

Request for Qualifications (RFQ) # 2011-01
FOR
Implementation of Google Transit

Date Issued:
April 22, 2011
10:00 a.m., PDT

Statement of Qualifications Due:
May 23, 2011
10:00 a.m., PDT

Prepared By:

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San Benito County Local Transportation Authority

Request for Qualifications #2011-01

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SECTION I. INVITATION

San Benito County Local Transportation Authority (LTA) is soliciting qualifications from independent firms to provide assistance in the implementation of Google Transit for its public transit service, County Express. Services being sought include the following:

- Coding all current County Express routes and bus stops to meet General Transit Feed Specification (GTSF) for Google Transit
- Fully validate GTSF through Google Feed Validator Program
- Coordinate feed and do internal testing with Google
- Coordinate a soft launch and create survey to monitor initial usage of Google Transit and report to the LTA its findings
- Monitor and troubleshoot anomalies as they appear
- Prepare and furnish the LTA an easy to read manual to update and maintain feed to Google without the use of proprietary software. If a firm indicates that the use of proprietary software would be required for updates, this does not disqualify the Statement of Qualifications; however, further negotiation will be required.

The LTA is the designated Consolidated Transportation Services Agency for San Benito County. The LTA is a Joint Powers Authority between the City of Hollister, City of San Juan Bautista and the County of San Benito that operates and administers traditional public transportation and specialized transportation services. Under the name of County Express, traditional Fixed Route, Intercounty, Dial-A-Ride and Paratransit services are provided.

The County of San Benito is located in the Central Coast Region, 95 miles south of San Francisco. Contiguous counties include Santa Clara, Santa Cruz, Monterey, Fresno and Merced. Land area is 1,396 square miles. Terrain varies from flat valley floor, to hilly rangeland, to 5,450 foot peaks. The City of Hollister, where the County seat is located is at an elevation of 229 feet. The north and northwest segments of the County are comprised of urban areas, leaving the southern portion of the County primarily rural.

Major transportation routes bisecting the County include Highways 101, 129, 156 and 25.

The current population of San Benito County is approximately 56,000 inclusively. The County has two incorporated cities – Hollister has a population of 35,000 and San Juan Bautista has a population of 1,646.

~ END SECTION 1 ~

SECTION 2. INSTRUCTIONS TO RESPONDENTS

2.1 Responding to RFQ

Respondents shall submit the completed Statement of Qualifications (SOQ) with appropriate attachments or explanatory materials in response to Request for Qualifications (RFQ) #2011-01. All attachments shall be identified with the Respondent's name, RFQ number and page number.

2.2 RFQ Documents

The following exhibits are included as a part of this RFQ:

- Exhibit "A" – Prospective Respondent Fact Sheet
- Exhibit "B" – Customer References
- Exhibit "C" – Designation of Subconsultants
- Exhibit "D" – Notice to Firm Disadvantaged Business Enterprise Information
- Exhibit "E" – DBE/LBE/SBE Participation Report
- Exhibit "F" – Non-Collusion Declaration
- Exhibit "G" – Certifications Regarding Debarment, Suspension, and other Responsibility Matters
- Exhibit "H" – Insurance Requirements
- Exhibit "I" – Standard Contract

2.3 RFQ Process Schedule

The following is an anticipated RFQ schedule. The LTA may change the estimated dates and process as deemed necessary.

The proposed schedule for the submittal reviews and notification is as follows:

Activity	Date
Release RFQ	April 22, 2011
Written Questions Due	May 4, 2011 at 1:00 p.m., PDT
Last Addenda Posting	May 6, 2011 at 6:00 p.m., PDT
RFQ Due	May 23, 2011 at 10:00 a.m., PDT

2.4 Submission of Response to RFQ

Three (3) hard copies and one (1) electronic copy on a compact disc of the SOQ, including all applicable supporting documentation, must be addressed and delivered to the office and individual named below:

Lisa Rheinheimer, Executive Director
San Benito County Local Transportation Authority
330 Tres Pinos Road, Suite C7
Hollister, California 95023

All SOQs must be received by no later than **10:00 a.m., PDT, on Monday, May 23, 2011**. SOQs received after the above date and time will be rejected and will be returned unopened. Facsimile transmission of SOQs will not be accepted.

SOQs must be signed by the firm or by a duly authorized officer of the firm, delivered along with all required documents, sealed and plainly addressed to the agency representative specified on the above.

A responsive SOQ shall include, at a minimum, the following items:

- A brief description of the firm, including the year the firm was established, type of firm (partnership, corporation, etc.), and a statement of the firm's qualifications for performing the subject consulting services.
- A brief summary of the proposed team's experience with implementing Google Transit for small transit systems.
- An organization chart depicting the individual or team proposed by the firm and a summary of the qualifications and experience of each member proposed to provide consulting services.
- A list of Subconsultants to be used, if any, and their relevant expertise.
- A list of references for relevant clients, including a contact person.
- A fixed fee schedule that includes the hourly rate for each classification of employees who will be assigned to the anticipated projects and the fees for related support costs. The fee schedule must be submitted in a separate sealed envelope and will not be used as part of the evaluation criteria.
- Other information that will assist the LTA in selecting the most qualified firm(s).
- Complete the following items:
 - A. Section 2, Paragraph 2.19
 - B. Section 5
 - C. Exhibit A – Prospective Respondent Fact Sheet
 - D. Exhibit B – Customer References
 - E. Exhibit C – Designation of Subconsultants
 - F. Exhibit E – DBE/LBE/SBE Participation Report
 - G. Exhibit F – Non-Collusion Declaration
 - H. Exhibit G – Certification(s) Regarding Debarment, Suspension and other Responsibility Matters

2.5 On-Site Inspection

On site inspection of Respondent's facilities may be performed by the LTA and an evaluation committee to ascertain that facilities and equipment may be in accordance with the requirements and intentions of the specifications.

2.6 System Demonstration

In order to qualify, it may be necessary for the respondent to demonstrate the recommended system in person to the evaluation team. If this is the case, the respondent will be notified of the time and the place for such a demonstration. Respondent will be required to bring all visual aids necessary to make this presentation.

- 2.7 Multiple SOQ
Only one SOQ will be accepted from any one firm; however, several alternatives may be included in one SOQ.
- 2.8 Late Responses
All responses to the RFQ must be delivered in person or received by mail no later than **10:00 a.m., PDT, on Tuesday, May 2, 2011**. Respondents shall be responsible for the timely delivery of their SOQs. Responses to this RFQ will not be accepted after the deadline and will be returned unopened.
- 2.9 Point of Contact
All questions regarding this RFQ shall be directed to Betty LiOwen, Transportation Planner by email at betty@sanbenitocog.org or by facsimile at 831.636.4160 with the subject: "RFQ #2011-01" followed by a brief description. No other individual has the authority to respond to any questions submitted unless specifically authorized by Lisa Rheinheimer, Executive Director. Failure to adhere to this process may disqualify the Respondent.
- 2.10 Non-Collusion Declaration
Respondent shall execute a Non-Collusion Declaration on the form furnished by the LTA. Exhibit D is attached to the RFQ.
- 2.11 References
Respondent shall submit Exhibit B – Customer References with RFQ.
- 2.12 SOQ Evaluation Criteria
An evaluation committee consisting of LTA staff will review each SOQ for completeness and content. Each SOQ will be evaluated based upon the relevant experience of the Consultant. The evaluation committee will review and rank the SOQs and may conduct interviews, if necessary. The rankings will be based upon the following criteria:
- A. Organization: Does the firm offer the breadth and quality of services required for the anticipated project? Does the firm's organizational structure show sufficient depth for its present workload?
 - B. Staff: Do the qualifications of key personnel to be assigned to the anticipated projects coincide with project requirements? Do assigned personnel have requisite education, experience, and professional qualifications?
 - C. Experience: Has the firm demonstrated the ability to successfully provide services for projects of a similar complexity and nature as described herein?
 - D. Specific Management Approach: How does the firm intend to achieve the budget and project delivery goals for the anticipated projects? How will the firm apply its management techniques?
 - E. Reputation: Are the firm's references from past clients and associates favorable? Does the firm show financial and operational stability?

2.13 Reservations

The LTA reserves the right to do the following at any time and for its own convenience, at its sole discretion:

- To reject any and all SOQs, without indicating any reason for such rejection
- Waive or correct any minor or inadvertent defect, irregularity or technical error in any RFQ or procedure, as part of the RFQ or any subsequent negotiation process
- Terminate this RFQ and issue a new RFQ anytime thereafter
- Procure any materials or services specified in the RFQ by other means
- Extend any or all deadlines specified in the RFQ, including deadlines for accepting RFQs, by issuance of an Addendum at any time prior to the deadline for receipt of responses to the RFQ
- Disqualify any Respondent on the basis of any real or perceived conflict of interest or evidence of collusion that is disclosed by the RFQ or other data available to the LTA. Such disqualification is at the sole discretion of the LTA
- Reject the RFQ of any Respondent that is in breach of or in default under any other agreement with the LTA
- Reject any Respondent deemed by the LTA to be non-responsive, unreliable, or unqualified

2.14 Notification of Withdrawals of SOQs

SOQs may be modified or withdrawn prior to the date and time specified for SOQ submission by an authorized representative of the respondent or by formal written notice. All SOQs not withdrawn prior to the response due date will become the property of the LTA.

2.15 Interpretation

Should any discrepancies or omissions be found in the RFQ specifications/requirements, or doubt as to their meaning, the firm shall notify the LTA in writing at once (e-mail is acceptable). The LTA will post addenda with further instruction or clarification on www.SanBenitoCountyExpress.org for all interested firms to view. The LTA shall not be held responsible for oral interpretations. Questions must be received by May 4, 2011 at 1:00 p.m., PDT. All addenda issued shall be incorporated into the contract. It is the firm's responsibility to check the website to obtain the most current information regarding this RFQ.

2.16 Notice of Intent to Award

Notice of Intent to Award may be issued upon receipt of all required documents.

2.17 Pre-Award Conference

If requested, successful Respondent(s) shall meet with the LTA representatives prior to the Award of Contract to review the specifications and finalize the initiation of the proposed contract.

2.18 Execution of Agreement

Upon successful reference checks, evaluations and receipt of all required documents, the agreement must be executed by both parties.

2.19 Compliance

Respondent, have you complied with all specifications, requirements, terms and conditions of this Qualification?

☐ Yes ☐ No

A “no” answer requires a detailed explanation giving reference to all deviations to be submitted on firm’s letterhead in attachment form. All exceptions must reference the RFQ paragraph and section number followed by an explanation

2.20 Consultant Responsibility and Performance

The LTA will consider the Consultant to be the sole point of contact with regard to all contractual matters.

Consultant shall provide the services of one (1) or more qualified contract manager(s) responsible for assuring that the services provided under the contract are satisfactory. It is desirable that the Consultant have local representation to provide on-site consultation/problem resolution if required.

2.22 Minimum Eligibility Requirements

Consideration for selection will be limited to firms and individuals that:

- Have a minimum of three (3) years experience in providing assistance in implementing Google Transit successfully.
- Have the resources and commitment to complete all components of the scope of services, as described in Section 3 of this RFQ, in a timely manner, including but not limited to, attending meetings, advising staff on matters specific to implementation and maintenance of Google Transit.
- The professional who signs the SOQ, as the manager of the professional contract with the LTA, shall certify that he or she will be present at meetings requested by LTA staff and will fully participate in the day-to-day management of the engagement.
- The Firms must agree to the standard contract terms and conditions attached in Exhibit I of this RFQ. No modifications to Exhibit I of this RFQ will be considered by LTA.
- Submit a complete and responsive SOQ per Section 2, Paragraph 2.4 of this RFQ.

2.23 Addenda

No one is authorized to amend any of these documents in any respect by an oral statement or to make any representation or interpretation in conflict with their provisions. Any changes to these documents will be issued in writing via Addenda by the LTA. All addenda will be online at www.SanBenitoCountyExpress.org by May 6 , 2011 at 6:00 p.m., PDT. No addenda will be posted past this date and time. It is the firm’s responsibility to check the website to get the most current information regarding this RFQ.

~ END SECTION 2 ~

SECTION 3. SCOPE OF SERVICES
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Task 1: Preparation of Data Feed

- a. Review current service information and evaluate available information ready for Google Transit Feed Specifications.
 - If available information is inadequate for Google Transit Feed Specifications, Consultant shall perform the necessary tasks to make the information adequate.
- b. Prepare data feed with service information to Google Transit Feed Specifications.
- c. Validate the data feed to Google Code Feed Validator program.

Task 2: Coordination with Google Transit

- a. Consultant will coordinate with Google Transit team for launching County Express service information.
- b. Integrate Google Transit to County Express website for soft launch and embed tracker to monitor Google Transit usage.
 - Google Transit tool on County Express website shall be made available in English and Spanish.
- c. Troubleshoot anomalies found after soft launch.

Task 3: Project Closeout

- a. Prepare a manual for the upkeep of GTSF data for future updates by the LTA. If proprietary software is proposed, indicate the following:
 - Availability of service and support
 - Centrally hosted and web-based application preferred
 - Ease of use
 - Data visualization tools
 - GTFS publishing features such as shape and transfer files
 - Data validation features
 - Initial, ongoing, and overall cost
 - Update capabilities
- b. All information relating to Tasks 1-3 shall be made available to the LTA in its native format. Such information shall be made available in formats compatible to Microsoft Office 2007 for Access, Excel and Word without restriction or limitation on their use.
- c. Provide additional support to the LTA for a period of one year after the completion of the project for additional technical support at a fixed hourly rate.

~ END SECTION 3 ~

SECTION 4. STANDARD TERMS AND CONDITIONS

The following provisions are expected to form the basis for the contract between the LTA and the successful Consultant(s).

4.1 Term of Contract

The term of the contract shall not exceed twenty-four (24) months, not including one (1) year of maintenance.

4.2 Purpose of Contract

The purpose of the contract is to establish the terms and conditions under which the Consultant shall provide assistance in implementing Google Transit for the LTA.

4.3 Changes

After award, no changes or additional service charges shall be made or imposed during the life of the contract, nor will bills for changes or extra charges, modifications or deviations be recognized or paid for except upon written order from the LTA, in advance of any additional work.

4.4 License and Permits

Consultant's employees shall possess all licenses, registrations and permits required by the State of California to perform the work in the contract. Such licenses and permits are to be presented to the LTA prior to the contract signing and for the appointed guard before reporting to duty at the LTA.

The Consultant shall also maintain all other business and professional licenses that may be required by Federal, State and local codes.

4.5 Compliance with Laws

Consultant shall comply with all applicable federal, state and local rules, regulations and laws.

4.6 Termination

The LTA reserves the right to terminate the contract, in whole or in part, at any time, for any reason, without penalty. The LTA shall give Consultant thirty (30) days written notification prior to the effective date of termination. The Consultant may terminate this agreement with thirty (30) days written notification, stating the reason for cancellation, mailed to the LTA at 330 Tres Pinos Road, Suite C7, Hollister, CA 95023.

4.7 Assignment

Consultant shall not assign the contract, or any interest herein, without the written consent of the LTA, and then only to a person or persons approved by the LTA on such terms and conditions as the LTA may require.

4.8 Inclusion of Documents

This RFQ, all addenda, and the submittal in response to this RFQ will be required to be incorporated as part of any final contract.

4.9 Payment Terms

Invoices are to be sent to the contract administrator identified in the contract, and will be processed upon receipt for payment.

4.10 Price Decline

In the event of a price decline or if the Consultant contracts with another government entity for the same service at lower prices than offered herein, with other terms and conditions being equal, then the Consultant shall immediately extend those same lower prices to the LTA.

4.11 Force Majeure

Consultant shall not be liable for any delays with respect to the contract due to causes beyond its reasonable control, such as acts of nature, epidemics, war, terrorism or riots. However, due to the nature of these security services, the consultant services will be required during disasters and the Consultant will be expected to perform all duties and possibly even additional services would be necessary for the LTA during any weather, medical, natural disaster and/or terrorism events.

4.12 Severability

Should any part of the contract be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the validity of the remainder of the contract which shall continue in full force and effect; provided that the remainder of the contract can, absent the excised portion, be reasonably interpreted to give the effect to the intentions of the parties.

4.13 Controlling Law

The contract shall be governed and construed in accordance with the laws of the State of California and proper venue for legal action regarding the contract shall be the County of San Benito.

4.14 Amendment

Amendment to or modification of the terms and conditions of the contract shall be effective only upon the mutual consent in writing by the parties hereto.

4.15 Indemnity and Insurance Requirements

Certificates of Insurance for Liability, Automobile, and Worker's Compensation must be provided to the LTA before the contract is signed and must remain in effect throughout the entire term of the contract; reference Exhibit "E".

The LTA reserves the right to withhold payments to Consultant or cancel the contract in the event of non-compliance with the insurance requirements outlined above.

4.16 Default

- 1) The LTA may by written notice of default to the Consultant, terminate the whole or any part of the contract in any one of the following circumstances:
 - a) If the Consultant fails to make delivery of the supplies or to perform within the time specified herein or promised, or any extension thereof; or
 - b) If the Consultant fails to perform any of the other provisions of this contract.
- 2) In the event the LTA terminates the contract in whole or in part, as provided in Paragraph (a), of this clause, the LTA may procure, upon such terms and in such manner as it may deem appropriate, supplies, services or work similar to those so terminated, and the Consultant shall be liable to the LTA for any excess

costs for such similar supplies, services or work; PROVIDED, that the Consultant shall continue the performance of this contract to the extent not terminated under the provisions of this clause. The Consultant shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault and negligence of the Consultant.

~ END SECTION 4 ~

SECTION 5. OFFICIAL RFQ FORM

NAME OF FIRM _____

ADDRESS _____ CITY _____ ZIP _____

Telephone _____ Date _____

The undersigned offers and agrees that the information provided in this Statement of Qualifications is true and accurate.

Executed in _____, California, on _____, 2011

SIGNATURE _____ TITLE _____

PRINTED NAME OF PERSON WHOSE SIGNATURE APPEARS _____

~ END SECTION 5 ~

SECTION 6. EXHIBITS

**EXHIBIT A
PROSPECTIVE RESPONDENT FACT SHEET**

Name of Consultant: _____

ADDRESS _____

CITY _____ ZIP _____ Telephone _____

Consultant Tax ID#: |_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|_|

Consultant License #: _____ Type: _____ (as applicable)

Consultant Does Business As: ☐ Individual ☐ Partnership ☐ Corporation ☐ Government
☐ Fiduciary ☐ Other: _____

Consultant is a: ☐ Resident ☐ Non-Resident of California

- 1) Is your firm authorized to do business in the State of California? ☐ Yes ☐ No
- 2) Is your firm a State of California registered small business? ☐ Yes ☐ No
- 3) Is this a business owned by a person(s) with disabilities? ☐ Yes ☐ No
- 4) Is this a women-owned business? ☐ Yes ☐ No
- 5) Is this a minority-owned business? ☐ Yes ☐ No
- 6) Has your firm been certified as a minority firm by any public agency? ☐ Yes ☐ No

If yes, name of agency: _____

Name of certifying officer: _____ Phone # _____

- 7) Is this a local business? ☐ Yes ☐ No
- 8) This firm has been in continuous business under the present name for _____ years.
- 9) Annual sales volume: _____
- 10) Net worth of business: _____

~ END EXHIBIT A ~

**EXHIBIT B
CUSTOMER REFERENCES**

List and submit three (3) customer references for whom your firm has furnished similar services in size and nature with this firm with SOQ.

1. FIRM NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

BRIEF DESCRIPTION: _____

2. FIRM NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

BRIEF DESCRIPTION: _____

3. FIRM NAME: _____

ADDRESS: _____

CONTACT PERSON: _____

TELEPHONE NUMBER: _____

BRIEF DESCRIPTION: _____

~ END EXHIBIT B ~

EXHIBIT C
DESIGNATION OF SUBCONSULTANTS

Firm shall complete the form below for each Subconsultant. A Subconsultant is one who: (1) performs work or labor; or (2) provides a service to the Firm. **If there are no Subconsultants, please state “NONE” and complete the Signature Block below.**

	SUBCONSULTANTS	
NAME	LOCATION OF BUSINESS	WORK

SIGNATURE BLOCK	
Authorized Signature: _____	Date: _____
Authorized Signer's Name & Title (Print): _____	

~ END EXHIBIT C ~

**EXHIBIT D
NOTICE TO FIRM
DISADVANTAGED BUSINESS ENTERPRISE INFORMATION**

1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR).
- The term “agreement” also means “contract.”
- The term “Agency” also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Contractor” also means “Consultant.”
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

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

3. SUBMISSION OF DBE INFORMATION

A “DBE/LBE/SBE Participation Report” form will be included in the agreement documents to be executed by the successful firm. The purpose of the form is to collect data required under 49 CFR 26. Even if no DBE participation will be reported, the successful firm must execute and return the form.

4. DBE PARTICIPATION GENERAL INFORMATION

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE 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.

- D. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
 - E. The firm (prime contractor) shall list only one subcontractor for each portion of work as defined in their SOQ and all DBE subcontractors should be listed in the SOQ list of subcontractors.
 - F. A prime contractor who is a certified DBE is eligible to claim all of the work in the agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
5. WHEN REPORTING DBE PARTICIPATION, MATERIAL OR SUPPLIES PURCHASED FROM DBES MAY COUNT AS FOLLOWS:
- A. If the materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost of the materials or supplies will count toward the DBE participation. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the agreement and of the general character described by the specifications.
 - B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies toward DBE participation. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
 - C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or agreement-by-agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
 - D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

~ END EXHIBIT D ~

**EXHIBIT E
DBE/LBE/SBE PARTICIPATION REPORT**

NAME OF FIRMS, ADDRESS, TELEPHONE NO. AND CONTACT PERSON; FEDERAL I.D. NO. (or STATE I.D. NO.)	DBE/LBE/SBE		NON- DBE/LBE/SBE		SCOPE OF WORK & CERTIFICATION TYPE & CERT. NO.	% OF PROJECT WORK	ANTICIPATED DOLLAR VALUE OF PARTICIPATION
	Male	Female	Male	Female			

Name of Authorized Officer of Consultant Firm (Print or Type)

Signature of Authorized Officer of Consultant Firm (Print or Type)

Date

Total D/L/SBE (Male): _____

Total D/L/SBE (Female): _____

Total Non D/L/SBE (Male): _____

Total Non D/L/SBE (Female): _____

~ END EXHIBIT E ~

EXHIBIT F
SAN BENITO COUNTY LOCAL TRANSPORTATION AUTHORITY
NON-COLLUSION DECLARATION

TO BE EXECUTED BY RESPONDENT AND SUBMITTED WITH SOQ

I, _____, am the
(Name)
_____ of _____
(Position/Title) (Firm)

the party making the foregoing SOQ, declare that the SOQ is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the SOQ is genuine and not collusive or sham; that the respondent has not directly or indirectly induced or solicited any other respondent to put in a false or sham SOQ; and has not directly or indirectly colluded, conspired, connived, or agreed with any respondent or anyone else to put in a sham SOQ, or that anyone shall refrain from bidding; that the respondent has not in any manner directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the respondent or any other respondent, or to fix any overhead, profit, or cost element of the bid price, or of that of any other respondent, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the SOQ are true; and, further, that the respondent has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

(Date)

(Signature)

~ END EXHIBIT F ~

EXHIBIT G
CERTIFICATION OF PRIMARY PARTICIPANT REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

The Primary Participant (primary firm), certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this SOQ been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or Local) transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding the SOQ had one or more public transaction (Federal, State, or Local) terminated for cause or default.

If the Primary Participant is unable to certify to any of the statements in this certification, the participant shall attach an explanation to this certification.

The primary participant certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. Sections 3801 et seq. are applicable thereto.

The undersigned chief legal counsel for the _____
Name and Title of Authorized Official

hereby certifies that the above mentioned individual has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Name of Applicant's Attorney

Date

**CERTIFICATION OF LOWER TIER PARTICIPANTS REGARDING
DEBARMENT, SUSPENSION, AND OTHER INELIGIBILITY AND VOLUNTARY EXCLUSION**

The Lower Tier Participant (Subconsultant), certifies by submission of this SOQ, that neither it is nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the Lower Tier Participant is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this SOQ. The lower tier participant certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of 31 U.S.C. sections 3801 et seq. are applicable thereto.

The undersigned chief legal counsel for the _____
Name and Title of Authorized Official

hereby certifies that the above mentioned individual has authority under State and local law to comply with the subject assurances and that the certification above has been legally made.

Signature of Applicant's Attorney

Name of Applicant's Attorney

Date

~ END EXHIBIT G ~

EXHIBIT H INSURANCE REQUIREMENTS

Indemnity

In conjunction with work performed at LTA site, the Consultant shall exonerate, indemnify, defend, and hold harmless the San Benito County Local Transportation Authority (which shall include, without limitation, its officers, agents, employees and volunteers) from and against:

1. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which the LTA may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the Consultant's performance under the terms of this contract, excepting any liability arising out of the sole negligence of the LTA. Such indemnification includes any damage to the person(s), or property(ies) of the Consultant and third persons. In addition, the Consultant shall hold the LTA, its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the contract or purchase order.
2. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to the Consultant and the Consultant's officers, employees and agents engaged in the performance of this contract (including, without limitation, unemployment insurance, Social Security and payroll tax withholding).

Insurance

The Consultant, at its sole cost and expense, for the full term of this contract (and extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects the LTA and any insurance or self-insurance maintained by the LTA shall be in excess of the Consultant's insurance coverage and shall not contribute to it.

1. Types of Insurance and Minimum Limits
 - a) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California.
 - b) The Consultant's vehicles used in the performance of this contract, including owned, non-owned (e.g. owned by the Consultant's employees), leased or hired vehicles, shall each be covered with Automobile Liability Insurance in the minimum amount of \$500,000 combined single limit per accident for bodily injury and property damage.
 - c) The Consultant shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of \$1,000,000.00 combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:
 - (i) Contractual liability coverage adequate to meet the Consultant's indemnification obligations under this Request;
 - (ii) Full Personal Injury coverage;
 - (iii) Broad form Property Damage coverage, and
 - (iv) A cross-liability clause in favor of the LTA.

2. Other Insurance Provisions

- a. As to all insurance coverage required herein, any deductible or self-insured retention exceeding \$5,000 shall be disclosed to and be subject to written approval by the LTA.
- b. If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, the Consultant shall maintain such insurance coverage for five years after expiration of the term (and any extensions) of this contract.
- c. All required Automobile Liability Insurance, Comprehensive or Commercial General Liability Insurance or Professional Liability Insurance shall contain the following endorsement as a part of each policy:

"The San Benito County Local Transportation Authority is hereby added as an additional insured as respects the operations of the named insured."
- d. All the insurance required herein shall contain the following clause:

"It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the San Benito County Local Transportation Authority ("LTA") shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to the LTA as evidenced by properly validated return receipt. Such notice shall be sent to: San Benito County Local Transportation Authority, 330 Tres Pinos Road Suite C7, Hollister, CA 95023".
- e. The prospective Consultant agrees to provide the LTA at or before the effective date of any award resulting from this SOQ with a certificate of insurance of the coverage required.
- f. All required insurance policies shall be endorsed to contain the following clause: This Insurance shall not be cancelled until after thirty (30) days prior written notice has been given to:

San Benito Local Transportation Authority
Lisa Rheinheimer
330 Tres Pinos Road, Suite C7
Hollister, CA 95023

The Consultant agrees to provide its insurance broker(s) with a full copy of these insurance requirements and provide the LTA on or before the effective date of this contract Certificates of Insurance for all required coverage.

All respondents will be required to furnish, at the time of submittal of the SOQ, proof of the insurances stated herein, which will be incorporated in the final contract with the Consultant selected.

If you do not currently carry the type/limit of insurance stated herein, please submit your SOQ with any differences clearly noted. Indicate if you would be able to obtain the proposed insurance and, if so, indicate the dollar amount, if any, that your SOQ would be increased due to the cost of this insurance. Finally, please indicate any other problems you or your insurance carriers may have with the proposed insurance requirements and why.

It is recommended that a copy of the insurance requirements be provided to your insurance broker(s) for review. Should either you or your broker have questions regarding any of these provisions, contact the LTA at 831.637.7665.

~ END EXHIBIT H ~

**EXHIBIT I
STANDARD CONTRACT**

The following is a copy of the "Standard Contract" employed by the LTA for contracting with consultants/or individual for professional services. This document shall serve as the basis for a contract with the successful consultant(s) or individual(s). *Firms should not respond to this RFQ if they cannot agree to the standard contract terms and conditions.*

The SAN BENITO COUNTY LOCAL TRANSPORTATION AUTHORITY ("LTA") and _____ ("CONSULTANT") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract.

This contract shall commence on _____, and end on _____ unless sooner terminated as specified herein.

2. Scope of Services.

CONSULTANT, for LTA's benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services.

In consideration for CONSULTANT'S performance, LTA shall pay compensation to CONSULTANT according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions.

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits.

CONSULTANT shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive general liability insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: \$1,000,000

6. Termination.

The number of days of advance written notice required for termination of this contract is thirty (30) days.

7. Specific Terms and Conditions. (check one)

- ☐ There are no additional provisions to this contract.
- ☐ The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for LTA:

Name: Lisa Rheinheimer

Title: Executive Director

Address: 330 Tres Pinos Road, Ste. C7

Hollister, California 95023

Phone No.: (831) 637-7665

Fax No.: (831) 636-4160

Contract Administrator for CONSULTANT:

Name:

Title:

Address:

SIGNATURES

APPROVED BY CONSULTANT:

Lisa Rheinheimer
Executive Director

Date:

Name:

Title:

Date:

APPROVED AS TO LEGAL FORM:

San Benito County Counsel

By:

Shirley L. Murphy, Deputy County Counsel

Date:

ATTACHMENT A
Scope of Services

This section has been intentionally left blank as the scope of services will be provided following selection of a qualified firm.

~ END ATTACHMENT A ~

ATTACHMENT B
Payment Schedule

B-1. BILLING

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: (check one)

- ☐ One month in arrears.
- ☐ Upon the complete performance of the services specified in Attachment A.
- ☒ The basis specified in paragraph B-4.

B-2. PAYMENT

Payment shall be made by LTA to CONSULTANT at the address specified in paragraph 7 of this contract, net thirty (30) days from the invoice date.

B-3. COMPENSATION

LTA shall pay to CONSULTANT: (check one)

- ☐ a total lump sum payment of \$_____, or
- ☐ a total sum not to exceed \$_____.

for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in this attachment, Attachment B.

B-4. SPECIAL COMPENSATION TERMS: (check one)

- ☐ There are no additional terms of compensation.
- ☒ The following specific terms of compensation shall apply: (Specify)

CONSULTANT shall invoice monthly at an hourly rate for services rendered pursuant to B-4 and of this Contract. CONSULTANT shall provide a monthly progress report as a part of the monthly invoice which tracks tasks specified in Attachment A, Scope of Services, with services completed by CONSULTANT. The monthly progress report shall include the following:

- Description of the tasks in progress or achieved
- Description of the tasks still to be achieved
- Percentage of work still anticipated for each task for the completion of the project

The LTA shall have the right to retain 10% of the total contracted amount until the project is deemed completed by the CONSULTANT and the LTA.

~ END ATTACHMENT B ~

ATTACHMENT C

General Terms and Conditions

C-1. INDEMNIFICATION.

CONSULTANT and LTA each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

C-2. GENERAL INSURANCE REQUIREMENTS.

Without limiting CONSULTANT'S duty to indemnify LTA, CONSULTANT shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by Paragraph C-3 shall satisfy the following requirements:

- (a) Each policy shall be issued by a company authorized by law to transact business in the State of California.
- (b) Each policy shall provide that LTA shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
- (c) The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the County of San Benito and its officers, agents and employees as additional insureds.
- (d) The required coverage shall be maintained in effect throughout the term of this contract.

CONSULTANT shall require all Subconsultants performing work under this contract to obtain substantially the identical insurance coverage required of CONSULTANT pursuant to this agreement.

C-3. INSURANCE COVERAGE REQUIREMENTS.

If required by paragraph 5 of the contract, CONSULTANT shall maintain the following insurance policies in full force and effect during the term of this contract:

- (a) Comprehensive general liability insurance. CONSULTANT shall maintain comprehensive general liability insurance, covering all of CONSULTANT'S operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
- (b) Professional liability insurance. CONSULTANT shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.
- (c) Comprehensive motor vehicle liability insurance. CONSULTANT shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in Paragraph 5 of this contract.
- d) Workers' compensation insurance. CONSULTANT shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State

Director of Industrial Relations. If CONSULTANT elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

C-4. CERTIFICATE OF INSURANCE.

Prior to the commencement of performance of services by CONSULTANT and prior to any obligations of LTA, CONSULTANT shall file certificates of insurance with LTA, showing that CONSULTANT has in effect the insurance required by this contract. CONSULTANT shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONSULTANT may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONSULTANT warrants that CONSULTANT'S self-insurance provides substantially the same protection to LTA as the insurance required herein. CONSULTANT further agrees to notify LTA in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

C-5. RECORDS TO BE MAINTAINED.

CONSULTANT shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONSULTANT shall contractually require that all of CONSULTANT'S Subconsultants performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONSULTANT or any SUBCONSULTANT, shall be made available to LTA or its authorized representative, Federal Highway Administration (FHWA), or any duly authorized representative of the Federal Government or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by LTA, its authorized representative, or officials of the State of California.

C-6. RETENTION OF RECORDS.

CONSULTANT shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONSULTANT shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the LTA notifies CONSULTANT of the commencement of an audit prior to the expiration of the three year period.

C-7. TITLE TO DOCUMENTS; COPYRIGHT.

All reports and other materials collected or produced by the CONSULTANT or any Subconsultant of CONSULTANT shall, after completion and acceptance of the contract, become the property of LTA, and shall not be subject to any copyright claimed by the CONSULTANT, Subconsultant, or their agents or employees. CONSULTANT may retain copies of all such materials exclusively for administrative purposes. Any use of completed or uncompleted documents for other projects by CONSULTANT, any Subconsultant, or any of their agents or employees, without the prior written consent of LTA is prohibited.

C-8. INDEPENDENT CONSULTANT.

CONSULTANT and its officers and employees, in the performance of this contract, are independent CONSULTANTS in relation to LTA and not officers or employees of LTA. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of LTA. CONSULTANT shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract.

CONSULTANT further represents to LTA that CONSULTANT has no expectation of receiving any benefits incidental to employment.

C-9. CONFLICT OF INTEREST.

CONSULTANT covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further covenants that, in the performance of this contract, no Subconsultant or person having such an interest shall be used or employed.

C-10. COMPLIANCE WITH APPLICABLE LAWS.

CONSULTANT shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

C-11. NONDISCRIMINATION.

CONSULTANT shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

C-12. BANKRUPTCY.

CONSULTANT shall immediately notify LTA in the event that CONSULTANT ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONSULTANT without the prior written consent of LTA, and any attempted assignment or delegation without such consent shall be void.

C-14. NEGOTIATED CONTRACT.

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

C-15. SEVERABILITY.

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

C-16. ENTIRE CONTRACT.

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

C-17. TIME IS OF THE ESSENCE.

Time is of the essence in the performance of this contract.

C-18. TERMINATION.

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The

termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-19, below. In the event of termination, LTA shall pay CONSULTANT for all work satisfactorily performed prior to the effective date of the termination.

C-19. NOTICES.

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

C-21. MATERIALITY.

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

C-22. WAIVER.

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. LTA's receipt of consideration with knowledge of CONSULTANT'S violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

C-23. AUTHORITY AND CAPACITY.

CONSULTANT and CONSULTANT'S signatory each warrant and represent that each has full authority and capacity to enter into this contract.

C-24. BINDING ON SUCCESSORS.

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONSULTANT. CONSULTANT and all of CONSULTANT'S heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

C-25. CUMULATION OF REMEDIES.

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition,

covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

C-26. INDEPENDENT ADVICE.

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

C-27. NO RELIANCE ON REPRESENTATIONS.

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

C-28. REDUCTION OF CONSIDERATION.

CONSULTANT agrees that LTA shall have the right to deduct from any payments specified in Attachment B any amount owed to LTA by CONSULTANT as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to, or after, the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If LTA exercises the right to reduce the consideration specified in Attachment B, LTA, at the time of making a reduced payment, shall give CONSULTANT notice of the amount of any off-set and the reason for the reduction.

C-29. COUNTERPARTS.

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

~ END ATTACHMENT C ~

ATTACHMENT D – FEDERAL CLAUSES

The CONSULTANT'S attention is called to the fact that this contract is subject to a financial assistance contract between the San Benito County Local Transportation Authority and the Federal Transit Administration of the United States Department of Transportation ("DOT"). The contract to be let, therefore, is subject to the terms of the contract between the LTA and the DOT. The CONSULTANT is required to comply with the conditions of that contract and with the conditions required by applicable federal regulations.

The CONSULTANT understands that Federal laws, regulations, policies, and related administrative practices applicable to this contract on the date the contract was executed may be modified from time to time. The CONSULTANT agrees the prevailing Federal requirements will govern the administration of this contract at any particular time, except if there is sufficient evidence in the contract of a contrary intent. Such contrary intent might be evidenced by express language of this contract or a letter signed by the Federal Transit Administrator, the language of which modifies or otherwise conditions the text of a particular provision of this contract. Likewise, new Federal laws, regulations, policies, and administrative practices may be established after the date the contract has been executed and may apply.

A. ENERGY CONSERVATION

CONSULTANT 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. §§ 6321 et seq.

B. ACCESS TO RECORDS

Upon request, CONSULTANT agrees to permit, and require its Subconsultants to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State of California, or any of their authorized representatives, to inspect all contract work, materials, payrolls, and other data, and to audit the books, records, and accounts of the CONSULTANT and its Subconsultants pertaining to the agreement.

CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The CONSULTANT agrees to maintain all books, records, accounts and reports required under this agreement for a period of not less than three (3) years after the date of termination or expiration of this agreement, except in the event of litigation or settlement of claims arising from the performance of this agreement, in which case CONSULTANT agrees to maintain same until the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

C. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Department of Transportation, Federal Transit Administration, Master Agreement, between the LTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONSULTANT'S failure to so comply shall constitute a material breach of this contract.

D. NO OBLIGATION BY THE FEDERAL GOVERNMENT.

1. The LTA and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or

liabilities to the LTA, the CONSULTANT, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

2. The CONSULTANT agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subconsultant who will be subject to its provisions.

E. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS.

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

F. CIVIL RIGHTS

The following requirements apply to the contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit law at 49 U.S.C. §5332, the CONSULTANT 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 CONSULTANT agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the contract:
 - 2.1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the CONSULTANT agrees to comply with all applicable equal employment

opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the performance of the contract. The CONSULTANT agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

2.2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §623 and Federal transit law at 49 U.S.C. §5332, the CONSULTANT agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

2.3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. §12112, the CONSULTANT agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT agrees to comply with any implementing requirements FTA may issue.

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

G. ACCESS TO RECORDS

The following access to records requirements apply to this agreement:

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

2. The CONSULTANT agrees to maintain all books, records, accounts and reports required under this agreement for a period of not less than three (3) years after the date of termination or expiration of this agreement, except in the event of litigation or settlement of claims arising from the performance of this agreement, in which case CONSULTANT agrees to maintain same until the LTA, the FTA Administrator, the Comptroller General, or

any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR §18.36(i)(11).

3. The CONSULTANT agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

H. DISADVANTAGED BUSINESS ENTERPRISE

The CONSULTANT agrees to take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in its performance of the contract:

1. The CONSULTANT agrees to comply with section 1101(b) of TEA-21, 23 U.S.C. §101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
2. The CONSULTANT agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from the U.S. DOT or in the administration of its DBE program or the requirements of 49 C.F.R. Part 26. The CONSULTANT agrees to take all necessary and reasonable steps set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from the U.S. DOT. The CONSULTANT'S DBE program, as required by 49 C.F.R. Part 26 and approved by the U.S. DOT, is incorporated by reference and made part of the contract. Implementation of this DBE program as a legal obligation, and failure to carry out its terms shall be treated as a violation of the contract. Upon notification to the CONSULTANT of its failure to implement its approved DBE program, the U.S. DOT may impose sanctions as provided for under 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. §1001, and/or the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801 et seq.

I. INCORPORATION OF FTA 4220.1D TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any LTA request, which would cause the LTA to be in violation of the FTA terms and conditions.

J. APPLICATION OF FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS

1. Federal Laws and Regulations. Federal law or laws authorizing contract approval control contract implementation. The CONSULTANT acknowledges that Federal laws, regulations, policies, and related administrative practices applicable to the contract on the date the authorized FTA official signs the Master Agreement or other awarding agreement may be modified from time to time. In particular, new Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the CONSULTANT executes the Master Agreement or other awarding agreement, and might apply to such agreement. The CONSULTANT agrees that the most recent of such Federal requirements will govern the administration of the contract at any particular time, unless FTA issues a written determination otherwise. FTA's written determination may be issued as a Special Condition, Requirement, or Provision or Condition of Award, a change to an FTA directive, or a letter signed by the Federal Transit Administrator, the language of which modifies or

otherwise conditions the text of a specific provision of the Master Agreement. To accommodate changing Federal requirements, the CONSULTANT agrees to include notice in each agreement with each Subconsultant and each third party CONSULTANT participating in the contract that Federal requirements may change and the changed requirements will apply to the contract as required, unless the Federal Government determines otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by FTA.

2. State, Territorial, and Local Law. Except when a Federal statute or regulation preempts State, local, or territorial law, no provision of the Master Agreement or contract shall require the CONSULTANT to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law. Thus, if any provision or compliance with any provision of the Master Agreement or contract violates State, territorial, or local law, or would require the CONSULTANT to violate State, territorial, or local law, the CONSULTANT agrees to notify FTA immediately in writing. Should this occur, FTA and the CONSULTANT agree to make appropriate arrangements to proceed with or, if necessary, terminate the contract expeditiously.

K. COVENANT AGAINST CONTINGENT FEES

Bonus or Commission. CONSULTANT affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the contract.

L. PROHIBITION ON GRATUITIES

1. Code of Ethics. The CONSULTANT agrees to maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or sub-agreements supported by Federal assistance. This code or standards of conduct shall provide that the CONSULTANT'S officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential CONSULTANT or Subconsultant. The CONSULTANT may establish minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards of conduct shall also prohibit the CONSULTANT'S officers, employees, board members, or agents from using their positions in a manner that constitutes a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards of conduct shall include penalties, sanctions, or other disciplinary actions for violations by the CONSULTANT'S officers, employees, board members, or their agents, or by the CONSULTANT, any Subconsultants, or their officers, employees, board members, or agents.
2. Personal Conflicts of Interest. The CONSULTANT'S code or standards of conduct shall prohibit CONSULTANT'S employees, officers, board members, or agents from participating in the selection, award, or administration of any third party contract or sub-agreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise if an employee, officer, board member, or agent, including any member of his or her immediate family, partner or organization, employs, or intends to employ, any of the above.
3. Organizational Conflicts of Interest. The CONSULTANT'S code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or sub-agreement may, without some restrictions on future activities, result in an unfair competitive advantage to

the third party CONSULTANT or Subconsultant or impair its objectivity in performing the contract work.

M. RECYCLED PRODUCTS

To the extent applicable, the CONSULTANT agrees to comply with U.S. EPA regulations, "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

N. DEBARMENT AND SUSPENSION

The CONSULTANT agrees to comply, and assures the compliance of each third party CONSULTANT and Subconsultant at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. §6101 note, and U.S. DOT regulations, "Government wide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29.

O. SUBSTANCE ABUSE

The CONSULTANT agrees to comply with the following Federal substance abuse regulations:

1. Drug-Free Workplace. U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§702 et seq.
2. Alcohol Misuse and Prohibited Drug Use. FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655, to the extent applicable. The CONSULTANT agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State oversight agency of California, or the LTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The CONSULTANT agrees further to certify annually its compliance with Part 655 before each February 15th, to submit quarterly Management Information System (MIS) reports, and to submit annual MIS reports before February 15 to the LTA, 330 Tres Pinos Road, Suite C7, Hollister, California, 95023. To certify compliance the CONSULTANT shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

P. PRIVACY ACT

The following requirements apply to the CONSULTANT and its employees that administer any system of records on behalf of the Federal Government under any contract:

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

2. The CONSULTANT also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

Q. TERMINATION

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the CONSULTANT.

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

3. Opportunity to Cure (General Provision). The LTA in its sole discretion may, in the case of a termination for breach or default, allow the CONSULTANT an appropriately short period of time, as determined by the circumstances surrounding the breach or default, in which to cure the breach or default. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If, upon receipt of the LTA's written notice setting forth the nature of said breach or default, the CONSULTANT fails to remedy to the LTA's satisfaction the breach or default of any of the terms, covenants, or conditions of the contract within the number of days specified in the LTA's written notice, the LTA shall have the right to terminate the contract without any further obligation to the CONSULTANT. Any such termination for default shall not in any way operate to preclude the LTA from also pursuing all available remedies against the CONSULTANT and its sureties for said breach or default.

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

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

7. **Termination for Default (Transportation Services).** If the CONSULTANT fails to pick up the commodities or to perform the services, including delivery services, within the time specified in the contract or any extension, or if the CONSULTANT fails to comply with any other provisions of the contract, the LTA may terminate the contract for default. The LTA shall terminate by delivering to the CONSULTANT a Notice of Termination specifying the nature of default. The CONSULTANT will only be paid the contract price for services performed in accordance with the manner of performance set forth in the contract.

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

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

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

terminated. This liability includes any increased costs incurred by the LTA in completing the work.

9. The CONSULTANT'S right to proceed shall not be terminated nor the CONSULTANT charged with damages under this clause if-
 - a. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the CONSULTANT. Examples of such causes include: acts of God, acts of the LTA, acts of another CONSULTANT in the performance of a contract with the LTA, epidemics, quarantine restrictions, strikes, freight embargoes; and
 - b. The CONSULTANT, within [10] days from the beginning of any delay, notifies the LTA in writing of the causes of delay. If in the judgment of the LTA, the delay is excusable, the time for completing the work shall be extended. The judgment of the LTA shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the CONSULTANT'S right to proceed, it is determined that the CONSULTANT was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the LTA.

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

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

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

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

11. Termination for Convenience or Default (Cost-Type Contracts). The LTA may terminate the contract, or any portion of it, by serving a notice of termination on the CONSULTANT. The notice shall state whether the termination is for convenience of the LTA or for the default of the CONSULTANT. If the termination is for default, the notice shall state the manner in which the CONSULTANT has failed to perform the requirements of the contract. The CONSULTANT shall account for any property in its possession paid for from funds received from the LTA, or property supplied to the CONSULTANT by the LTA. If the termination is for default, the LTA may fix the fee, if the contract provides for a fee, to be

paid the CONSULTANT in proportion to the value, if any, of work performed up to the time of termination. The CONSULTANT shall promptly submit its termination claim to the LTA and the parties shall negotiate the termination settlement to be paid the CONSULTANT.

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

If, after serving a notice of termination for default, the LTA determines that the CONSULTANT 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 CONSULTANT, the LTA, after setting up a new work schedule, may allow the CONSULTANT to continue work, or treat the termination as a termination for convenience.

~ END ATTACHMENT D ~

~ END EXHIBIT I ~

~ END SECTION 6 ~