evidence of a federally approved Cost Allocation Plan and indirect rate, consistent with the requirements of 2 C.F.R. 200.414; ii) submit a written request to LACMTA; and iii) receive a written approval from LACMTA prior to incurring the expenditure.

12. LACMTA COSTS

12.1 LACMTA will not charge the Agency for administrating these Federal Funds.

13. TERM

13.1 The term of this Agreement shall commence on the date of the LACMTA's CEO or their designee's signature ("Effective Date") and shall terminate **four (4) years** after the Effective Date of this Agreement (the "Termination Date"), unless extended by a written approval from the LACMTA, or terminated earlier as provided herein, (i) the agreed upon Scope of Work has been completed; (ii) all deliverables have been published and made publicly available; (iii) all LACMTA audit and reporting requirements have been satisfied; and (iv) the final disbursement of the Funds has been made to the Agency.

13.2 Should LACMTA determine there are insufficient Funds available for the Project; LACMTA may terminate this Agreement by giving written notice to the Agency at least thirty (30) days in advance of the effective date of such termination. If this Agreement is terminated pursuant to this section, LACMTA will not reimburse the Agency any costs incurred after the effective date of such termination.

13.3 Amendments to this Agreement shall be in writing executed by the parties. No changes to the (i) award amount, (ii) Project Funding, (iii) the SOW, or (iv) termination date of shall be allowed without a written amendment to this Agreement, approved and signed by the LACMTA Chief Executive Officer or their designee and the Agency.

14. FINANCIAL RECORDS AND AUDIT REQUIREMENTS

14.1 The Agency shall be subject to and shall comply with all applicable requirements of LACMTA, the FHWA, the USDOT, and the USDOL regarding Project reporting, audit requirements and site visits.

14.2 LACMTA, and/or its designee, shall have the right to conduct audits of the Project, as deemed appropriate, such as financial and compliance audits; interim audits; pre-award audits, performance audits and final audits. LACMTA may commence a final audit within twelve months of receipt of an acceptable final invoice. The Agency agrees to establish and maintain proper accounting procedures and cash management records and documents in accordance with Generally Accepted Accounting Principles (GAAP). The Agency shall reimburse LACMTA for any expenditure not in compliance with the terms and conditions of this Agreement. Any use of the Funds which is expressly prohibited under this Agreement shall be an ineligible use of the Funds and may be disallowed by LACMTA audit. Findings of the LACMTA audit are final. When LACMTA audit findings require the Agency to return monies to LACMTA, the Agency shall return such monies within thirty (30) days after the final audit is sent to the Agency. LACMTA shall make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if determined that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner under this Agreement.

14.3 The Agency shall keep records, including, without limitation, accounting records, written policies and procedures, contract files, original estimates, correspondence, change order files (including documentation covering negotiated settlements), invoices, and any other supporting evidence deemed necessary by LACMTA to substantiate charges related to the Project and confirm compliance with applicable Federal laws and regulations referenced in Part II of this Agreement. The records shall be open to inspection and subject to audit and reproduction by LACMTA auditors or authorized representatives to the extent deemed necessary by LACMTA to adequately permit evaluation of expended costs. Such records subject to audit shall also include, without limitation, those records deemed necessary by LACMTA to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Project, and those deemed necessary by LACMTA to evaluate and verify compliance with Federal laws (including Title VI, ADA, and DBE). These records must be retained by the Agency for three years following final payment under this Agreement.

14.4 The Agency shall comply with all applicable provisions governing the FHWA's access to records, accounts, documents, information, facilities, and staff, including complying with any program or compliance reviews, and/or complaint investigations conducted by the FHWA. The Agency shall submit the material for review upon request to FHWA, or its designee in a timely, complete, and accurate way.

14.5 The Agency shall cause all contractors and subcontractors to comply with the requirements of Sections 14.3 and 14.4 above. The Agency shall cause all contractors and subcontractors to cooperate fully in furnishing or in making available to LACMTA and FHWA all records deemed necessary by auditors or authorized representatives related to the Project.

14.6 LACMTA or any of its duly authorized representatives, upon reasonable written notice shall be afforded access to all the records of the Agency and its contractors and subcontractors related to the Project and shall be allowed to interview any employee of the Agency and its contractors and subcontractors through final payment to the extent reasonably practicable.

14.7 LACMTA or any of its duly authorized representatives, upon reasonable written notice, shall have access to the offices of the Agency and its contractors and subcontractors, shall have access to all necessary records, including reproduction at no charge to LACMTA, and shall be provided adequate and appropriate workspace in order to conduct audits in compliance with the terms and conditions of this Agreement.

14.8 In addition to LACMTA's other remedies as provided in this Agreement, LACMTA shall withhold the Funds and/or recommend not to award future grants to the Agency if the LACMTA audit has determined that the Agency failed to comply with the Scope of Work (such as misusing Funds or failure to return Funds owed to LACMTA and FHWA in accordance with audit findings) and/or is severely out of compliance with other terms and conditions as defined by this Agreement, including the access to records provisions of section 14.3 and 14.4.

14.9 The Agency shall certify monthly invoices by reviewing all contractor and subcontractor costs and maintaining internal control to ensure that all expenditures are reasonable, allocable, and allowable under the applicable cost provisions of 2 C.F.R. Part 200, Subpart E.

14.10 Whenever possible, in exercising its audit rights under this Agreement, LACMTA shall rely on the Agency's own records and audit work to minimize direct audit of contractors, subcontractors, consultants, and suppliers.

14.11 The Agency shall obtain the services of an independent auditor to conduct a single audit of the Project each year in conformance with the provisions of 2 C.F.R. Part 200, Subpart F. The Agency shall submit a copy of each single audit to the LACMTA within 30 days of its completion.

15. EXPENDITURE AND DISPOSITION OF FUNDS

15.1 The expenditure and disposition of the Funding Amount by the Agency shall be subject to and in accordance with the terms and conditions of this Agreement, the Federal Grant and the applicable requirements of LACMTA and the FHWA. The Agency shall not utilize the Funding Amount in any way or on any project other than that specified in this Agreement and in the Federal Grant.

15.2 The Agency shall be responsible for any and all cost overruns and/or operating

deficits for the Project.

15.3 Upon completion of the Project described in the SOW and disposition of the 10 percent retention, any unused Funding Amount shall revert back to the FHWA.

15.4 The Agency shall address all correspondence to the FHWA regarding this Project through LACMTA's SS4A Program Manager.

15.5 The programmed budget (the "Financial Plan") specifying the sources and amounts of funds to be used to pay for the Project is attached to this Agreement as Exhibit "B".

15.6 No material changes, as determined by LACMTA in its reasonable discretion and subject to the final discretion of the FHWA, to the Financial Plan or the SOW shall be funded or allowed without an amendment to this Agreement approved and signed by LACMTA's CEO or their designee and an amendment to the Federal Grant evidencing the FHWA's acceptance of such material change. The Agency shall give advance written notice to LACMTA of all proposed changes to the Financial Plan or SOW that it originally submitted to LACMTA.

16. TIMELY USE OF FUNDS

16.1 The Agency must demonstrate timely use of the Funds by:

- (v) Executing this Agreement within ninety (90) days of receiving formal transmittal of the Agreement from LACMTA.
- (vi) Meeting the Project milestones due dates as agreed upon by the LACMTA and Agency in the Agreement (see Exhibit A, SOW).
- (vii) Expending the Funds granted under this Agreement for allowable costs within the term of this Agreement.

17. DEFAULT

17.1 Default under this Agreement is defined as one or more of the following: (i) the Agency fails to comply with the terms and conditions specified in Part I of this Agreement, the applicable Federal laws and regulations referenced in Part II of this Agreement, or the SOW contained herein; (ii) the Agency is consistently behind schedule in meeting milestones or in delivering the Project; (iii) the Agency fails to perform satisfactorily or makes a material change, as determined by LACMTA at its sole discretion, to the Financial Plan, the Scope of Work, or the Project Funding without LACMTA's and FHWA's prior written consent or approval as provided herein; or, (iv) the Agency is in default of any other applicable requirements of LACMTA or the FHWA.

18. REMEDIES

18.1 In the event of a Default by the Agency, LACMTA shall provide written notice of such Default to the Agency with a 30-day period to cure the Default. In the event the Agency fails to cure the Default or commit to cure the Default and commence the same within such 30-day period to the satisfaction of LACMTA, LACMTA shall have the following remedies:

- (i) LACMTA may terminate this agreement;
- (ii) LACMTA may make no further disbursements of Funds to the Agency;
- (iii) LACMTA may recover from the Agency any Funds disbursed to the Agency as allowed by law or in equity; and/or
- (iv) Any remedies the FHWA may have under the Federal Grant.

18.2 Effective upon receipt of written notice of termination from LACMTA pursuant to Section 18.1, the Agency shall not undertake any new work or obligation with respect to this Agreement unless so directed by LACMTA in writing. Any Funds expended after termination shall be the sole responsibility of the Agency.

18.3 The remedies described herein are non-exclusive. LACMTA shall have the right to enforce any and all rights and remedies herein or which may be now or hereafter available at law or in equity.

19. SECTION 5333(b) REQUIREMENTS

19.1 For purposes of satisfying the requirements of Section 5333(b) of the Federal Transit Act, by signing this Agreement the Agency certifies its acceptance of the terms and conditions of all protective arrangements applicable to all capital and operating assistance projects and of any other Section 5333(b) protections certified by the USDOL as applicable to any federal funding received, including any specific terms and conditions included in USDOL's certification letter for the FHWA grant.

19.2 The Agency shall indemnify, defend, and hold harmless the LACMTA and its employees, officers and agents for any claims properly brought by public transportation employees in the Agency's service area or by its subcontractors pursuant to the Special Warranty, or any other Section 5333(b) arrangements, that may be filed against LACMTA and that may arise from any or all of the Federal Grant awarded to LACMTA on behalf of the Agency for the Project.

20. ADDITIONAL TERMS AND CONDITIONS

20.1 This Agreement, along with its Attachments, constitutes the entire understanding between the parties, with respect to the subject matter herein. The Agreement shall not be amended, nor any provisions or breach hereof waived, except in writing signed by the parties who agreed to the original Agreement or the same level of authority.

20.2 In the event that there is any court proceeding between the parties to enforce or interpret this Agreement, to protect or establish any rights or remedies hereunder, the prevailing party shall be entitled to its costs and expenses, including reasonable attorney's fees.

20.3 Neither LACMTA nor any subsidiary or their respective directors, officers, agents, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or committed to be done by the Agency under or in connection with any work performed by or service provided by the Agency, its officers, agents, employees, contractors and subcontractors under this Agreement. The Agency shall fully indemnify, defend (with counsel approved by LACMTA) and hold LACMTA, and its subsidiaries and their

respective directors, officers, agents and employees harmless from and against any suits and causes of actions, claims, losses, liability, damages, costs and expenses, including without limitation, any costs or liability on account of bodily injury, death or personal injury of any person or for damage to or loss of property, any environmental obligation, and any legal fees in any way arising out of acts or omissions to act related to the Project or this Agreement, without requirement that LACMTA first pay such claim. The obligations set forth in this section shall survive termination of this Agreement.

20.4 Neither party hereto shall be considered in default in the performance of its obligation hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of a public enemy, and government acts beyond the control and without fault or negligence of the affected party. Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder, or prevent performance of any obligations under this Agreement.

20.5 The Agency shall comply with and ensure that work performed under this Agreement is done in compliance with Generally Accepted Accounting Principles (GAAP), all applicable provisions of federal, state, and local laws, statutes, ordinances, rules, regulations, and the applicable requirements and regulations of LACMTA. The Agency acknowledges responsibility for obtaining copies of and complying with the terms of the most recent federal, state, or local laws and regulations, and LACMTA requirements including any amendments thereto.

20.6 The Agency shall not assign this Agreement, or any part thereof, without prior approval of the LACMTA Chief Executive Officer or their designee, and any assignment without said consent shall be void and unenforceable at the option of LACMTA.

20.7 Subject to all requirements of this Agreement, the Federal Grant, and all other applicable requirements of LACMTA and FHWA, including without limitation the requirement of competitive procurement of services and assets, the Agency may contract with other entities, including its affiliates in a project management role, to implement this Agreement.

20.8 This Agreement shall be governed by California law. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

20.9 The covenants and agreements of this Agreement shall inure to the benefit of, and shall be binding upon, each of the parties and their respective successors and assigns.

20.10 The Agency will advise LACMTA prior to any key Project staffing changes.

20.11 The Agency in the performance of the work described in this agreement is not a contractor nor an agent or employee of LACMTA. The Agency attests to no organizational or personal conflicts of interest and agrees to notify LACMTA immediately if a conflict, or the appearance thereof, arises. The Agency shall not represent itself as an agent or employee of LACMTA and shall have no powers to bind LACMTA in contract or otherwise.

20.12 The Agency agrees to comply with all applicable Federal laws and regulations referenced in Part II of this Agreement including, but not limited to, the Uniform Administrative Requirements (49 C.F.R. Part 18), Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. Part 200); National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.); and Build America, Buy America Act (BIL, div. G 70901-27).

20.13 The Agency agrees that federal laws and regulations control Project award and implementation. The Agency also agrees that federal directives as defined in (Part II, Applicable Federal Laws and Regulations) this Agreement, set forth federal terms applicable to the Project, except to the extent that FHWA determines otherwise in writing. The Agency understands and agrees that unless FHWA has offered express written approval of alternative procedure or course of action differing from a procedure or course of action set forth in the applicable federal directive, the Agency may incur a violation of the terms of its Agreement if it implements an alternative procedure or course of action not approved.

20.14 The Agency understands and agrees that federal laws, regulations, and directives applicable to the Project and to itself as the applicant for federal funds on the date on which the FHWA authorized official awards of federal assistance for the Project may be modified from time to time. New federal laws, regulations and directives may become effective after the date on which the Agency executes the Agreement for the Project and might apply to that Agreement. The Agency agrees that the most recent of such federal laws, regulations and directives will govern the administration of the Project at any time, except to the extent FHWA determines otherwise in writing.

20.15 The Agency understands that it will make reference to the Catalog of Federal Domestic Assistance (CFDA) number for the Safe Streets and Roads for All Program (20.939) in all its correspondence, including quarterly progress reports, invoices, and single audit reports.

20.16 Notices will be given to the parties at the address specified below unless otherwise notified in writing of change of address. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered upon receipt by the correct address by United States mail, postage prepaid, certified, or registered mail, return receipt requested, or by Federal Express or other reputable overnight delivery service addressed to the parties hereto as follows:

LACMTA's Address:

LACMTA
One Gateway Plaza
Mail Stop 99-23-3
Los Angeles, CA 90012
Attention: Ruben Cervantes
Email: cervantesr@metro.net
Phone: 213-547-4323

Agency Address:

City of Monrovia
415 South Ivy Avenue
Monrovia, CA 91016
Attention: Christopher Castruita
Email: ccastruita@ci.monrovia.ca.us
Phone: 626-256-8224

PART II
APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this Agreement, the Agency assures and certifies, with respect to these SS4A funds, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this agreement shall be governed by and in compliance with the following requirements, as applicable, to the Agency. The applicable provisions to this agreement include, but are not limited to, the following:

General Federal Legislation

- a) Federal Fair Labor Standards Act – 29 U.S.C. 201, et seq.
- b) Hatch Act – 5 U.S.C. 1501, et seq.
- c) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 – 42 U.S.C. 4601, et seq.
- d) National Historic Preservation Act of 1966 - Section 106 – 54 U.S.C. 306108
- e) Archeological and Historic Preservation Act of 1974 – 54 U.S.C. 312501, et seq.
- f) Native American Graves Protection and Repatriation Act – 25 U.S.C. 3001, et seq.
- g) Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. 7401, et seq.
- h) Section 404 of the Clean Water Act, as amended – 33 U.S.C. 1344
- i) Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. 1536
- j) Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. 1451, et seq.
- k) Flood Disaster Protection Act of 1973 - Section 102(a) – 42 U.S.C. 4012a
- l) Age Discrimination Act of 1975 – 42 U.S.C. 6101, et seq.
- m) American Indian Religious Freedom Act, P.L. 95-341, as amended
- n) Drug Abuse Office and Treatment Act of 1972, as amended – 21 U.S.C. 1101, et seq.
- o) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, P.L. 91-616, as amended – 42 U.S.C. 4541, et seq.
- p) Sections 523 and 527 of the Public Health Service Act of 1912, as amended – 42 U.S.C. 290dd through 290dd-2
- q) Architectural Barriers Act of 1968 – 42 U.S.C. 4151, et seq.
- r) Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 – 42 U.S.C. 8373
- s) Contract Work Hours and Safety Standards Act – 40 U.S.C. 3701, et seq.
- t) Copeland Anti-kickback Act, as amended – 18 U.S.C. 874 and 40 U.S.C. 3145
- u) National Environmental Policy Act of 1969 – 42 U.S.C. 4321, et seq.
- v) Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. 1271, et seq.
- w) Federal Water Pollution Control Act, as amended – 33 U.S.C. 1251-1376
- x) Single Audit Act of 1984 – 31 U.S.C. 7501, et seq.
- y) Americans with Disabilities Act of 1990 – 42 U.S.C. 12101, et seq.
- z) Title IX of the Education Amendments of 1972, as amended – 20 U.S.C. 1681 through 1683 and 1685 through 1687
- aa) Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. 794
- bb) Title VI of the Civil Rights Act of 1964 – 42 U.S.C. 2000d, et seq.

- cc) Title IX of the Federal Property and Administrative Services Act of 1949 – 40 U.S.C. 1101 -1104, 541, et seq.
- dd) Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. 1352
- ee) Freedom of Information Act – 5 U.S.C. 552, as amended
- ff) Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. 1855
- gg) Farmland Protection Policy Act of 1981 – 7 U.S.C. 4201, et seq.
- hh) Noise Control Act of 1972 – 42 U.S.C. 4901, et seq.
- ii) Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. 661, et seq.
- jj) Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 – 33 U.S.C. 401 and 525
- kk) Section 4(f) of the Department of Transportation Act of 1966 – 49 U.S.C. 303
- ll) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. 9601, et seq.
- mm) Safe Drinking Water Act – 42 U.S.C. 300f to 300j-26
- nn) Wilderness Act – 16 U.S.C. 1131-1136
- oo) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. 6901, et seq.
- pp) Migratory Bird Treaty Act – 16 U.S.C. 703, et seq.
- qq) The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- rr) Cargo Preference Act of 1954 – 46 U.S.C. 55305
- ss) Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232

Executive Orders

- a) Executive Order 11246 – Equal Employment Opportunity
- b) Executive Order 11990 – Protection of Wetlands
- c) Executive Order 11988 – Floodplain Management
- d) Executive Order 12372 – Intergovernmental Review of Federal Programs
- e) Executive Order 12549 – Debarment and Suspension
- f) Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g) Executive Order 13166 – Improving Access to Services for Persons with Limited English Proficiency
- h) Executive Order 13985 – Advancing Racial Equity and Support for Underserved
- i) Communities Through the Federal Government
- j) Executive Order 14005 – Ensuring the Future is Made in All of America by All of
- k) America’s Workers
- l) Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

General Federal Regulations

- a) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b) Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c) Investigative and Enforcement Procedures – 14 C.F.R. Part 13

- d) Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e) Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f) Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g) Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60, et seq.
- h) New Restrictions on Lobbying – 49 C.F.R. Part 20
- i) Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j) Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k) Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l) Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m) DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n) Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o) Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q) DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r) Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs – 49 C.F.R. Part 26

Office of Management and Budget Circulars

- a) Any applicable OMB Circular based upon the specific FY 2022 Safe Streets and Roads for All Grant Recipients and Subrecipients.

Highway Federal Legislation

- a) Agreements relating to the use of access to rights-of-way-interstate system, 23 U.S.C. 111
- b) Planning, 23 U.S.C. 134 and 135 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)

- c) Tolls, 23 U.S.C. 301 (to the extent the recipient or subrecipient wishes to toll an existing free facility that has received Title 23 funds in the past); except as authorized by 23 U.S.C. 129 and 166.
- d) Efficient Environmental Reviews - 23 U.S.C. 139
- e) Policy on lands, wildlife and waterfowl refuges, and historic sites - 49 U.S.C. 303

Federal Highway Regulations

- a) Planning – 23 C.F.R. Part 450 (except for projects that are not regionally significant that do not receive funding under Title 23 or Chapter 53 of Title 49)
- b) National Highway System Design Standards – 23 C.F.R. Part 625
- c) Location and Hydraulic Design of Encroachments on Flood Plains – 23 C.F.R. Part 650 Subpart A
- d) Manual on Uniform Traffic Control Devices – 23 C.F.R. Part 655
- e) Length, Width and Weight Limitations – 23 C.F.R. Part 658
- f) Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- g) Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f)) – 23 C.F.R. Part 774
- h) Permitting Requirements under the National Pollutant Discharge Elimination System – 40 C.F.R. Part 122

EXHIBIT A
SCOPE OF WORK

Monrovia Action Plan

- Complete the City of Monrovia's Action Plan, update the Bicycle Master Plan, perform an analysis of portions of Mountain Avenue, and perform a congestion analysis.

The City has performed initial analysis for a Local Road Safety Action Plan and has an outdated Bicycle Master Plan that no longer reflects development patterns or bicycle traffic conditions. Mountain Avenue is a major thoroughfare with a high incidence of traffic and pedestrian related collisions, and the congestion analysis will facilitate review of traffic at signalized intersections to integrate features such as leading pedestrian intervals and bicycle signal detection. Combined, all these components align with the goal of reducing traffic-related fatalities and serious injuries within the entire city. All elements will also be driven by a data-driven approach focused on infrastructure design, public education/participation, and enforcement efforts around the goal of zero traffic fatalities or severe injuries, while increasing safety and healthy mobility for all community members. The Mountain Avenue Collision Analysis has been identified as a priority by the City to address the high rate of injury and collision on this major thoroughfare.

Performance Measures (completion of project)

- a) Percent of Funds to Underserved Communities: Funding amount (of total project amount) benefiting underserved communities, as defined by USDOT.
- b) Lessons Learned and Recommendations: Description of lessons learned and any recommendations relating to future projects or strategies to prevent death and serious injury on roads and streets.

Timeline

Milestone	Schedule Date
Planned Draft Action Plan Completion Date:	12/31/2024
Planned Action Plan Completion Date:	3/31/2025
Planned Action Plan Adoption Date:	6/30/2025
Planned SS4A Final Report Date:	7/31/2025

Deliverables

- a) Implement the Project consistent with the Scope of Work and the Federal Grant (including any amendments approved by the LACMTA and the FHWA), and in compliance with all applicable federal regulations.
- b) Submit all required reports and certifications as detailed in this Agreement and as requested by LACMTA and FHWA.
- c) Proposed enhancements to existing subregional plans are completed, and/or the proposed Action Plan is made publicly available and is published on a publicly available website.

EXHIBIT B
FINANCIAL PLAN

The total cost of the Project is \$221,700. The following is a description of the funding category and the corresponding funding amounts and source to implement the Project.

Category	<u>FHWA Grant</u>	<u>Local Match</u>
Planning and Demonstration	\$177,360	\$44,340

Sources of Federal Financial Assistance

<u>Funding Year</u>	<u>Funding Source</u>	<u>Amount</u>
FY2022	Safe Streets and Road for All	\$177,360

Local Match

The Agency shall use Non-USDOT funds to match the grant.

FUNDING SOURCES	TOTAL (\$)	FEDERAL (\$)	LOCAL (\$)
1. SS4A (2022 Award)- Planning and Demonstration	\$177,360	\$177,360	
2. Monrovia Local Match	\$44,340		\$44,340
Total	\$221,700	\$177,360	\$44,340
	100%	80%	20%

ELIGIBLE EXPENSES	TOTAL (\$)	FEDERAL (\$)	LOCAL (\$)
1. Local Road and Safety Action Plan Updates	\$75,000	\$60,000	\$15,000
2. Bicycle Master Plan Updates	\$35,000	\$28,000	\$7,000
3. Mountain Avenue Collision Analysis	\$11,700	\$9,360	\$2,340
4. Congestion Analysis	\$100,000	\$80,000	\$20,000
Total	\$221,700	\$177,360	\$44,340

EXHIBIT C

SUBRECIPIENT PROCUREMENT CERTIFICATION

As a condition for receiving certain subrecipient federal funds from the Los Angeles County Metropolitan Transportation Authority (Metro), The Agency certifies that procurement procedures will ensure an open competitive process and will conform to applicable federal law, including 49 CFR Part 18 (specifically Section 18.36). Furthermore, solicitation documents will not be released to the public or individual procurement contracts will not be executed until a Metro representative has reviewed all applicable procurement procedures and documents to ensure compliance.

Metro will be notified of the contract or option award including the name of the successful bidder, the total dollar value of the contract or option and the contract or option award date within three business days of the award.

ATTACHMENT B

FHWA REQUIRED FEDERAL PROVISIONS AND CERTIFICATIONS

1. Civil Rights Requirements and Equal Employment Opportunity Clause
2. Disadvantaged Business Enterprises (DBE) Provision
3. Sanctions and Penalties for Breach of Contract
4. Termination for Cause and Convenience
5. Rights to Inventions Made Under a Contract or Agreement
6. Clean Air Act / Federal Water Pollution Control Act
7. Energy Efficiency
8. Debarment and Suspension (**Certification Required**)
9. Byrd Anti-Lobbying Amendment (**Certification Required**)

Required certifications that need to be completed are at the end of this document. The following requirements apply to all contracts and subcontracts.

1. Civil Rights Requirements and Equal Employment Opportunity Clause

1. *Nondiscrimination* - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C., 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C.6102, Section 202 of the Americans with Disabilities Act of 1990, and 42 U.S.C. 12132, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. In addition, the contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.
2. *Equal Employment Opportunity* – 41 CFR 60-1.4(a)- Government Contracts. Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts and subcontracts (and modifications thereof if not included in the original contract). During the performance of this contract, the contractor and its subcontractors agrees as follows:
 - a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
 - b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

- c) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- d) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- e) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- f) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- g) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- h) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

2. Disadvantaged Business Enterprise (DBE) Provision- 49 CFR 26

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs and with section 1101(b) of SAFETEA-LU, 23 U.S.C. § 101. A separate contract goal of **6% DBE participation has been established** for this procurement. The City, as a recipient of federal financial assistance, is required to implement the Los Angeles County Metropolitan Transportation Authority's (Metro's) Disadvantaged Business Program in accordance with federal regulation 49 CFR Part 26 issued by the U.S. Department of Transportation (DOT). The City is required to include all other DBE requirements and flow-down clauses in their solicitation and contract(s) as identified in the RC-DBE Instructions (Exhibit D) for DOT-Assisted Contracts and Disadvantaged Business Enterprise Implementation Agreement for Subrecipients.

3. Sanctions and Penalties for Breach of Contract- 2 CFR Part 200 Appendix II (A)

Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. FHWA does not prescribe the form or content of such provisions. What provisions are developed will depend on the circumstances and the type of contract. Recipients should consult legal counsel in developing appropriate clauses. The following clauses are examples of provisions from various Federal third-party contracts.

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

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

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

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

Rights and Remedies - The duties and responsibilities imposed by the Contract Document and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by the City or Contractor shall constitute a waiver of any right of duty afforded any

of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agree in writing.

4. Termination for Cause and Convenience- 2 CFR Part 200 Appendix II (B)

All contracts and subcontracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

1. Termination for Convenience (General Provision) The City may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to the City to be paid. If the Contractor has any property in its possession belonging to the City, the Contractor will account for the same, and dispose of it in the manner the City directs.
2. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, the City may terminate this contract for default. Termination shall be in effect by serving a notice of termination on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract. If it is later determined by the City that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, the City, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.
3. Opportunity to Cure (General Provision) The City in its sole discretion may, in the case of a termination for breach or default, allow the Contractor thirty (30) days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

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

4. Waiver of Remedies for any Breach In the event that the City elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this contract, such waiver by the City shall not limit the City's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.
5. Termination for Convenience (Professional or Transit Service Contracts) The City, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the City shall be liable only for

payment under the payment provisions of this contract for services rendered before the effective date of termination.

6. If, after serving a notice of termination for default, the City determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, the City, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

5. Rights to Inventions Made Under a Contract or Agreement- 2 CFR Part 200 Appendix II (F)

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. Clean Air Act / Federal Water Pollution Control Act- 2 CFR Part 200 Appendix II (G)

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. Energy Efficiency- 2 CFR Part 200 Appendix II (H)

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

8. Debarment and Suspension- 2 CFR Part 200 Appendix II (I) - **(Certification Required)**

Debarment and Suspension (Executive Orders 12549 and 12689)- A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

This contract is a covered transaction for the purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded, or disqualified as defined at 49 CFR 29.940 and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters.

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

9. Byrd Anti-Lobbying Amendment- 2 CFR Part 200 Appendix II (J)- **(Certification Required)**

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier, up to the non-Federal award.

Certification for Suspension and Debarment

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

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

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement flows down to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

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

_____ Signature of Contractor's Authorized Official

_____ Name of Contractor's Authorized Official

_____ Title of Contractor's Authorized Official

_____ Date

Byrd Anti-Lobbying Amendment Certification

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

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

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, *apply* to this certification and disclosure, if any.

_____ Signature of Contractor's Authorized Official

_____ Name of Contractor's Authorized Official

_____ Title of Contractor's Authorized Official

_____ Date

ATTACHMENT C

RC-DBE INSTRUCTIONS FOR METRO SUBRECIPIENT AGENCIES

RACE-CONSCIOUS INSTRUCTIONS FOR DOT-ASSISTED CONTRACTS

The City has established a RC-DBE contract goal for this Agreement of **6%**. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

1. DEFINITIONS

- a. The term “Disadvantaged Business Enterprise” or DBE means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- b. The Term “Race Conscious Disadvantaged Business Enterprise” or RC-DBE. DBE classes have been determined to have a statistically significant disparity in their utilization in previously awarded transportation contracts. RC-DBE’s include all DBE groups, specifically: Black Americans, Native Americans, Asian-Pacific Americans, Hispanic Americans, Subcontinent Asian Americans, and Women
- c. The term “Agreement” also means “Contract.”
- d. Agency also means the local entity entering into this contract with the Consultant.
- e. The term “Bidder” shall mean prime contractor or prime consultant submitting a bid or proposal to recipient organization. The terms “Proposer” or “Offeror” may also be used in lieu of “Bidder.”
- f. The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- a. DBE’s and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (see 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Contractor should ensure that DBE’s and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- b. Proposers are encouraged to use services offered by financial institutions owned and controlled by DBE’s.

3. SUBMISSION OF RC-DBE INFORMATION

If there is an RC-DBE contract goal on this contract, the Proposer, in order to be considered responsible and responsive, must make good faith efforts to meet the goal established for the contract. If the goal is not met, the Proposer must document adequate good faith efforts

and submit documentation at the time of bid or proposal due date. If the Proposer fails to submit good faith effort documentation at the time of bid or proposal due date, the Proposer will be considered non-responsive. Only RC-DBE firms certified through the CUCP will be counted towards the contract goal; however, all DBE participation shall be collected and reported.

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

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

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

If Proposer does not meet DBE goal at time of proposal due date, Proposer must submit its good faith efforts as follows:

1. At time of proposal or bid due date, as a matter of responsiveness, or
2. No later than 5 days after bid opening as a matter of responsibility.

4. RC-DBE PARTICIPATION GENERAL INFORMATION

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

- a. A RC-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 RC-DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- c. A RC-DBE Proposer not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following;
 - i. The Proposer is an RC-DBE and will meet the goal by performing with its own forces.
 - ii. The Proposer will meet the goal through work performed by RC-DBE subcontractors, suppliers, or trucking companies.
 - iii. The Proposer, prior to bidding, made adequate good faith efforts to meet the goal.

- d. A RC-DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- e. A RC-DBE must perform a commercially useful function pursuant to 49 CFR 26.55, that is, a RC-DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- f. The Proposer shall list only one subcontractor for each portion of work as defined in their bid and all RC-DBE subcontractors should be listed in the bid list of subcontractors. Firms to be counted toward the DBE Goal must be certified by bid/proposal due date.
- g. A prime contractor who is a certified RC-DBE is eligible to claim all the work in the agreement toward the RC-DBE participation except that portion of the work to be performed by non-DBE subcontractors.
- h. To identify certified DBEs, you must only use the California Unified Certification Program Database (CUCP). **Certifications from other agencies or organizations will not be accepted.**

5. RESOURCES

- a. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Proposers may call (916) 440-0539 for web or download assistance.
- b. Access the CUCP database from the Department of Transportation, Civil Rights, Disadvantaged Business Enterprise Program website at:
<https://californiaucp.dbesystem.com>.
 - i. Click on Search for Certified Firms
 - ii. Searches can be performed by one or more criteria
 - iii. Follow instructions on the screen

6. MATERIALS OR SUPPLIES PURCHASED FROM DBEs COUNT TOWARDS DBE CREDIT, AND IF A DBE IS ALSO A RC-DBE, PURCHASES WILL COUNT TOWARDS THE RC-DBE CONTRACT GOAL UNDER THE FOLLOWING CONDITIONS:

- a. If the materials or supplies are obtained from a RC-DBE manufacturer, 100 percent of the cost of the materials or supplies count towards the goal. A RC-DBE manufacturer is a firm that operates, or maintains a factory, or establishment that produces on the premises that materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- b. If the materials or supplies purchased from a RC-DBE regular dealer, count 60 percent of the cost of the materials or supplies. A RC-DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specification and required under the

Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of doing business. To be an RC-DBE regular dealer the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be an RC-DBE regular dealer, in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.

- c. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution shall be, by a long-term lease agreement and not an ad hoc or Agreement-by-Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not RC-DBE regular dealers within the meaning of this section.
- d. Materials or supplies purchased from a RC-DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies required or fees or transportation charges for the delivery of materials or supplies on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBEs WILL COUNT TOWARDS DBE CREDIT, AND IF A DBE IS A RC-DBE, CREDIT WILL COUNT TOWARDS THE RC-DBE CONTRACT GOAL UNDER THE FOLLOWING CONDITIONS:

- a. The RC-DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular agreement, and there cannot be a contrived arrangement for the purpose of meeting the RC-DBE contract goal.
- b. The RC-DBE must itself own and operate at least one fully licensed, insured, and operational truck used in the agreement.
- c. The RC-DBE receives credit for the total value of the transportation services it provides on the agreement using trucks it owns, insures, and operates using drivers it employs.
- d. The RC-DBE may lease trucks from another RC-DBE firm including an owner-operator who is certified as an RC-DBE. A RC-DBE who leases trucks from another RC-DBE receives credit for the total value of the transportation services the lessee RC-DBE provides on the agreement.
- e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- f. The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

- g. For the purposes of this section, a lease must indicate that the RC-DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the RC-DBE, as long as the lease gives the RC-DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the RC-DBE.

8. DBE SUBCONTRACTING FLOW DOWN REQUIREMENTS:

a. CONTRACT ASSURANCE

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

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

b. PROMPT PAYMENT PROVISIONS

The DBE Program, 49 CFR, Part 26, requires that any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. The California Business and Professions Code, under Section 7108.5, requires that on public works projects, a prime contractor or subcontractor pay to any subcontractor not later than seven (7) days after receipt of each progress payment, unless otherwise agreed to in writing. Any violation of this provision shall subject the violating Contractor or Subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. Metro's DBE Program with Federal Highway Administration (FHWA) funds requires a prime contractor or subcontractor pay to any subcontractor not later than seven (7) days after receipt of each progress payment for all contracts.

These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or Subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor, deficient subcontract performance, or noncompliance by a Subcontractor. Any delay or postponement of payment from the above-referenced timeframes may occur only for good cause following written approval from the City. Failure to comply with this provision without prior approval from the City will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, withholding of payment to the Contractor of two percent (2%) of the invoice amount due per month, for every month that full payment is not made in accordance with these prompt payment requirements. These requirements apply to both DBE and non-DBE subcontractors.

Prompt Progress Payments to Subcontractors

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

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

Prompt Payment of Withheld Funds to Subcontractors

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

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

Provision #2 – No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor after the subcontractor's work is satisfactorily completed within the following timeframe:

1. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC)

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

Provision #3 – The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency within the

following timeframe:

1. For construction subcontracts, retainage must be paid within seven (7) days of receipt unless otherwise agreed to in writing for construction work completed (Section 7108.5 of the CBPC and Section 10262 of the CPCC)

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

c. TERMINATION/SUBSTITUTION

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

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the written consent of the City and that, unless the written consent of the City is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The contractor must make available upon request by the City a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

d. FAILURE TO COMPLY

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

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

ALL PROPOSERS:

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

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

PART I - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal.

PART II - Identifies all subcontractors (DBE and Non-DBE) that provided a quote, bid, or proposal but were not selected to participate as a subcontractor on the project.

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

RFP FORM __ – BIDDERS LIST

Proposer

RFP Number

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

The Proposer is to complete all requested information for every firm that submitted a bid, proposal, or quote, including the Proposer itself and any proposed subconsultants. The Bidders List form shall be submitted with each proposal submitted by the Proposer to the City and for all bids, proposals, or quotes received by the Proposer for the pre-construction phase of this Project. Please note that the City will request that this form be executed again if Proposer is awarded construction work on the Project as new subcontractors will then need to be identified. *s. **The Bidders List content will not be considered in evaluating the proposal or determining award of any contract.***

1.0 Proposer’s Information

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

RFP FORM __ (CONT’D) – BIDDERS LIST

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

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

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

INSTRUCTIONS - LOCAL AGENCY PROPOSER RC-DBE COMMITMENT

ALL PROPOSERS:

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

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

The form requires specific information regarding the consultant contract: Local Agency, Location, Project Description, Proposal Date, Proposer's Name, and Contract RC-DBE goal.

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

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

Exhibit 10-O2 must be signed and dated by the consultant submitting the proposal. Also list a phone number in the space provided and print the name of the person to contact.

RC-DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date: _____

The City has established a Race-Conscious Disadvantaged Business Enterprise (RC-DBE) goal of ___ for this project. The information provided herein shows that a good faith effort was made. Good Faith Efforts documentation must be submitted with the Bid/Proposal or Contractor will be deemed non-responsive to the DBE requirements.

Lowest, second lowest and third lowest Proposers shall submit the following information to document adequate good faith efforts. Proposers should submit the following information even if the "Local Agency Bidder – RC-DBE Commitment" form indicates that the Proposer has met the RC-DBE contract goal. This will protect the Proposer's eligibility for award of the contract if the administering agency determines that the Proposer failed to meet the goal for various reasons, e.g., a RC-DBE firm was not certified at bid opening, or the Proposer made a mathematical error.

The submittal of only the "Local Agency Bidder RC-DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following types of actions will be considered as part of the Proposer's Good Faith Efforts to obtain RC-DBE participation:

- a. The names and dates of each publication in which a request for RC-DBE participation for this project was placed by the Proposer. Attach copies of advertisements or proofs of publication:

Publications	Dates of Advertisement
_____	_____
_____	_____
_____	_____

- b. The names and dates of written notices sent to certified RC-DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the RC-DBEs were interested. Attach copies of solicitations, telephone records, fax confirmations etc.

Names of RC-DBEs Solicited	Date of Initial Solicitation	Follow Up Methods and Dates
_____	_____	_____
_____	_____	_____
_____	_____	_____

- c. The items of work which the Proposer made available to RC-DBE firms, including, where appropriate, any break down of the contract work items (including those items normally performed by the Proposer with its own forces) into economically

feasible units to facilitate RC-DBE participation. It is the Proposer's responsibility to demonstrate that sufficient work was made available to facilitate RC-DBE participation as follows (please provide documents that sufficiently evidence the effort):

Items of Work	Proposer Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

d. The names, addresses and phone numbers of rejected RC-DBE firms, the reasons for the Proposer's rejection of the RC-DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each RC-DBE if the selected firm is not a RC-DBE.

1. Names, addresses and phone numbers of rejected RC-DBEs and the reasons for the Proposer's rejection of the RC-DBEs:

2. Names, addresses and phone numbers of firms selected for the work identified above:

e. Efforts made to assist interested RC-DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to RC-DBEs:

- f. Efforts made to assist interested RC-DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the RC-DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- g. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using RC-DBE firms. Attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.

Name of Agency/Organization	Method/Date of Contact	Results

- h. Any additional data to support a demonstration of good faith efforts please include here.

Proposers are advised to attach all requested documents to this form. Include any and all supplemental materials necessary in order to demonstrate Good Faith Efforts.

INSTRUCTIONS – SUMMARY OF MONTHLY DBE PAYMENTS INFORMATION CITY FORM NO. 103

SUCCESSFUL PROPOSER:

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

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

IMPORTANT: Identify **all** DBE firms that were paid during the reporting period for the project-including all RC-DBEs listed on the RC-DBE Commitment form (Exhibit 15G(1)), regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

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

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

The City Form 103 must be signed and dated by the prime contractor’s representative that is responsible for reporting DBE compliance matters. The form must be submitted no later than the 15th day of each month.

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUBCONTRACTORS PAID REPORT

Reporting Period (Month/Yr) :

FORM 103

(Please Print or Type)

1) Project Name:		2) Report No.:	1	3) Prime:			
4) Project Location:		5) Contract No.:		6) Prepared By:			
7) Prime Contractor:		8) Original Award Amount:		9) Phone #:			
10) Address:		11) Current Contract Value:		12) Contact Person:			
		13) Payment this month:		14) Phone #:			
16) City, State, Zip Code:		16) Total \$ Paid-to-date to Prime:		17) Signature:			
18) Contract Award Date:		18) Date of last progress paym't rec'd from MTA:		20) (Title):			
21) DBE (committed) Goal:		22) % of project complete:					
Subrecipient - Local Agency No. 2 (Subrecipient Name)		24) DOLLARS PAID THIS MONTH	25) DOLLAR AMOUNT PAID-TO-DATE	26) (Construction only) Schedule Activity I.D.	27) TYPE OF WORK PERFORMED	28) Original Dollar Amount COMMITTED	29) Dollar +/-resulting from Change order activity
23) PRIME							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #1							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #2							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #3							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #4							
NAME							
ADDRESS							
(Area Code) PHONE		\$ -	\$ -			\$ -	
CONTACT							
SUBCONTRACTOR/SUPPLIER #5							
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SUBCONTRACTOR/SUPPLIER #5							
<p>Special Instructions: The Prime shall make prompt payment of all monies due and owed to DBE and non-DBE firms within 7 business days upon receipt of payment from Agency as per contract agreement and Prompt Payment Act. Payment of retention shall be made to all DBE and non-DBE subcontractors within 7 days after satisfactory completion of the subcontracted work. The Form 103 is due by the 15th of each month and should reflect all payments made to subs through the last day of the previous month. The Prime must report monthly for the life of the contract, even if the sub(s) did not perform any work for the previous month.</p>							

ATTACHMENT D

DRAFT CONSULTANT SERVICES AGREEMENT

This Consultant Services Agreement (“Agreement”) is dated [month] [day], [year] (“Effective Date”), and is between the City of Monrovia, a California municipal corporation (“City”) and [Consultant’s Legal Name], a [Legal Form of Entity, e.g., California corporation, limited partnership, limited liability company] (“Consultant”).

RECITALS

A. City desires to utilize the services of Consultant as an independent contractor to provide professional planning and engineering services.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. City desires to retain Consultant and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement.

The parties therefore agree as follows:

1. Consultant’s Services.

A. Scope of Services. Consultant shall perform the services described in the Scope of Services, attached as **Exhibit A**. City may request, in writing, changes in the scope of services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Party Representatives. For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the “City Representative”). For the purposes of this Agreement, the Consultant Representative shall be:

[Name], [Title] (the “Consultant Representative”)
[E-mail Address]

The Consultant Representative shall directly manage Consultant’s services under this Agreement. Consultant shall not change the Consultant Representative without City’s prior written consent.

C. Time for Performance. Consultant shall commence the services on the Effective Date and shall perform all services in conformance with the project timeline, attached hereto as **Exhibit C**.

D. Standard of Performance. Consultant shall perform all services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

E. Personnel. Consultant has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All of the services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

F. Compliance with Laws. Consultant shall comply with all applicable federal, state and local laws, ordinances, codes, regulations and requirements applicable to this Agreement.

G. Permits and Licenses. Consultant shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

2. Term of Agreement. The term of this Agreement shall be from the Effective Date through [Month] [Day], [Year], unless sooner terminated as provided in Section 13 of this Agreement or extended.

3. Compensation.

A. Compensation. As full compensation for Consultant's services provided under this Agreement, City shall pay Consultant the total flat sum of [Written Amount] Dollars (\$[Numerical Amount]) (the "maximum compensation"), as set forth in the Approved Fee Schedule, attached hereto as **Exhibit B**.

B. Expenses. The amount set forth in paragraph A shall include reimbursement for all actual and necessary expenditures reasonably incurred in the performance of this Agreement.

C. Additional Services. City shall not allow any claims for additional services performed by Consultant, unless the City Council and the Consultant Representative authorize the additional services in writing prior to Consultant's performance of the additional services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council shall be compensated at the rates set forth in **Exhibit B**, or, if not specified, at a rate mutually agreed to by the parties. City shall make payment for additional services and expenses in accordance with Section 4 of this Agreement.

4. Method of Payment.

A. Invoices. Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall

itemize the services rendered during the billing period, hourly rates charged, if applicable, and the amount due. City shall review each invoice and notify Consultant in writing within ten (10) business days of receipt of any disputed invoice amounts.

B. Payment. City shall pay all undisputed invoice amounts within thirty (30) calendar days after receipt up to the maximum compensation set forth in Section 3 of this Agreement. City shall not withhold federal payroll, state payroll or other taxes, or other similar deductions, from payments made to Consultant.

C. Audit of Records. Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this agreement available during Consultant's regular working hours to City for review and audit by City.

5. FHWA Required Federal Provisions and Certifications. The FHWA Required Federal Provisions and Certifications set forth in **Exhibit D** are incorporated as part of this Agreement. Each consultant and subconsultant will be subject to these federal provisions and certifications. The consultant must include these provisions and certifications with all subcontracts.

6. RC-DBE Instructions for Metro Subrecipient Agencies. The RC-DBE Instructions for Metro Subrecipient Agencies set forth in **Exhibit E** are incorporated as part of this Agreement. Each consultant and subconsultant will be subject to DBE requirements and flow down clauses. The Proposer is required to meet this **6% DBE goal** or demonstrate Good Faith Efforts as a condition of the award of this Contract. The consultant must include these RC-DBE instructions with all subcontracts.

7. Ownership of Documents. All reports, documents or other written material ("written products") developed by Consultant in the performance of this Agreement shall be and remain City's property without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

8. Independent Contractor. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City.

9. Confidentiality. All data, documents, discussion, or other information (collectively "data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential. Consultant shall keep all data confidential and shall not disclose any data to any person or entity without City's prior written consent. City shall grant such consent if disclosure is legally required. Consultant shall return all data

to City upon the expiration or termination of this Agreement. Consultant's covenant under this Section 7 shall survive the expiration or termination of this Agreement.

10. Conflicts of Interest. Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, *et seq.*) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients, but Consultant and its officers, employees, associates and subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section 8 into any subcontract that Consultant executes in connection with the performance of this Agreement.

11. Indemnification.

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity,

whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Subparagraph B. 2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section 9 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the parties.

C. Workers' Compensation Acts not Limiting. Consultant's obligations under this Section 9, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provisions in this Section 9 shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liability, Claim, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section 9 shall survive the expiration or termination of this Agreement.

12. Insurance.

A. Minimum Scope and Limits of Insurance. Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Four Million Dollars (\$4,000,000) per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of services under this Agreement, Consultant shall obtain a non-owned auto endorsement to the Commercial General Liability policy required under Subparagraph A. 1) of this Section 10.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per accident for bodily injury or disease. If Consultant has no employees while performing services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has not employees.

4) Professional Liability Insurance [or Errors and Omissions Insurance] with minimum limits of Two Million Dollars (\$2,000,000) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Section 10 shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section 10.

C. Additional Insured. The commercial general and automobile liability policies shall contain an endorsement naming the City, its officers, employees, agents and volunteers as additional insureds.

D. Primary and Non-Contributing. The insurance policies required under this Section 10 shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Section 10 shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section 10 during the term of this Agreement. The commercial general and automobile liability policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail thirty (30) days' prior written notice to City. If any insurance policy required under this Section 10 is canceled or reduced in coverage or limits, Consultant shall, within two (2) business days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

H. City Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Section 10 in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section 10, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of services under this Agreement, Consultant shall furnish City's Risk Manager with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section 10. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with City's Risk Manager. Consultant shall provide proof to City's Risk Manager that insurance policies expiring

during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two (2) weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under Section 9 of this Agreement.

K. Subcontractor Insurance Requirements. Consultant shall require each of its subcontractors that perform services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section 10.

13. Mutual Cooperation.

A. City's Cooperation. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for Consultant's proper performance of the services required under this Agreement.

B. Consultant's Cooperation. In the event any claim or action is brought against the City relating to Consultant's performance or services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

14. Records and Inspections. Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of [Written Amount] ([Numerical Amount]) years. Consultant shall, without charge, provide City with access to the records during normal business hours. City may examine and audit the records and make transcripts therefrom, and inspect all program data, documents, proceedings and activities.

15. Termination of Agreement.

A. Right to Terminate. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least five (5) calendar days before the termination is to be effective. Consultant may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to City at least sixty (60) calendar days before the termination is to be effective.

B. Obligations upon Termination. Consultant shall cease all work under this Agreement on or before the effective date of termination specified in the notice of termination. In the event of City's termination of this Agreement due to no fault or failure of performance by Consultant, City shall pay Consultant based on the percentage of work satisfactorily performed up to the effective date of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

16. Force Majeure. Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

17. Notices. Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three business days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the party to be notified as set forth below:

If to City:
Attn: Alice D. Atkins, City Clerk
City of Monrovia
415 South Ivy Avenue
Monrovia, California 91016

If to Consultant:

With a courtesy copy to:

Craig A. Steele, City Attorney
Richards, Watson & Gershon
350 South Grand Avenue, 37th Floor
Los Angeles, CA 90071

18. Non-Discrimination and Equal Employment Opportunity. In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law. Consultant will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information or sexual orientation.

19. Prohibition of Assignment and Delegation. Consultant shall not assign any of its rights or delegate any of its duties under this Agreement, either in whole or in part, without City's prior written consent. City's consent to an assignment of rights under this Agreement shall not release Consultant from any of its obligations or alter any of its

primary obligations to be performed under this Agreement. Any attempted assignment or delegation in violation of this Section 17 shall be void and of no effect and shall entitle City to terminate this Agreement. As used in this Section 17, "assignment" and "delegation" means any sale, gift, pledge, hypothecation, encumbrance or other transfer of all or any portion of the rights, obligations, or liabilities in or arising from this Agreement to any person or entity, whether by operation of law or otherwise, and regardless of the legal form of the transaction in which the attempted transfer occurs.

20. No Third Party Beneficiaries Intended. This Agreement is made solely for the benefit of the parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

21. Exhibits. Exhibits A, B, C, D and E constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, the provisions of this Agreement shall control.

22. Entire Agreement and Modification of Agreement. This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may be modified only by a writing signed by both parties.

23. Headings. The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the parties to this Agreement.

24. Word Usage. Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

25. Time of the Essence. Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.

26. Governing Law and Choice of Forum. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, except that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in interpreting this Agreement. Any dispute that arises under or relates to this Agreement (whether contract, tort or both) shall be resolved in a municipal, superior or federal court with geographic jurisdiction over the City of Monrovia.

27. Attorneys' Fees. In any litigation or other proceeding by which one party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorneys' fees together with any costs and expenses, to resolve the dispute and to enforce the final judgment.

28. Severability. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

[SIGNATURE PAGE FOLLOWS]

The parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

City:

City of Monrovia,
a California municipal corporation

Consultant:

[Consultant's Legal Name],
a [Legal Form of Entity]

By: _____

Name: Dylan Feik
Title: City Manager

By: _____

Name: [Name of Authorized Signer]
Title: [Title of Authorized Signer]
Email: [Email of Authorized Signer]

ATTEST:

By: _____

Name: Alice D. Atkins, MMC
Title: City Clerk

By: _____

Name: [Name of Authorized Signer]
Title: [Title of Authorized Signer]
Email: [Email of Authorized Signer]

APPROVED AS TO FORM:

By: _____

Name: Craig A. Steele
Title: City Attorney

(Two signatures of corporate officers required for corporations under Corporations Code Section 313, unless corporate documents authorize only one person to sign this Agreement on behalf of the corporation.)