

REQUEST FOR COUNCIL ACTION



CITY COUNCIL MEETING DATE:
MARCH 15, 2016

CLERK OF COUNCIL USE ONLY:

TITLE:

OC STREETCAR DESIGN
COOPERATIVE AGREEMENT
(NON-GENERAL FUND)
{STRATEGIC PLAN NOS. 3, 2C, 4B; 6, 1G}

CITY MANAGER

APPROVED

- As Recommended
- As Amended
- Ordinance on 1st Reading
- Ordinance on 2nd Reading
- Implementing Resolution
- Set Public Hearing For _____

CONTINUED TO _____

FILE NUMBER _____

RECOMMENDED ACTION

Authorize the City Manager and Clerk of the Council to execute a cooperative agreement with the Orange County Transportation Authority, in the amount not to exceed \$1,493,469, for the term beginning with Orange County Transportation Authority Board approval and ending one year after the OC Streetcar Project is operational and providing service to the public as intended, for design of the OC Streetcar Project, subject to nonsubstantive changes approved by the City Manager and City Attorney.

DISCUSSION

On July 7, 2015, a Memorandum of Understanding (MOU) was approved by City Council with the Orange County Transportation Authority (OCTA) for implementation of the OC Streetcar Project (Project). The MOU outlines the general roles and responsibilities for the development, implementation, operations, and maintenance phases of Project between the City of Santa Ana and OCTA. The MOU was subsequently approved by OCTA Board of Directors on July 13, 2015.

Consistent with the MOU, staff has been working with the OCTA since last fall to review and finalize a Design Cooperative Agreement (Agreement) (Exhibit 1) that details the responsibilities of both agencies moving forward through the design phase of the project. The Agreement specifies areas of responsibility and identifies procedures that will be followed to gain approvals in preparing for the construction phase. Staff has reached consensus with the OCTA on the specific terms and conditions which are documented in the Agreement for the design phase of the Project. Some of the key highlights of the Agreement terms are as follows:

General

- The Agreement reimburses the City for allowable design expenditures incurred since execution of the Memorandum of Understanding on August 31, 2015, through design completion.
- OCTA shall lead the design of the Project, whereby plans, specifications and estimates are developed in preparation for construction.
- The Agreement outlines design assumptions related to the Project elements, including, but not limited to, the following:
 - Track
 - Traction Power Substations
 - Stations
 - Utilities
 - Traffic Signals
 - Pavement
 - Streetscape
 - Maintenance and Storage Facility
- The City shall provide design reviews. The Agreement defines the participation requirements of the OCTA and the City in the design review process, including the notice period, review times and resolution of conflicting comments.
- The City agrees to grant OCTA rights to use the City right-of-way (ROW) for streetcar purposes, as well as acquire or lease City property for three traction power substations. The latter shall involve OCTA providing monetary or other considerations to the City.
- The City shall have one representative on the selection/evaluation committee for design services, construction management, and outreach procurements. OCTA shall be responsible for Project procurements.
- OCTA shall be responsible for all ROW acquisition activities with City assistance. City will assist with eminent domain proceedings if needed and requested by OCTA.
- OCTA shall lead the public outreach program for the Project with input from the City.
- City staff will return to the Council for approval of construction, operations and right of way use agreements.

Financial

- OCTA is responsible for securing and administering Project funding.
- Consistent with OCTA's practice on major capital projects, OCTA agrees to compensate the City for their participation on the project.

- The City's participation ensures City input on project elements through meetings and design reviews, consistency with the City's development and building processes, and overall collaboration.
- The City's role will be akin to that of a vendor as opposed to a pass-through grant sub recipient.
- A detailed work plan has been developed and serves as the budget estimate for City support reimbursement.
- The compensation amount of \$1,493,469 is a 'not to exceed' obligation; the specific reimbursement amount will be based upon actual work performed by the City.
- The cost of the City's participation in the project will be covered as a project cost consistent with federal guidelines. Reimbursement will utilize actual labor rates, with the application of a federally compliant indirect cost recovery rate.
- The City must have their indirect cost recovery rate updated annually and approved by an agency able to review overhead rates consistent with federal requirements.
- The City is required to submit monthly invoices to OCTA for review which shall include signed timesheets and a summary of work performed during the month.
- The City is responsible for all betterment costs requested by the City. Betterment is an element added to the Project by the City that is not needed for the Project.

STRATEGIC PLAN ALIGNMENT

Approval of this item supports the City's efforts to meet the following Strategic Plan Goals:

1. Goal #3 - Economic Development, Objective #2 (create new opportunities for business/job growth and encourage private development through new General Plan and Zoning Ordinance policies), Strategy C (support business development and job growth along transit corridors through the completion of critical transit plans/projects including: The Fixed Guideway Project, Santa Ana Regional Transportation Center Master Plan, Complete Streets and General Plan Circulation Element update).
2. Goal #3 - Economic Development, Objective #4 (continue to pursue objectives that shape downtown Santa Ana into a thriving, culturally diverse, shopping, dining, and entertainment destination), Strategy B (create a comprehensive program to manage parking that includes innovative strategies to provide parking, create revenue and enhance accessibility in the downtown).
3. Goal #6 - Community Facilities & Infrastructure, Objective #1 (establish and maintain a Community Investment Plan for all City assets), Strategy G (develop and implement the City's Capital Improvement Program in coordination with the Community Investment and Deferred Maintenance Plans; e.g., transit vision, street car, fixed guideway project, SARTC

master plan, Bristol Street widening, neighborhood streets, traffic improvements, park facilities, sport fields, soccer fields, senior centers, bike master plan, etc.).

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

Funds are available in the FY 2015/16 expenditure accounts. Subsequent funding will be budgeted in FY 2016/17 and FY 2017/18 as identified in the attached expenditure plan (Exhibit 2).

APPROVED AS TO FUNDS AND ACCOUNTS:

for Nahid D. Sava
Fred Mousavipour
Executive Director
Public Works Agency

Francisco Gutierrez
Francisco Gutierrez
Executive Director
Finance and Management Services Agency

FM/EWG/JG

- Exhibits: 1. Design Cooperative Agreement
 2. Expenditure Plan

1 COOPERATIVE AGREEMENT NO. C-5-3583
2 BETWEEN
3 ORANGE COUNTY TRANSPORTATION AUTHORITY
4 AND
5 CITY OF SANTA ANA
6 FOR
7 THE DESIGN PHASE
8 OF THE
9 OC STREETCAR PROJECT

10 THIS COOPERATIVE AGREEMENT ("Agreement"), is effective this _____ day of
11 _____, 2016, by and between the Orange County Transportation Authority, 550 South
12 Main Street, P.O. Box 14184, Orange California 92863-1584, a public entity of the State of California
13 (herein referred to as "AUTHORITY") and the City of Santa Ana, a charter city and municipal
14 corporation duly organized and existing under the laws of the State of California (hereinafter referred
15 to as "CITY") each individually known as "Party" and collectively known as the "Parties".

16 **RECITALS:**

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

19 **WHEREAS**, the AUTHORITY and the CITY entered into a Memorandum of Understanding
20 (MOU) on August 31, 2015 for this Project in advance of this Agreement;

21 **WHEREAS**, the AUTHORITY, in cooperation with the Federal Transit Administration (FTA)
22 and the CITY, is proposing to design, construct, operate and maintain the OC Streetcar. The
23 AUTHORITY is a grantee of the Federal Transit Administration.

24 **WHEREAS**, the Santa Ana/Garden Grove Streetcar Locally Preferred Alternative was
25 identified by the Santa Ana City Council on August 5, 2014 and approved through the certification of
26

C:\Users\jfunk\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\BK3MRV9HVAG53583-20160210 OCTA SA Design
Agreement - Post Final Amendment .docx

1 the Environmental Impact Report by the Santa Ana City Council on January 20, 2015;

2 **WHEREAS**, on August 11, 2014, the AUTHORITY Board of Directors approved the
3 AUTHORITY to be the lead agency on all phases of the Project;

4 **WHEREAS**, this Agreement defines the roles, responsibilities, commitments, obligations, and
5 expectations for the AUTHORITY and the CITY as they relate to the Project design phase including
6 financial obligations;

7 **WHEREAS** it is the intent of the AUTHORITY and the CITY that the CITY shall be acting at all
8 times in respect to the Project as a Vendor as that term is used for federal funding requirements
9 purposes and that the CITY shall conduct any activities on the Project in compliance with all federal
10 rules, regulations and circulars applicable to Project Vendors.

11 **WHEREAS**, the Parties intend to enter into an agreement, prior to construction to establish the
12 roles, responsibilities and expectations for the AUTHORITY and the CITY as they relate to Project
13 construction;

14 **WHEREAS**, the OC Streetcar Project becomes the "OC Streetcar" upon the initiation of
15 revenue service;

16 **WHEREAS**, the Parties intend to enter into an agreement , prior to construction, to establish
17 the roles, responsibilities and expectations of the OC Streetcar operating in the CITY's public way;

18 **WHEREAS**, the Parties intend to enter into an agreement, prior to revenue service, to establish
19 the roles, responsibilities and expectations for the AUTHORITY and the CITY as they relate to the
20 operations and maintenance of the OC Streetcar and adjacent streets;

21 **WHEREAS**, the Project will be funded through a combination of federal, state and local funds;

22 **WHEREAS**, the AUTHORITY's Board of Directors approved this Agreement on ____ day of
23 _____, 2016;

24 **WHEREAS**, the CITY's City Council approved this Agreement on ____ day of
25 _____, 2016;

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

3 **ARTICLE 1. DEFINITIONS**

4 “Betterment” means any work or items that are requested by the CITY or a third party that go
5 beyond what is needed for the basic functioning of the Project. Betterments must i) not be prohibited
6 by a governing state or federal standard ii) not adversely impact the operation of the Project and iii)
7 not unreasonably delay or interfere with the Project schedule. Notwithstanding the foregoing, none of
8 the following shall be considered Betterments:

- 9 (a) A change in scope to which the Parties mutually agree, is necessary for the construction,
10 operation or maintenance of the Project;
- 11 (b) A requirement of applicable law;
- 12 (c) A requirement of applicable city standards in effect as of the Effective Date of the
13 Agreement;
- 14 (d) Any measures to mitigate environmental or other impacts of the Project arising from the
15 construction or operation or maintenance of the Project, including measures identified in
16 the Project's EIR or any required supplemental or addenda environmental report once
17 cleared.

18 “CEQA” means California Environmental Quality Act.

19 “Construction Agreement” means the cooperative agreement between the Parties established
20 to define the roles responsibilities and expectations during the construction, start up and testing of the
21 Project.

22 “Construction Contractor” means the firms(s) procured by the AUTHORITY to construct the
23 Project or portions of the Project.

24 “Day” or “Days” means calendar days and not business days, unless a different meaning
25 clearly appears from the context.

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

3 “Effective Date” means the date this Agreement is executed by the Parties.

4 “Mitigation Monitoring and Reporting Program” means the program for the implementation of
5 the mitigation measures adopted for the Project as identified by the CITY in the Revised Environmental
6 Assessment (REA)/Final Environmental Impact Report (FEIR) approved by the CITY’S City Council
7 on January 20, 2015.

8 “OC Streetcar” is the operating streetcar vehicles and all streetcar infrastructure including the
9 track, the overhead contact system (wires, poles, conduits, and appurtenances), the traction power
10 system (substations, conduits, controllers, and appurtenances), streetcar signage, stations or stops
11 (lighting, shelters, and all stop features), utilities supporting the streetcar from point of service, and a
12 maintenance and storage facility (MSF).

13 “Operations and Maintenance Agreement” means the cooperative agreement between the
14 AUTHORITY and the CITY establishing the roles, responsibilities, and expectations with respect to
15 the operations and maintenance of the OC Streetcar.

16 “PE ROW” means the property owned by the AUTHORITY, previously the Pacific Electric
17 Railroad ROW, intended to be used for the OC Streetcar between Raitt Street and Harbor Boulevard.

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

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

1 "Public Way Use Agreement" means the agreement established between the Parties
2 establishing the AUTHORITY's right to use the CITY's public way for the OC Streetcar.

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

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

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

10 "Work Plan" is the CITY's staffing budget for the responsibilities identified in this Agreement
11 and as provided for in Exhibit C, Table C-1.

12 **ARTICLE 2. COMPLETE AGREEMENT**

13 A. This Agreement, including any attachments incorporated herein and made applicable
14 by reference, constitutes the entire term(s) and condition(s) for the subject matter addressed in this
15 Agreement between the AUTHORITY and the CITY. This Agreement does not replace or supersede
16 the MOU for this Project entered into prior to this Agreement; however, any terms or conditions in
17 conflict shall be controlled by this Agreement. The invalidity in whole or in part of any term or condition
18 of this Agreement shall not affect the validity of other term(s) or condition(s) of this Agreement. The
19 above referenced Recitals are true and correct and are incorporated by reference herein.

20 B. The AUTHORITY's failure to insist on any instance(s) of the CITY's performance of any
21 term(s) or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of the
22 AUTHORITY's right to such performance or to future performance of such term(s) or condition(s), and
23 the CITY's obligation in respect thereto shall continue in full force and effect. Changes to any portion
24 of this Agreement shall not be binding upon the AUTHORITY except when specifically confirmed in
25

1 writing by an authorized representative of the AUTHORITY by way of a written amendment to this
2 Agreement and issued in accordance with the provisions of this Agreement.

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

10 **ARTICLE 3. SCOPE OF AGREEMENT**

11 This Agreement specifies the roles and responsibilities of the Parties as they pertain to the
12 design phase of the Project and subjects addressed herein. Both the AUTHORITY and the CITY
13 agree that each will cooperate and coordinate with the other in all activities covered by this Agreement
14 and any other supplemental agreements that may be required to facilitate purposes thereof.

15 **ARTICLE 4. RESPONSIBILITIES OF THE AUTHORITY**

16 The AUTHORITY agrees to the responsibilities for the Project assigned herein to the
17 AUTHORITY pursuant to Exhibit B Project Scope and Exhibit C Financial Obligations attached hereto
18 and made part of this Agreement.

19 **ARTICLE 5. RESPONSIBILITIES OF THE CITY**

20 The CITY agrees to the responsibilities for the Project assigned herein to the CITY pursuant
21 to Exhibit B Project Scope and Exhibit C Financial Obligations attached hereto and made part of this
22 Agreement.

23 **ARTICLE 6. DELEGATED AUTHORITY**

24 The actions required to be taken by the CITY in the implementation of this Agreement are
25 delegated to its City Manager, or designee, and the actions required to be taken by the AUTHORITY
26

1 In the implementation of this Agreement are delegated to the AUTHORITY's Chief Executive Officer
2 or designee.

3 **ARTICLE 7. MAXIMUM OBLIGATION**

4 Notwithstanding any provisions of this Agreement to the contrary, the AUTHORITY and the
5 CITY mutually agree that the AUTHORITY's maximum cumulative payment obligation under this
6 Agreement shall be One Million Four Hundred Ninety Three Four Hundred Sixty Nine
7 Dollars (\$1,493,469), unless agreed to and amended in writing by both Parties.

8 /

9 **ARTICLE 8. AUDIT AND INSPECTION**

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

19 **ARTICLE 9. INDEMNIFICATION**

20 A. To the fullest extent permitted by law, the CITY shall defend (at the CITY's sole cost
21 and expense with legal counsel reasonably acceptable to the AUTHORITY), indemnify, protect, and
22 hold harmless the AUTHORITY, its officers, directors, employees, and agents from and against any
23 and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards,
24 settlements, damages, demands, orders, penalties, and expenses including legal costs and attorney
25 fees, including but not limited to claims arising from injuries to or death of persons (the CITY's
26

1 employees included), for damage to property, including property owned by the AUTHORITY, or from
2 any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent
3 acts, omissions or willful misconduct of the CITY, its officers, directors, employees or agents in
4 connection with or arising out of the performance of this Agreement.

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

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

17 **ARTICLE 10. ADDITIONAL PROVISIONS**

18 A. Term of Agreement: This Agreement shall be in full force and effect for a term of one
19 year past the first day of Revenue Service as defined. The Parties do not intend that the term of this
20 Agreement shall exceed any limitation imposed by law, including without limitation the laws of
21 California, and agree to comply with any applicable requirements of such laws in connection with any
22 renewal of the term of this Agreement.

23 B. Termination: In the event either Party defaults in the performance of their obligations
24 under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party
25 shall have the option to terminate this Agreement upon thirty (30) days prior written notice to the other
26

1 Party. This option shall only be available if the non-defaulting Party has provided reasonable notice
2 to the defaulting Party of any default and the opportunity to cure such default within forty-five (45)
3 days.

4 C. Termination for Convenience: This Agreement may not be terminated by either Party
5 for convenience.

6 D. Termination for Lack of Funding: The AUTHORITY may terminate this Agreement in
7 the event funding is not available.

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

11 F. Legal Authority: The AUTHORITY and the CITY hereto consent that they are
12 authorized to execute this Agreement on behalf of said Parties and that, by so executing this
13 Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

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

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

22 I. Force Majeure: Either Party shall be excused from performing its obligations under this
23 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable
24 cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God;
25 commandeering of material, products, plants or facilities by the federal, state or local government;

1 national fuel shortage; or a material act or omission by the other Party, when satisfactory evidence of
2 such cause is presented to the other Party, and provided further that such nonperformance is
3 unforeseeable, beyond control and not due to the fault or negligence of the Party not performing.

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

9 K. Governing Law and Venue: The laws of the State of California and applicable local
10 and federal laws, regulations and guidelines shall govern this Agreement. The Parties agree that
11 Orange County, California shall be the venue for any action or proceeding that may be brought in
12 connection with this Agreement.

13 L. Dispute Resolution: Disputes arising out of this Agreement shall be resolved at the
14 lowest possible level. If a dispute cannot be resolved, it shall be elevated promptly to the next
15 resolution level. The three levels of dispute resolution shall be: both Parties' Project Manager level
16 (lowest), Executive Director level (middle), and Chief Executive Officer/City Manager level (highest).
17 If the dispute has not been resolved within sixty (60) days of referral to the highest level above, either
18 Party shall not be precluded from initiating litigation upon fourteen (14) days written notice to the other
19 Party; provided however, that if one Party has requested the other to participate in the informal process
20 listed above, at any level, and the other Party has unreasonably failed to participate, the requesting
21 Party may initiate litigation upon fourteen (14) days written notice.

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

24 N. Notices: Any notices, requests, or demands made between the Parties pursuant to this
25 Agreement are to be directed as follows:

26 C:\Users\jfunk\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\BK3MRV9H\AG53583-20160210 OCTA SA Design
Agreement - Post Final Amendment .docx

<p>To CITY: City of Santa Ana 20 Civic Center Plaza P.O. Box 1988 Santa Ana, CA 92701</p>	<p>To AUTHORITY: Orange County Transportation Authority 550 South Main Street P.O. Box 14184 Orange, CA 92863-1584</p>
<p>ATTENTION: Jason Gabriel Principal Civil Engineer Tel: (714) 647-5664 E-Mail: jgabriel@santa-ana.org</p>	<p>ATTENTION: Lydla Bilynsky Section Manager III, Capital Projects Tel: (714) 560-5568 E-Mail: LBilynsky@octa.net</p>
<p>Cc: Fred Mousavipour Executive Director, Public Works Agency Tel: (714) 647-5654 E-Mail: fmousavipour@santa-ana.org Cc: City Attorney</p>	<p>Cc: Jim Bell Executive Director, Capital Programs Tel: (714) 560-5646 E-Mail: JBell@octa.net</p>

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

P. Compliance with FTA Requirements: The CITY shall comply with all Federal Transit Administration (FTA) requirements, including but not limited to, Circular C 5010 1D and Circular 4220.1F as updated from time to time. Any third party contracting shall include Exhibit D – Required Federal Clauses attached hereto and incorporated by reference in all third party contracts.

Q. Incorporation of Exhibits: This Agreement in its entirety includes the Exhibits listed

1 below, all of which are, by this reference, incorporated herein and made part hereof as though fully
2 set forth. The Exhibits of this Agreement are:

- 3 EXHIBIT A – PROJECT MAP
- 4 EXHIBIT B – PROJECT SCOPE
- 5 EXHIBIT C – FINANCIAL OBLIGATIONS
- 6 EXHIBIT D – REQUIRED FEDERAL CLAUSES
- 7 EXHIBIT E – CITY SUPPORT WORK PLAN

9 CITY OF SANTA ANA

ORANGE COUNTY TRANSPORTATION AUTHORITY

11 By: _____

By: _____

12 David Cavazos
13 City Manager

Darrell Johnson
Chief Executive Officer

14 APPROVED AS TO FORM:

APPROVED AS TO FORM:

15
16 By: John M. Funk
17 John M. Funk

By: _____
James M. Donich

18 Assistant City Attorney

General Counsel

19 APPROVAL RECOMMENDED:

APPROVAL RECOMMENDED:

21 By: _____

By: _____

22 Fred Mousavipour
23 Executive Director, Public Works Agency

Jim Bell
Executive Director, Capital Programs

25 Dated : _____

Dated : _____

1 **ATTEST:**

2
3 By: _____

4 Maria D. Huizar

5 Clerk of Council

6
7 Dated : _____

8
9 **LIST OF EXHIBITS**

10 Exhibit A – Project Map

11 Exhibit B – Project Scope

12 Exhibit C – Financial Obligations

13 Exhibit D – Required Federal Clauses

14 Exhibit E – City Support Work Plan

15 /

16 /

17 /

18 /

19 /

20 /

21 /

22 /

23 /

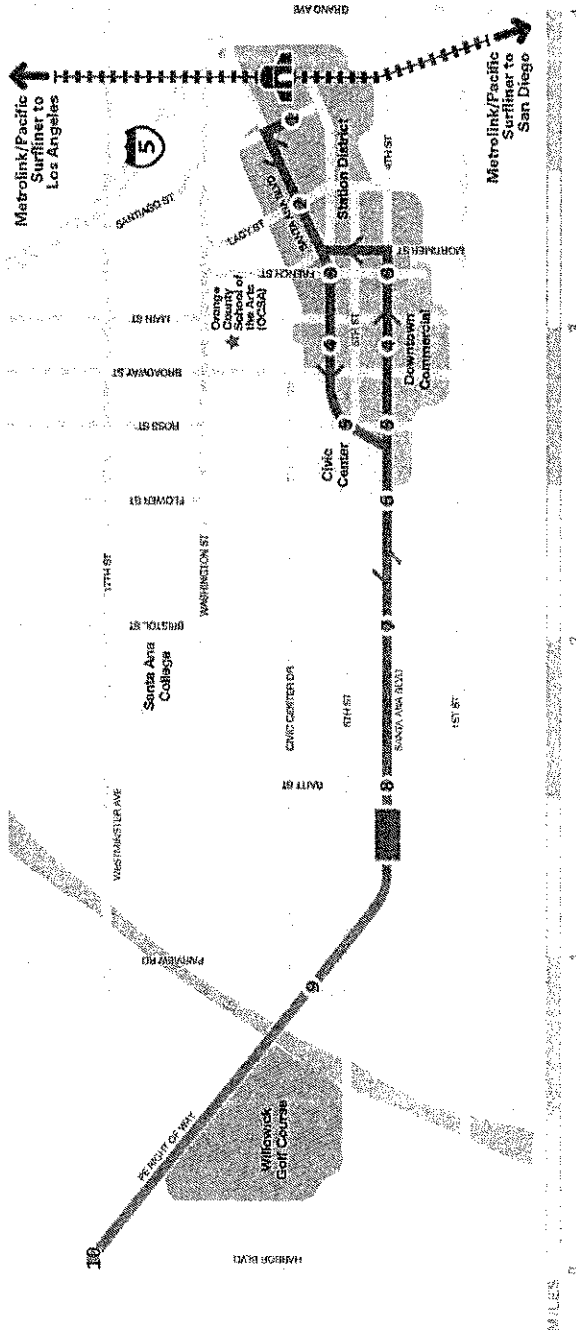
24 /

25 /

26 C:\Users\jfunk\AppData\Local\Microsoft\Windows\NetCache\Content.Outlook\BK3MRV9H\AG53583-20160210 OCTA SA Design Agreement - Post Final Amendment .docx

PROJECT MAP

OC Streetcar
Santa Ana / Garden Grove



LEGEND

- Streetcar Route
- Operations and Maintenance Facility
- Proposed Stop
 - Santa Ana Regional Transportation Center
 - Sycamore Street
 - Harbor Boulevard
 - Lacy Street
 - Ross Street
 - Belk Street
 - French Street
 - Flower Street
 - Fishlaw Road
- Santa Ana Regional Transportation Center

PROJECT SCOPE

1.0 DEFINITIONS

The terms defined in Article 1 of this Agreement are incorporated into and made a part of Exhibit B.

2.0 STATEMENT OF MUTUAL SUPPORT

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

3.0 NOT USED

4.0 PROJECT MANAGEMENT

4.1 AUTHORITY MANAGEMENT

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

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

4.2 CITY MANAGEMENT

The CITY shall identify a CITY Representative for the Project as a single point of contact for the Project. The CITY Representative will convey all direction provided by the CITY on behalf of the

CITY and will manage the CITY's responsibilities as defined in this Agreement. The CITY Representative will provide the AUTHORITY with clear and concise direction in situations where conflicting information is received from different CITY departments. All coordination with CITY departments regarding the Project will be through the CITY Representative, unless otherwise agreed upon by the CITY and the AUTHORITY.

4.3 SCHEDULE

The AUTHORITY shall develop a baseline schedule early in Project development. The CITY shall support the AUTHORITY in their efforts to meet Project milestones in order to achieve timely implementation of the Project. To the extent permitted by law, the CITY also agrees to cooperate and work with the AUTHORITY to mitigate adverse schedule conditions that jeopardize on-time Project completion.

4.4 REPORTING

The AUTHORITY will produce a monthly progress report providing an update on project status, budget, schedule, including a three (3) month look ahead schedule, and other information. The AUTHORITY shall provide the CITY access to the monthly progress report electronically.

4.5 PROCUREMENTS

The AUTHORITY shall be responsible for all procurement activities required for the Project. The CITY shall have, at the CITY's discretion, one (1) representative on all selection/evaluation committees including but not limited to public outreach, station and urban design, and construction management. The CITY Representative or designee shall be available for the procurement activities as scheduled.

4.5.1 Betterments

The AUTHORITY shall address CITY Betterment requests as separate cooperative agreements, or amendments to cooperative agreements, for each Betterment request. See Exhibit C – Financial Obligations, Section 4.0 for additional information.

4.6 RECORDS MANAGEMENT

The AUTHORITY shall maintain all Project records per the AUTHORITY's policies and procedures.

5.0 PROJECT INFRASTRUCTURE

5.1 ROUTE DESCRIPTION

The Project is 4.15 miles long more or less, and is represented in Exhibit A.

5.2 TRACKWAY

5.2.1 Embedded Track

Embedded track is best described as rail embedded in concrete forming a track slab that is 8-foot wide and typically 12-15 inches thick. Embedded track will be utilized in all street running segments of the Project. For this Project, the AUTHORITY shall use non-colored concrete embedded track unless agreed mutually otherwise.

5.2.2 Ballasted Track

Ballasted track consists of rail affixed on ties, which are supported by ballast. Ballast is a rock placed around ties, holding the ties in place. Ties are spaced approximately 30-inches apart. Ballasted track can be utilized in stations, special trackwork areas, between intersections, and through intersections with concrete crossing panels. The AUTHORITY shall utilize ballasted track on the Project west of Raitt Street unless agreed to mutually otherwise.

5.2.3 Drainage Facilities

The AUTHORITY shall mitigate any additional surface storm water drainage needs generated from the trackway or other impervious areas added by the Project or any change in drainage patterns caused solely by the Project. The mitigation of additional surface storm water drainage for the Project shall meet the CITY's National Pollutant Discharge Elimination System (NPDES) permit standards and will be subject to the CITY's storm water management requirements.

The AUTHORITY intends to implement the Project with little to no increase in drainage runoff by keeping the existing impervious surface areas the same. If the AUTHORITY increases existing

Impervious drainage needs on the Project and a drainage analysis is required, the AUTHORITY and the CITY shall work together to determine the appropriate analysis approach.

Storm drainage collection locations will be adjusted as necessary to accommodate any changed drainage patterns due to the implementation of the Project. The CITY agrees to allow the AUTHORITY to connect drainage collection facilities as desired within the streetcar guideway to the CITY's storm drainage system.

5.2.4 Gated Crossings

Gated crossing gates shall implement Quiet Zone standards and shall be used at the following locations on the Project:

- W. 5th Street/PE ROW Xing
- Fairview Street/PE ROW Xing

5.3 ROADWAY

5.3.1 Geometry

The roadway geometry will vary throughout the Project to accommodate the streetcar guideway, turn lanes, through lanes, bike lanes, and parking. The streetcar guideway shall not be exclusive to streetcar operations in street running areas. Vehicular traffic will be allowed on the streetcar guideway in all locations where public roadway use exists. The Parties agree the intent for this Project is to implement the streetcar guideway without widening the roadway. Widening the roadway will not be done to accommodate the addition of bike lanes or new traffic lanes unless agreed to mutually otherwise.

The Parties agree to confirm the roadway geometry for all streets including number of lanes, the streetcar placement within the streets, turn lanes, bike lanes, and parking during the resolution of 30% design comments. The 30% Plans and Specifications submittal, comment response log including resolution of comments will commemorate the geometry that will advance unless mutually agreed otherwise.

Maintenance on or near the streetcar guideway will be addressed fully in the Operations and Maintenance Agreement.

5.3.2 Pavement

The streetcar guideway shall be installed by saw cutting the existing pavement, constructing the track slab(s), patching the pavement with a pavement thickness meeting CITY standards as defined by Exhibit B, Section 6.1.1. Pavement restoration for utility trenching performed by the AUTHORITY shall be handled similarly.

5.3.3 Traffic Signals

The streetcar shall utilize the same traffic signals vehicular traffic utilizes. If during design an operational need is identified requiring an independent streetcar signal system, the CITY agrees to allow integration of the independent signal with the CITY's signal system as long as there is not a material degradation of traffic flow. CITY traffic signal poles shall not be used for the OC Streetcar overhead contact system or dedicated OC Streetcar signal facilities unless mutually agreed to otherwise. To reduce sidewalk clutter and assist in integration, the CITY shall allow the AUTHORITY to place any traffic related streetcar equipment inside the CITY's traffic control cabinets where space is available. Intersections with traffic signals include:

- Fairview Street/PE ROW (May include Queue Cutter and Pedestrian Signal)
- Raitt Street/Santa Ana Boulevard
- Pacific Avenue/Santa Ana Boulevard
- Bristol Street/Santa Ana Boulevard
- Shelton Street/Santa Ana Boulevard
- Flower Street/Santa Ana Boulevard
- Parton Street/Civic Center
- Broadway/4th Street
- Main Street/4th Street
- Bush Street/4th Street
- French Street/4th Street
- Mortimer Street/4th Street
- Lacy Street/Santa Ana Boulevard
- Santiago Street/Santa Ana Boulevard
- Bush Street/Santa Ana Boulevard
- Main Street/Santa Ana Boulevard
- Broadway/Santa Ana Boulevard

- Pedestrian Signal/Santa Ana Boulevard
- Ross Street/Santa Ana Boulevard

The AUTHORITY shall replace, modify, or relocate any traffic signal mast arms, signal cabinets, or signal poles in conflict with the streetcar infrastructure following CITY standards as defined by Exhibit B, Section 6.1.1. Any new poles, cabinets, or mast arms shall match the existing equipment unless agreed to mutually otherwise. Traffic signal equipment upgrades or replacements not required for the Project shall be considered a Betterment.

The traffic signal system will provide the OC Streetcar traffic signal priority through peer to peer communications optimizing the priority to the streetcar vehicle while minimizing the impact to vehicular and pedestrian traffic. The amount of green time extension for the streetcar approaching an intersection shall not exceed twenty (20) seconds to allow the streetcar to progress through the intersection. The amount of red time reduction for the streetcar, if stopped at an intersection, shall not be more than twenty (20) seconds to allow the streetcar to progress through the intersection. The green time extension and red time reduction will not be employed at traffic signals where the OC Streetcar crosses Main Street, Broadway, and Bristol Street.

The AUTHORITY will be responsible for providing timing plans to the CITY for opening day and design year traffic conditions for all traffic signals affected by streetcar operations.

Salvageable signals, poles, and equipment will be removed and turned over to the CITY as requested and implemented in the Plans and Specifications.

5.3.4 Traffic Management Plan

During design, the AUTHORITY shall prepare a Traffic Management Plan (TMP) for the CITY's review and approval that addresses, to the extent appropriate, construction-related impacts to the CITY's existing street traffic. The TMP will include normal traffic handling requirements during construction of the Project, including staging, lane closures, detours, signage, Intelligent

Transportation Systems (ITS), and signalization and will specify requirements for communicating with the public and local agencies during construction.

5.3.5 Signage/Striping

New traffic signage shall be provided to facilitate new lane configurations and traffic conditions. The AUTHORITY will be responsible for the design and installation of all signage. Existing signage along the alignment that is not affected will remain unless it is in conflict with the new traffic conditions.

The AUTHORITY will be responsible for striping. Final striping shall be a thin mil thermoplastic application. The AUTHORITY shall replace all striping removed and restore all striping damaged by the Project and match to existing striping consistent with CITY standards as defined by Exhibit B, Section 6.1.1, as needed. All signing and marking shall comply with Manual of Uniform Traffic Control Devices.

5.4 BIKE FACILITIES

5.4.1 Bike Lanes

The AUTHORITY shall coordinate with the CITY on bike lane locations on streets within the alignment, including those consistent with the Complete Streets study commissioned by the CITY. The Parties shall confirm the roadway geometry for all streets, including bike lanes, early in the design process; see Exhibit B, Section 5.3.1 for specifics.

5.4.2 Bike Paths

There are no bike paths included in the Project. The implementation of any bike path in the PE ROW shall be considered a Betterment. Any license requirements for a bike path in the PE ROW shall be addressed in the Public Way Use Agreement.

5.5 LANDSCAPING/IRRIGATION

Any landscaping or irrigation systems in the public way or on City property impacted by Project construction will be replaced or relocated with drought tolerant landscaping, space permitting.

No new landscaped areas are required for this Project.

Existing CITY owned irrigation systems that may be impacted by the Project will be tested prior to construction to verify operational fitness. Systems found to be non-operational shall have heads, valves, and controllers relocated and left in a connection-ready status.

5.6 LIGHTING

New Project lighting shall be LED lamps.

5.6.1 Public Way Lighting

There is no new street lighting included in this Project unless mutually agreed otherwise. Lighting will be added to stops as necessary to meet pedestrian lighting standards. The AUTHORITY is not required to upgrade existing lighting if not impacted by the Project.

5.6.2 PE ROW Lighting

The AUTHORITY may install operational lighting in the PE ROW if necessary for operations. Pedestrian level lighting in the PE ROW is not included in the Project other than at stop locations.

5.6.3 Maintenance and Storage Facility (MSF) Lighting

The AUTHORITY shall implement lighting at the MSF facility in a manner consistent with the approved use and as necessary to ensure the safe and secure operation of the facility.

5.7 UTILITIES

5.7.1 CITY Utilities

CITY utilities include, but are not limited to, the CITY's water distribution system, storm drain system, sanitary sewer system, traffic signal conduits, and the street lighting system. The AUTHORITY's intent is to implement the Project with the least utility impacts possible. Any existing utility in direct conflict with a Project element shall be relocated. Additionally, the AUTHORITY shall apply the following criteria to utilities as applicable:

- An existing utility may remain under the trackway, longitudinal and perpendicular, if the material, type, condition, and load capacity of the utility is sufficient. The AUTHORITY shall provide the CITY with an analysis report. Parties to agree on sufficiency.

- Existing access manholes, vaults, valve boxes, clean outs, and taps may be directly adjacent to or on a case by case basis, within a track slab. Use of access points near the streetcar track slab will require coordination with the AUTHORITY once the OC Streetcar is operational.
- No new utilities shall be installed longitudinally within 4-feet of the track slab.
- New utilities, installed during the Project and perpendicular to the streetcar alignment, shall be encased no less than 4-feet outside the track slab limits.

5.7.2 Public Utilities

The AUTHORITY shall initiate discussions with each public utility to rearrange or relocate its public utility facilities that may be determined by the AUTHORITY and the CITY to conflict with the Project. Public utilities are all non-CITY utilities including but not limited to communications, electric, gas, and cable. In the event the public utility fails to agree or fails to make the rearrangement or relocation in a timely manner, the CITY shall exercise and/or assign its rights under any state laws or under any applicable franchise as requested by the AUTHORITY to effectuate such rearrangement or relocation to permit the AUTHORITY to rearrange or relocate the utility in a timely manner. The CITY shall cooperate with the AUTHORITY, shall provide assistance to the AUTHORITY as needed, and shall join with the AUTHORITY as a party in the prosecution or defense of the CITY's and the AUTHORITY's rights under the laws of the State of California to cause such rearrangements or relocations. The AUTHORITY shall underground only those overhead utilities found in conflict with the proposed Project elements. Additional undergrounding of overhead utilities, if not in conflict with the Project, shall be considered a Betterment.

5.8 STREETCAR STOPS

5.8.1 Locations/Position

Project-wide it is anticipated there will be ten (10) streetcar stops for passengers to access the streetcar in each direction. Side stops typically entail a passenger boarding area for each direction

and have tracks only on one side. Center stops entail a passenger boarding area with tracks on each side. To the extent the Parties determine jointly that the stop locations will increase roadway crossings by pedestrians, the Project will include appropriate safety features to accommodate these crossings.

The stop locations are defined below:

<u>Eastbound Stops</u>	<u>Stop Type</u>
• Harbor Boulevard/PE ROW	Side or Center
• Fairview Street/PE ROW	Side or Center
• Raitt Street/PE ROW	Side or Center
• Bristol Street/Santa Ana Boulevard	Side
• Flower Street/Santa Ana Boulevard	Side
• Ross Street/4 th Street	Side
• Sycamore Street/4 th Street	Side
• French Street/4 th Street	Side
• Lacy Street/Santa Ana Boulevard	Side
• Santa Ana Regional Transportation Center	Center

<u>Westbound Stops</u>	<u>Stop Type</u>
• Santa Ana Regional Transportation Center	Center
• Lacy Street/Santa Ana Boulevard	Side
• French Street/Santa Ana Boulevard	Side
• Sycamore Street/Santa Ana Boulevard	Side
• Ross Street/Santa Ana Boulevard	Side
• Flower Street/Santa Ana Boulevard	Side
• Bristol Street/Santa Ana Boulevard	Side
• Raitt Street/PE ROW	Side or Center
• Fairview Street/PE ROW	Side or Center
• Harbor Boulevard/PE ROW	Side or Center

The stop types listed are primarily a function of the position of the streetcar guideway in the roadway. If during design the streetcar alignment changes positions in a roadway, the stop types listed here may be amended accordingly.

5.8.2 Stops

Sizing - Stops shall be long enough to support a single streetcar.

Shelter – The stop shelters are intended to provide limited protection from rain or sun. The shelters are not intended to be fully enclosed. Shelter specifics shall be developed during the

development of Project design criteria. The shelters shall utilize furnishings that are readily available. Custom furnishings shall not be used.

Seating/Leaning Rail – The shelters shall have limited seating and/or leaning rail areas. No other seating areas will be provided.

Ticket Vending Machines – At the AUTHORITY's discretion, each stop may have a ticket vending machine.

Pavement Surface – The pavement surface at stops shall be surfaced to match the adjacent sidewalk material for side-running stops and non-colored concrete on center platforms unless mutually agreed otherwise. A tactile warning strip meeting federal requirements will be provided on the track side of all stops.

5.9 TRACTION ELECTRIFICATION SYSTEM

The Traction Electrification System is comprised of two categories including Traction Power Substations (TPSS) and the Overhead Contact System (OCS).

5.9.1 Traction Power Substations

There are a total of five (5) TPSS planned for this Project. Substations shall be spaced as necessary for the OC Streetcar to operate at the frequency desired. Substation locations have been preliminarily identified. The CITY shall cooperate with AUTHORITY on locations for TPSS use identified by the AUTHORITY.

The Parties agree that the TPSS may be prefabricated units. Depending on the specific location of the TPSS, aesthetic treatments will be applied to reasonably blend the TPSS into its surroundings. Aesthetic treatments may include but not be limited to walls, structures, fencing, paint treatments, siding, or partial screening. Treatments will be provided for in the Station and Urban Design effort in collaboration with the CITY.

The AUTHORITY shall follow the CITY's permit approval process for each TPSS location however; approval for driveway access at TPSS locations shall not be unreasonably withheld by the CITY.

5.9.2 Overhead Contact System (OCS)

The OCS distributes the power generated by the TPSS that is used to propel the streetcars.

The poles used to support the OCS shall be smooth, round and tapered steel poles. The poles will be a single color mutually agreed upon by the AUTHORITY and the CITY. The color selected for the OCS poles will apply to all OCS poles within the CITY.

5.10 STREETCARS

The AUTHORITY is responsible for the procurement of streetcar vehicles.

5.11 MAINTENANCE AND STORAGE FACILITY (MSF) AND ACCESS TRACK

5.11.1 Zoning

The MSF site shall be zoned M1 or a similar zoning designation that will accommodate the proposed facility. The CITY shall ensure the MSF is an allowed use.

The AUTHORITY shall design the facility to handle all loading and unloading of parts and materials onsite. Loading areas shall not be visible from the street. The AUTHORITY may not use mechanized equipment, such as a fork lift, to load or unload parts and products in the public right of way. Parking for both employees and the public shall be accommodated in a single lot. Landscaping in the parking lot shall be no more than 1 landscaped island per ten (10) spaces.

5.11.2 Site Development

The AUTHORITY will be allowed to have a zero lot-line setback requirement for the MSF from a zoning standards standpoint. However, the AUTHORITY shall comply with all other code requirements as applicable.

5.11.3 Activity Periods

The AUTHORITY may conduct operations and maintenance activities at the MSF at any time and on any day.

6.0 DESIGN

6.1.1 Design Criteria

The AUTHORITY will develop design criteria and standards for the Project that are consistent with CITY design standards and guidelines. Applicable City standards are those in place on the Effective Date of this Agreement unless agreed to otherwise. The Project design criteria shall include the technical requirements and provisions for the Project and include which standards, specifications, and other requirements will be adhered to by the AUTHORITY's design consultants and Construction Contractors. The CITY shall review and approve design criteria that affect CITY owned assets. The Project design criteria shall include a design exception process with the approval of the applicable Party included. Once adopted, design criteria and referenced criteria requirements will not change unless agreed mutually otherwise.

6.1.2 Project Information

The CITY shall provide the AUTHORITY with electronic copies of all available record drawings, CADD files, and any other documents applicable to the Project.

6.1.3 Construction Phasing

During design, the AUTHORITY and the CITY will work collaboratively to develop the construction phasing for the Project. The AUTHORITY and the CITY shall gather input from the public in the development of construction phasing alternatives. The construction phasing plan shall be developed by the sixty (60) percent design level of completion in order for the information to be implemented into the Plans and Specifications.

6.1.4 Packaging

The Plans and Specifications prepared by the AUTHORITY shall be comprehensive and represent the complete design of the Project. All design plans shall be on a uniform border, numbered sequentially, and segregated by discipline as deemed appropriate by the AUTHORITY. The design plans and specifications, at the Ready to Bid stage, shall have a signature sheet for both AUTHORITY

approval and CITY concurrence. CITY or AUTHORITY signature on individual sheets or specifications is not required.

6.1.5 Design Reviews

The Plans and Specification design package(s) will entail a formal review package including 30 percent, 60 percent, 90 percent, and Ready to Bid. Each shall be scheduled in advance with at least a three-week notice provided for each submittal. The total review time shall be thirty (30) days for each formal review package submittal. The thirty (30) day period begins when the City receives the submittals. If multiple formal review packages are prepared the separate packages will not be concurrently reviewed. In situations where the AUTHORITY intends to submit review packages outside of the formal review packages, the CITY and the AUTHORITY will determine the review times on a case by case basis. The AUTHORITY shall provide the number of copies of the Plans and Specifications for review as requested by the CITY. The CITY shall provide written comments on hard-copy prints, e-file comments, or tabular comments with clear reference to where the comment applies in the review set. Comments must be clear, concise, and legible. Prior to submission to the AUTHORITY, the CITY shall resolve any conflicting comments.

The MSF and TPSS site plan design packages shall be reviewed following the CITY's Site Plan Review process and shall be no more than a sixty (60)-day review. The MSF and TPSS construction document packages shall be reviewed following the CITY's building permit review process and shall be no more than a sixty (60) day review. The sixty (60) day period begins when the City receives the complete package of Plans and Specifications for each submittal. OCTA and the CITY shall endeavor to shorten review durations where possible.

The AUTHORITY shall hold comment resolution meetings for each formal review stage and discipline, and shall discuss rejected comments with each reviewer. It is the AUTHORITY's responsibility to evaluate conflicting review comments between the various stakeholders (utility companies, agencies, etc.) and work with the reviewers to develop a final disposition.

The AUTHORITY shall respond in writing to each comment received within thirty (30) days. Any comments received after the review period shall be evaluated for relevance and shall be incorporated into the next design submittal when applicable. Comments received after the Ready to Bid review period, that have a material effect on Project cost or schedule shall be considered a Betterment. The exclusion of any review comment from the CITY shall be discussed between the Parties until mutually agreed upon. Any review comment not resolved within a reasonable time may be requested by either Party to be resolved in the Dispute Resolution process, identified in Article 10.L.

The AUTHORITY shall adopt a validation process to ensure that all accepted comments (from all reviewers) have been incorporated into the Plans and Specifications. The AUTHORITY shall demonstrate to the CITY that all comments have been implemented or resolved satisfactorily in the final Plans and Specifications.

Comments received that are deemed a Betterment, as determined by the AUTHORITY, shall be discussed with the CITY to determine if the CITY is interested in submitting a Betterment request.

6.1.6 Authorization to Bid

The AUTHORITY may advertise the procurement of a Construction Contractor as necessary to meet the Project schedule. The AUTHORITY shall not issue the Invitation for Bids for construction until the Ready to Bid set of documents is complete as defined in Article 1 of the Agreement unless provided for otherwise herein.

The CITY shall not unnecessarily withhold the signing of the Ready to Bid cover sheet if the AUTHORITY has addressed all comments in good faith. If no comments have been elevated in the Dispute Resolution process as provided for in Article 10.L, the AUTHORITY may proceed into construction fourteen (14) days following written notice to the CITY that all comments have been addressed without the City's signature on the cover sheet.

6.1.7 Artistic Influence

The extent of the AUTHORITY's Project artwork obligations shall be to contract a station and urban design consultant to develop aesthetic design concepts that will incorporate artistic influence into the Project. Any artistic influence incorporated into the Project must meet FTA guidelines as an eligible expense. All other requested artwork shall be considered a Betterment.

6.1.8 Station and Urban Design

The AUTHORITY shall develop station and urban design concepts through an urban design consultant separate from the Project Design Consultant's scope of work, and gather community input on the urban aspects of the Project. The AUTHORITY is committed to an iterative process focused on securing community stakeholder consensus prior to advancing the concepts to final design. The Parties agree that the iterative process shall be orchestrated in a manner that reduces the number of concepts with each iteration. Once consensus is reached, the AUTHORITY shall advance the concept to the Design Consultant responsible for final design.

7.0 PUBLIC INVOLVEMENT

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

8.0 REAL ESTATE

The AUTHORITY shall be responsible for all right of way acquisition activities. If necessary, the AUTHORITY and the CITY shall cooperate in implementing eminent domain. If requested by the AUTHORITY, the CITY shall conduct public hearings to hear resolutions of necessity and agrees to exercise its rights under eminent domain, to assign all of its rights, and to join the AUTHORITY in

litigation if necessary. Compensation for right of way acquisition support is addressed in Exhibit C, Section 4.2.

9.0 COORDINATION OF ADJACENT PROJECTS

The CITY agrees to keep the AUTHORITY informed on all design and construction projects that may directly impact this Project and that are submitted to the CITY for approval. This includes, but is not limited to, utility projects, communication projects, development projects, and other improvement projects.

To the extent permitted by law and except for renewals or extensions of existing licenses or permits, and renewals or extensions of existing use rights, the CITY shall not issue new licenses, permits, or use rights within the City's public right of way that materially interfere with the AUTHORITY's construction of the Project.

10.0 PERMITS AND COORDINATION

10.1 USE OF RIGHT OF WAY

The CITY agrees to grant to the AUTHORITY certain non-exclusive rights to use the CITY right of way for streetcar purposes, including the right to construct, operate, and maintain tracks, stations, OC Streetcar elements, and other improvements necessary for the OC Streetcar on that portion of the Project alignment constituting the CITY's public way or right of way. The AUTHORITY's use of the CITY's public way or right of way shall be at no charge and upon such terms and conditions as set forth in a Public Way Use Agreement.

10.2 PERMITS

By executing this Agreement, the CITY agrees to use its best efforts to facilitate all necessary authority, permission, and permits to enable the AUTHORITY to construct the Project as set forth herein. The CITY and the AUTHORITY acknowledge that the intent of this Agreement is to incorporate the majority of the CITY's requirements with respect to the permit the AUTHORITY must obtain to construct the Project. However, before the AUTHORITY begins construction, the AUTHORITY shall apply for and the CITY agrees to not unreasonably withhold such permit(s).

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

10.3 CITY PROPERTY

The CITY agrees to sell to the AUTHORITY the CITY property, at the appraised value, necessary for the AUTHORITY to construct, operate, and maintain a traction power substation and related equipment necessary for the OC Streetcar at the following two (2) locations as follows:

- CITY property located at the southwest corner of the Bristol Street/Santa Ana Blvd. intersection;
- CITY property located in the northeast corner of the Garfield Street/Santa Ana Blvd. intersection.

The CITY agrees to grant to the AUTHORITY an easement to use CITY property for streetcar purposes, including the right to construct, operate, and maintain traction power substations and related equipment necessary for the OC Streetcar at the following location for monetary or other consideration:

- CITY property located in the City Civic Center Plaza on the north side of Santa Ana Blvd west of Ross Street.

The AUTHORITY agrees to minimize the amount of property purchased or used while providing for construction, operations, and maintenance activities. The AUTHORITY and the CITY shall work collaboratively to ensure the traction power substation sites are not obtrusive to surrounding uses through the Station and Urban Design process identified in Exhibit B Section 5.9.1.

11.0 ENVIRONMENTAL

11.1 MONITORING

Pursuant to CEQA Guidelines Section 15097(a), the CITY delegates the CITY's reporting and monitoring responsibilities as set forth in the Mitigation Monitoring and Reporting Program to the AUTHORITY, and the AUTHORITY accepts the delegation of those reporting and monitoring responsibilities. The CITY shall participate in meetings related to the Mitigation Monitoring and

Reporting Program as needed and receive regular updates on the progress. The AUTHORITY shall provide copies of all environmental reporting and monitoring reports to the CITY to ensure compliance is maintained. In accordance with CEQA Guidelines Section 15097(a), the CITY ultimately remains responsible for ensuring that the mitigation measures in the Mitigation Monitoring and Reporting Program are implemented.

11.2 ENVIRONMENTAL DOCUMENT UPDATES

In the event the AUTHORITY deems it necessary to make significant changes to the Project descriptions as submitted to the Federal Transit Administration or used for purposes of the Environmental Impact Report, the AUTHORITY shall take the lead on preparing any required updates. The CITY shall be responsible for supporting and coordinating with the AUTHORITY in completing any additional environmental review required under State or federal law. The reimbursement of CITY costs associated with this coordination are addressed in Exhibit C Section 5.1.3 Additional Support.

FINANCIAL OBLIGATIONS

1.0 DEFINITIONS

The terms defined in Article 1 of this Agreement are incorporated into and made a part of Exhibit C.

2.0 PROJECT FUNDING

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

3.0 PROJECT COSTS

The AUTHORITY is responsible for all Project capital costs. The AUTHORITY is not responsible for Betterment costs.

4.0 BETTERMENTS

4.1 BETTERMENT REQUESTS

Betterment requests submitted by the CITY to the AUTHORITY shall be established as separate cooperative agreements or as amendments to existing cooperative agreements under the framework established herein. All Betterments shall be paid for by the CITY. The following steps for a Betterment include:

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

reserves the right to decline any Betterment request that materially impacts the Project schedule.

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

Any design work done by the AUTHORITY's Design Consultant on a Betterment, and incorporated into the Plans and Specifications, shall be constructed, without exception, by the AUTHORITY's Construction Contractor, as part of the Project construction effort.

4.2 BETTERMENT REIMBURSEMENT

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

5.0 CITY COSTS

5.1 CITY SUPPORT SCOPE

5.1.1 City Staff Support

City staffing support is CITY staff time spent in support of the Project and includes, but is not limited to, administering the CITY's support efforts, Project meetings, construction package reviews, site plan reviews, station and urban design participation, and public outreach efforts. The City Representative is responsible for managing CITY staff support on the Project and shall ensure time charged is reasonable and necessary. Support costs are for the design phase of the Project and shall not include costs incurred past the notice to proceed for construction.

5.1.2 City Consultant Services

Any consultant services used by the CITY on behalf of the Project shall be coordinated with the AUTHORITY. Any existing contracts the CITY intends to use for Project support must be reviewed by the AUTHORITY for compliance with FTA requirements and the CITY agrees to follow the

AUTHORITY's requirements for contract modifications or task order language, if applicable, prior to advancing any Project support work.

Should the CITY determine a need for additional consultant services, the CITY shall submit the scope, schedule and budget to the AUTHORITY for review and approval prior to commencing the procurement or authorizing the work under existing contracts. The AUTHORITY will verify there is no potential duplication of effort or risks to the overall Project schedule and budget and that there is no existing conflict of interest with existing contracts. In addition, the AUTHORITY will confirm the forecasted expenditures are eligible for reimbursement. All procurements must meet FTA requirements.

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

Support costs are for the design phase of the Project and shall not include costs incurred past the notice to proceed for construction. CITY support costs associated with the construction phase of the Project will be addressed in the Construction Agreement.

5.1.3 Additional City Support

Additional City Support is to provide a means for the AUTHORITY to secure CITY support for the condemnation of property and for support on environmental update documents in a timely manner. The AUTHORITY recognizes that the CITY may use existing contracts for legal or other services to provide Additional City Support as requested by the AUTHORITY in accordance with the procedures below. The AUTHORITY shall use its best efforts to facilitate the CITY's use of such agreements, including without limitation seeking a waiver or other relief from applicable FTA requirements as necessary. In the event the CITY is unable to use an existing agreement for the purposes of providing Additional City Support because of noncompliance with FTA requirements, the AUTHORITY

recognizes that the CITY in those circumstances may be unable to render Additional City Support, and the CITY shall thereupon be relieved from any obligation under this section.

Additional City Support is not intended to provide contingency for other Work Plan activities.

The following procedure shall be followed when Additional City Support is requested:

1. The AUTHORITY shall submit to the CITY a support request in writing. Each request shall include a detailed scope of work. For time sensitive activities, the AUTHORITY may authorize an initial amount in the request for support.
2. If an initial authorization is provided, the CITY shall provide support as requested and then the CITY shall prepare and submit to the AUTHORITY a proposal identifying scope clarifications, support costs, management/administrative costs, and any third party costs.
3. The AUTHORITY shall review the CITY's support proposal. If further negotiations are necessary before authorization is provided, the CITY and the AUTHORITY shall negotiate and update the proposal to accurately reflect the negotiated terms and conditions. If the cost of the support will exceed the provisional amount provided for Additional City Support, the Parties shall amend Article 7.0 – Maximum Obligation and provide a supplemental work plan to Exhibit E – City Support Work Plan.
4. All Additional Support Work shall be tracked separately and segregated as an independent task as identified with each authorization when invoicing.

5.2 CITY WORK PLAN BUDGET

5.2.1 City Staff Support

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

AUTHORITY will reimburse CITY for actual CITY staff support costs incurred in accordance with the Work Plan budget. Actual costs include all eligible CITY direct and indirect costs. The actual indirect cost recovery rate applied to direct labor costs will be adjusted following federal regulations.

The cost to develop a Cost Allocation Plan to determine an indirect cost recovery rate is not eligible for reimbursement.

5.2.2 Additional City Support

Additional CITY support costs not included in the CITY Work Plan budget shall be included in an amendment to this Agreement. The CITY may not provide additional support without prior written authorization from the AUTHORITY.

5.2.3 Periodic Cost Reviews

The AUTHORITY and the CITY agree to regularly monitor CITY costs expended in comparison to the CITY support budget and the remaining effort anticipated. A formal review of funds expended shall be conducted by the Parties immediately following the submittal of the CITY's invoice inclusive of the construction package reviews at the 30%, 60%, and 90% periods which are generally scheduled for June 2016, January 2017, and June 2017 respectively. In the event the remaining level of effort required, as agreed to by the Parties, exceeds the remaining budget, the Work Plan Budget shall be updated through an amendment to this Agreement.

5.3 INVOICING PROCEDURES

Each month, the CITY shall submit an invoice to the AUTHORITY for actual costs incurred the prior month. Invoices shall be submitted within 30 days of the end of the monthly invoice period. Invoices shall be submitted in duplicate to AUTHORITY's Accounts Payable office. The CITY may also submit invoices electronically to the AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. The AUTHORITY shall remit payment within thirty (30) days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Reference to Agreement No. C-5-3583;
2. The time period covered by the invoice;
3. An identification of the execution date of this Agreement;
4. Work Plan budget and cumulative invoice amount;

5. Hours worked per person in the invoiced period;
6. Burdened Rate per person Invoiced;
7. Indirect cost recovery rate applied to the total cost of CITY direct labor;
8. Current invoice payment amount due;
9. Signed and approved timesheets;
10. Description of work performed adequate to correlate hours shown and work performed;
11. Consultant invoices for the invoice period with the same information as required above,
and
12. Any other information requested by the AUTHORITY to reasonably substantiate the validity
of an invoice.

5.4 CONSULTANT PAYMENT VERIFICATION

The CITY shall provide the AUTHORITY verification of all consultant payments made by the CITY associated with CITY support within thirty (30) days of the consultant payment date.

6.0 NOT USED

7.0 FEES

7.1 PERMIT FEES

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

7.2 DEVELOPMENT IMPACT FEES

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

REQUIRED FEDERAL CLAUSES FOR THIRD PARTY AGREEMENTS

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

ARTICLE 1. FEDERAL CHANGES

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

ARTICLE 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

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

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

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

ARTICLE 4. CIVIL RIGHTS ASSURANCE

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

A. Compliance with Regulations: CONSULTANT shall comply with the Regulations

Exhibit D

Page 1

25F-44

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

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

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

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

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

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

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

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

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

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

I. DBE Participation

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55 that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- D. Consultant must not claim DBE participation as attained until the amount to be claimed is paid and fully adheres to DBE crediting provisions.

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

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

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

- A. Take appropriate actions to ensure that it will continue to meet the DBE Commitment at the minimal level committed to at award or will satisfy the good faith efforts to meet the DBE Commitment, when change orders or other contract modifications alter the dollar amount of

the contract or the distribution of work. The Consultant must apply and report its DBE goal commitments against the total Contract Value, including any contract change orders and/or amendments.

II. **DBE Policy and Applicability**

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

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

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

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

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

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

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

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

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

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

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

III. **Authority's DBE Policy Implementation Directives**

Pursuant to the provisions associated with federal regulation 49 CFR, Part 26, the Disadvantaged Business Enterprise (DBE) program exists to ensure participation, equitable competition, and assistance to participants in the USDOT DBE program. Accordingly, based on

the Authority's analysis of its past utilization data, coupled with its examination of similar Agencies' Disparity Study and recent Goal Methodology findings the Authority has implemented the reinstatement of the DBE program utilizing both race-conscious and race-neutral means across the board as all protected groups participation have been affected using strictly race neutral means on its FTA-assisted contracts.

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

I. Definitions

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

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern must not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
3. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
 - A. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - B. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - C. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - D. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China,

Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

- E. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
 - F. Women, regardless of ethnicity or race.
- 4. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
 - 5. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant.
 - 6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
 - 7. **"Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty. The Authority may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR, Part 31. The Authority may refer the case to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.
 - 8. **"Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or a recognized California Unified Certification Program Certifying Agency to meet the social and economic disadvantage criteria described below.
 - A. "Social Disadvantage"
 - 1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
 - 2. The individual must demonstrate that he/she has personally suffered social disadvantage.

3. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

B. "Economic Disadvantage"

1. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
2. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

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

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

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

The Form 103 must include the following information:

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

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

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

1. DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.
2. DBE Firm Contract Value Information:
Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.

2. **Consultant Assurance of Full Compliance with Prompt Payment Provisions**

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

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

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

3. **DBE Subcontract Agreements**

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

4. "Monthly DBE Trucking Verification" Form

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

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

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

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

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

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

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

V. DBE Eligibility and Commercially Useful Function Standards

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

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a Prime Consultant, Subconsultant, joint venture partner with a Prime or Subconsultant, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - A. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
5. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

1. When a DBE is proposed to participate in the contract, either as a Prime Consultant or Subconsultant, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.
2. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be credited toward the Prime Consultant's DBE attainment.
3. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
 - A. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 - B. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.

COOPERATIVE AGREEMENT NO. C-5-3583
EXHIBIT D

4. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward the prime Consultant's DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
 - A. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 - B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 - C. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.

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

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

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

VII. Performance of DBE Subconsultants

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

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

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

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

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

VIII. Additional DBE Subconsultants

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

IX. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in the Authority's federally - assisted contracts. Proposers are cautioned against knowingly and willfully using "fronts." The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal

violations. Further, any indication of fraud, waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

X. Consultant's Assurance Clause Regarding Non-Discrimination

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

XI. Prompt Payment Clause

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

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

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

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

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

XII. Administrative Remedies and Enforcement

Consultant must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. Consultant's failure to comply constitutes a material breach of contract, wherein the Authority will impose all available administrative sanctions including payment withholdings, necessary to effectuate full compliance. In instances

of identified non-compliance, a Cure Notice will be issued to the Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

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

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

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

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

ARTICLE 6. ACCESS TO RECORDS AND REPORTS

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

ARTICLE 7. INCORPORATION OF FTA TERMS

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

ARTICLE 8. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 9. FLY AMERICA REQUIREMENTS

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

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

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

B. CONSULTANT shall furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipping originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of lading in English for each shipment of cargo described in paragraph 0 of this Article to AUTHORITY (through CONSULTANT in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 11. PROHIBITED INTERESTS

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

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

ARTICLE 12. ALCOHOL AND DRUG POLICY

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

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

ARTICLE 13. PRIVACY ACT

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

ARTICLE 14. CONFLICT OF INTEREST

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

ARTICLE 15. CODE OF CONDUCT

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

ARTICLE 16. PROTEST PROCEDURES

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

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

ARTICLE 17. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONSULTANT written notice thereof. Upon termination, AUTHORITY shall pay

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

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

ARTICLE 18. RECYCLED PRODUCTS

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

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

ARTICLE 19. DEBARMENT & SUSPENSION:

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

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

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

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

ARTICLE 20. DISPUTES

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

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

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

ARTICLE 21. CLEAN WATER REQUIREMENTS

CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT shall report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 22. CLEAN AIR

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

ARTICLE 23. LOBBYING

CONSULTANT's who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or

employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE 24. BUY AMERICA

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

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

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

COOPERATIVE AGREEMENT NO. C-5-3583
EXHIBIT E

CITY SUPPORT WORK PLAN

OC Streetcar City Work Plan Design Phase 1/29/2016						4 Months (8/31/15 - 12/31/15)					
Position	2016 Total Cost	Hourly Rate w/ Burden	% on Project	Total Hours	Administration & Coordination	Project Meetings	Construction Package Review	MSF & TPSS Site Plan Reviews	Station and Urban Design Participation	Public Outreach	
						Bi-weekly coordination meetings, meetings w/ designers, agreement meetings, and other meetings. 8 Meetings	N/A	80-Day Site Plan Review #1 (MFS)	N/A	Participation in meetings with OCTA, community meetings, and coordination meetings.	
Public Works Director	\$12,076	\$216.25	8.7%	60	60						
City Representative (Project)	\$31,312	\$195.70	23.1%	160	160						
Administrative Staff	\$3,508	\$87.64	5.8%	40	40						
City Engineer	\$5,977	\$186.78	1.6%	32		24				8	
Principal Civil Engineer	\$9,394	\$195.70	1.6%	48		24		16		8	
Traffic Reviewer	\$3,974	\$166.68	0.4%	24		8		16			
Civil Reviewer	\$3,974	\$166.68	0.4%	24		8		16			
Drainage Reviewer	\$3,974	\$166.68	0.4%	24		8		18			
Operations Reviewer	\$1,403	\$173.36	0.4%	8		8					
Landscape Reviewer	\$979	\$122.32	0.4%	8		6					
Water/Sewer Reviewer	\$3,974	\$166.68	0.4%	24		8		16			
Constructability Reviewer	\$1,588	\$196.70	0.4%	8		6					
Station/Urban Design Reviewer	\$0	\$122.32	0.0%	0							
Bike & Ped Safety Reviewer	\$0	\$166.68	0.0%	0							
Public Outreach Lead	\$5,009	\$169.01	1.0%	32						32	
City Attorney	\$10,107	\$210.56	1.0%	48		40		8			
ROW Support	\$0	\$210.56	0.0%	0							
Building & Planning Department											
Site Plan Review MSF - Planning	\$4,985	\$155.16	0.0%	32				32			
Site Plan Review MSF - Building	\$3,103	\$155.16	0.0%	20				20			
Site Plan Review MSF - Fire	\$776	\$155.16	0.0%	5				5			
Site Plan Review MSF - PD	\$776	\$155.16	0.0%	5				5			
2016 Total	\$107,823			602	260	144	0	150	0	48	

OC Streetcar City Work Plan Design Phase 1/29/2016						12 Months (1/1/2016 - 12/31/2016)					
Position	2016 Total Cost	Hourly Rate w/ Burden	% on Project	Total Hours	Administration & Coordination	Project Meetings	Construction Package Review	MSF & TPSS Site Plan Reviews	Station and Urban Design Participation	Public Outreach	
						Bi-weekly coordination meetings, meetings w/ designers, agreement meetings, and other meetings. 28 Meetings	30% Review (Jul, 2016) 60% Review (Nov, 2016)	Permit Submittal Review (MFS) Site Plan Review (TPSS)	Assume participation as follows: (3) Urban Concept Review Packages that will address stops, TPSS, OCS, etc	Participation in meetings with OCTA, community meetings, and coordination meetings.	
Public Works Director	\$61,800	\$216.25	11.6%	240	240						
City Representative (Project)	\$133,076	\$195.70	32.7%	680	680						
Administrative Staff	\$10,517	\$87.64	5.8%	120	120						
City Engineer	\$27,270	\$186.78	7.0%	146		72	40		10	24	
Principal Civil Engineer	\$40,314	\$195.70	8.0%	206		72	60	20	10	24	
Traffic Reviewer	\$42,057	\$166.68	11.3%	254		24	210	20			
Civil Reviewer	\$37,421	\$166.68	9.9%	226		24	182	20			
Drainage Reviewer	\$27,486	\$166.68	4.1%	166		24	62	80			
Operations Reviewer	\$55,794	\$173.36	16.4%	318		24	244	40	10		
Landscape Reviewer	\$19,571	\$122.32	3.0%	160		24	68	80			
Water/Sewer Reviewer	\$28,182	\$166.68	7.8%	168		24	134				
Constructability Reviewer	\$52,448	\$196.70	12.9%	268		24	244				
Station/Urban Design Reviewer	\$5,071	\$122.32	2.3%	48		8					
Bike & Ped Safety Reviewer	\$3,974	\$166.68	1.2%	24		8	16		40		
Public Outreach Lead	\$16,265	\$169.01	4.6%	96							
City Attorney	\$20,962	\$210.56	6.8%	128		120		8		96	
ROW Support	\$16,045	\$210.56	3.8%	80		80					
Building & Planning Department											
Permit Review MSF - Planning	\$6,982	\$155.16	1.3%	46		8		17	20		
Permit Review MSF - Building	\$93,306	\$155.16	0.4%	408		8		400			
Permit Review MSF - Fire	\$3,689	\$155.16	0.4%	23		8		15			
Permit Review MSF - PD	\$2,793	\$155.16	0.4%	18		8		10			
Site Plan Review TPSS - Planning	\$4,600	\$155.16	0.1%	29		2		27			
Site Plan Review TPSS - Building	\$1,036	\$155.16	0.1%	7		2		5			
Site Plan Review TPSS - Fire	\$1,036	\$155.16	0.1%	7		2		5			
Site Plan Review TPSS - PD	\$1,066	\$155.16	0.1%	7		2		5			
2016 Total	\$677,300			3862	1040	668	1260	762	60	144	

**COOPERATIVE AGREEMENT NO. C-5-3583
EXHIBIT E**

Position	2017 Total Cost	Rate	% on Project	Total Hours	12 Months (1/1/2017 - 12/31/2017)						
					Administration & Coordination	Project Meetings	Construction Package Review	MSF & TPSS Site Plan Reviews	Station and Urban Design Participation	Public Outreach	
						Bi-weekly coordination meetings, meetings w/ designers, agreement meetings, and other meetings. 28 Meetings	90% Review (Jun. 2017) Ready to Bid Review (Oct. 2017)	Permit Submittal Review (TPSS)	N/A	Participation in meetings with OCTA, community meetings, and coordination meetings.	
Public Works Director	\$81,000	\$216.25	11.5%	240	240						
City Representative (Project)	\$133,076	\$185.70	32.7%	680	680						
Administrative Staff	\$10,617	\$87.64	5.8%	120	120						
City Engineer	\$25,402	\$188.78	6.8%	138		72	40				24
Principal Civil Engineer	\$98,400	\$195.70	8.5%	188		72	80		10		24
Traffic Reviewer	\$31,791	\$166.88	8.8%	192		24	168		10		
Civil Reviewer	\$31,460	\$166.58	8.7%	190		24	168		10		
Drainage Reviewer	\$13,412	\$166.58	3.4%	81		24	47		10		
Operations Reviewer	\$68,817	\$175.36	16.6%	324		24	300				
Landscape Reviewer	\$9,786	\$122.32	3.8%	80		24	56				
Water/Sewer Reviewer	\$22,363	\$165.58	6.0%	136		24	101		10		
Constructability Reviewer	\$63,407	\$195.70	16.6%	324		24	300				
Station/Urban Design Reviewer	\$0	\$122.32	0.0%	0							
Bike & Ped Safety Reviewer	\$3,974	\$165.58	1.2%	24		6	18				
Public Outreach Lead	\$16,205	\$158.01	4.6%	98							98
City Attorney	\$16,845	\$210.58	3.8%	80		80					
ROW Support	\$16,845	\$210.58	3.8%	80		80					
Building & Planning Department											
Permit Review TPSS - Planning	\$2,327	\$155.16	0.0%	15					15		
Permit Review TPSS - Building	\$11,172	\$155.16	0.0%	72					72		
Permit Review TPSS - Fire	\$2,327	\$155.16	0.0%	15					15		
Permit Review TPSS - PD	\$1,892	\$155.16	0.0%	12					12		
2017 Total:	\$559,938			3082	1040	480	1254	164	0	144	

Position	2018 Total Cost	Rate	% on Project	Total Hours	7 Months (1/1/2018 - 6/31/2018)						
					Administration & Coordination	Project Meetings	Construction Package Review	MSF & TPSS Site Plan Reviews	Station and Urban Design Participation	Public Outreach	
						Bi-weekly coordination meetings, meetings w/ designers, agreement meetings, and other meetings. 20 Meetings	N/A	N/A	N/A	Participation in meetings with OCTA, community meetings, and coordination meetings.	
Public Works Director	\$30,275	\$216.25	11.5%	140	140						
City Representative (Project)	\$66,495	\$195.70	28.0%	350	350						
Administrative Staff	\$9,135	\$97.64	5.8%	70	70						
City Engineer	\$10,460	\$188.78	2.7%	56		42					14
Principal Civil Engineer	\$10,959	\$195.70	2.7%	56		42					14
Traffic Reviewer	\$2,318	\$165.58	0.7%	14		14					
Civil Reviewer	\$2,318	\$165.58	0.7%	14		14					
Drainage Reviewer	\$2,318	\$165.58	0.7%	14		14					
Operations Reviewer	\$2,465	\$175.36	0.7%	14		14					
Landscape Reviewer	\$1,712	\$122.32	0.7%	14		14					
Water/Sewer Reviewer	\$2,318	\$165.58	0.7%	14		14					
Constructability Reviewer	\$2,740	\$195.70	0.7%	14		14					
Station/Urban Design Reviewer	\$0	\$122.32	0.0%	0							
Bike & Ped Safety Review	\$0	\$165.58	0.0%	0							
Public Outreach Lead	\$8,005	\$158.01	2.7%	68							68
City Attorney	\$0	\$210.58	0.0%	0							
ROW Support	\$0	\$210.58	0.0%	0							
Building & Planning Department											
Permit Review TPSS - Planning	\$0	\$155.16	0.0%	0							
Permit Review TPSS - Building	\$0	\$155.16	0.0%	0							
Permit Review TPSS - Fire	\$0	\$155.16	0.0%	0							
Permit Review TPSS - PD	\$0	\$155.16	0.0%	0							
2018 Total:	\$151,408			828	560	182	0	0	0	84	

Total City Design Phase Costs: **\$1,493,469**

NOTES

1. Additional Work, as defined by the Agreement, will be addressed with a separate work plan and scope. Additional Work is work that cannot be defined at this time and includes, but not limited to, Right of Way condemnation and Environmental Updates.
2. Billable rates are based at the latest Cost Allocation Plan for each classification and adjusted using a 2080 hours productive rate.
3. Positions not referenced in a Cost Allocation Plan have been prorated based on a similar Cost Allocation Plan positions. The actual rate would be based on the audited Cost Allocation Plan.

OC STREETCAR EXPENDITURE PLAN

FUND	ACCOUNTING UNIT	FY 2015-16	FY2016-17	FY 2017-18
City Manager	01103010	\$ 12,720.50	\$ 15,265.00	\$ 16,537.50
City Attorney	01108032	\$ 23,583.00	\$ 21,898.50	\$ 8,422.50
Office of the Chief of Police	01114400	\$ 1,357.75	\$ 1,435.25	\$ 465.50
Office of the Chief of Police	01114405	\$ 1,357.75	\$ 1,435.25	\$ 465.50
Fire Suppression/EMS	01115330	\$ 543.00	\$ 1,706.50	\$ 1,163.50
Planning & Building/Planning	01116510	\$ 4,228.00	\$ 5,120.25	\$ 3,374.75
Planning & Building/Permit Plan Check	01116530	\$ 41,776.50	\$ 39,565.75	\$ 3,374.75
Public Works Traffic Engineering	01117620	\$ 3,922.40	\$ 5,267.20	\$ 4,632.20
Federal Clean Water Protection	05717640	\$ 78,572.90	\$ 108,729.20	\$ 90,362.20
Public Works Environment/Sanitation	06817640	\$ 7,321.25	\$ 14,072.63	\$ 7,715.88
Public Works Roadway Cleaning	06817641	\$ 7,321.25	\$ 14,072.63	\$ 7,715.88
Graffiti Abatement	06817642	\$ 7,321.25	\$ 14,072.63	\$ 7,715.88
Public Works Street Trees	06817643	\$ 7,321.25	\$ 14,072.63	\$ 7,715.88
Construction Engineering	08617611	\$ 3,922.40	\$ 5,267.20	\$ 4,632.20
Design Engineering	08617612	\$ 190,436.50	\$ 284,480.70	\$ 199,461.10
Public Works Admin Services	10117601	\$ 47,689.50	\$ 62,417.00	\$ 67,618.50
Public Works Development Engineering	10117605	\$ 3,922.40	\$ 5,267.20	\$ 4,632.20
	FY TOTAL:	\$ 443,317.60	\$ 614,145.50	\$ 436,005.90

DESIGN PHASE TOTAL: \$ 1,493,469.00

Exhibit 2

25F-66