

REQUEST FOR COUNCIL ACTION

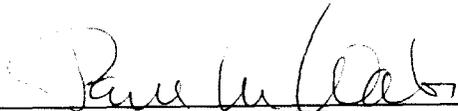


CITY COUNCIL MEETING DATE:

AUGUST 1, 2011

TITLE

AGREEMENT WITH CORDOBA CORPORATION FOR STEP 2 PRE-PRELIMINARY ENGINEERING ANALYSIS (PROJECT 092505)


CITY MANAGER

CLERK OF COUNCIL USE ONLY:

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 the attached agreement with Cordoba Corporation in an amount not to exceed \$491,736 to prepare the Pre-Preliminary Engineering Analysis for the Santa Ana and Garden Grove Fixed Guideway Project, subject to nonsubstantive changes approved by the City Manager and City Attorney.

DISCUSSION

On March 7, 2011, the City Council authorized staff to execute a cooperative agreement with the Orange County Transportation Authority (OCTA) in an amount not to exceed \$5,541,700 for Pre-Preliminary Engineering (Pre-PE) and Preliminary Engineering (PE) activities for the Santa Ana-Garden Grove Fixed Guideway Project. The cooperative agreement with OCTA defined the roles and responsibilities related to funding and project delivery between OCTA and Santa Ana, the Lead Agency, for Pre-PE and PE activities consistent with Measure M2 as well as federal guidelines and requirements.

Prior to entering PE, there are certain project development activities that need to be completed to satisfy Federal Transit Administration (FTA) requirements. Such activities include the development of project and fleet management plans, a detailed ridership, and cost analyses. These tasks were not included as part of the Go Local Step 2 grant award or scope of work. Consequently, on April 18, 2011, the City Council authorized the Public Works Agency to issue a Request for Proposals (RFP) to qualified consulting firms to prepare Pre-PE analyses to satisfy FTA requirements.

The RFP was issued on April 22, 2011. In addition to being posted on the City's website, it was also advertised in the Orange County Register and Orange Reporter and published in Integrated Management System's Architectural and Engineering (A&E) newsletter. The City hosted a pre-proposal meeting on May 18, 2011. Representatives from seven A&E firms attended the pre-proposal meeting. Proposals were due on June 1, 2011. One team submitted a proposal. The team is led by Cordoba Corporation and includes Sheils, Obletz, Johnsen, Inc. (SOJ); URS Corporation; Leon Skiles & Associates, Inc.; E.D. Hovee & Company, LLC; Cambridge Systematics; and John Parker Consulting, LLC. This multidisciplinary team includes several firms

which have successfully completed the tasks included in the Pre-PE scope of work and, thereby, helped to gain federal funding for streetcar systems in Portland and Seattle. Both URS and Cordoba Corporation are Santa Ana-based firms.

The fact that the City received only one proposal is not surprising given the highly specialized nature of the work required to complete the Pre-PE analysis. However, in compliance with federal procurement policies, follow-up calls were placed to each of the firms that attended the pre-proposal meeting but chose not to submit a proposal. Exhibit 1 is a summary of the information they provided, which will be shared with OCTA and FTA.

Consistent with federal procurement policies, a detailed review of the cost proposal submitted by the Cordoba/SOJ team was also conducted by members of the City's transit program team and by OCTA's Go Local project management oversight team. The contract amount included in the attached agreement (Exhibit 2) reflects the price that was negotiated with Cordoba Corporation following the detailed review.

The Pre-PE analysis is anticipated to take approximately six months and will be prepared simultaneously with the final tasks of the ongoing conceptual engineering and environmental analysis tasks. Staff will return to the City Council with an update on the Fixed Guideway Project early next year.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

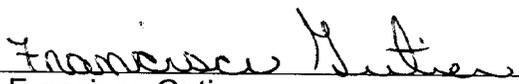
FISCAL IMPACT

On November 22, 2010, the OCTA Board allocated federal Section 5307 formula funds and Measure M2 funds to the City of Santa Ana for the Pre-PE Analysis. Funds are available in Measure M Street Construction (accounting unit 03217660-66220, project 092505).

APPROVED AS TO FUNDS AND ACCOUNTS:



Raul Godinez II
Executive Director
Public Works Agency



Francisco Gutierrez
Executive Director *FB*
Finance & Management Services Agency

RG:DB

Exhibits: 1. Memo
2. Agreement

Memo

June 30, 2011

To: Raul Godinez, Executive Director, Public Works Agency, City of Santa Ana

From: Cindy Krebs, Contract Transit Program Manager

Subject: Calls to Firms That Attended the Santa Ana-Garden Grove Fixed Guideway Project Pre-Preliminary Engineering Pre-Proposal Meeting

I have had the opportunity to talk with representatives from all but one of the firms that attended the pre-proposal meeting for the Santa Ana-Garden Grove Fixed Guideway Project Pre-Preliminary Engineering Pre-Proposal Meeting on May 18, 2011 but chose not to submit a proposal. A summary of the information they shared with me is provided below:

Diaz Yourman – Tried to team; no interest from other firms they contacted. Didn't think they'd be in strong position to lead. Attended meeting to gain more information about the project.

APA Engineering – Lack relevant experience. Were hoping to team but weren't successful. Believed current team had the advantage for the next phase.

Iteris, Inc – Not geared to prime. Didn't find an opportunity to team with another firm.

Harris & Associates – Not qualified to prime. Didn't find another firm to team with.

Tait & Associates – Attended meeting to learn more about the project. Didn't find anyone to partner with; meeting turnout was low. Said, "The team that had the inside track was present."

DEA - I tried to contact the representative from DEA several times by phone. I never received a response to any of the messaged I left.

EXHIBIT 1

25D-3

**AGREEMENT FOR PROVISION OF
PROFESSIONAL SERVICES**

THIS AGREEMENT, made and entered into this 1st day of August, 2011 by and between Cordoba Corporation, a California corporation (hereinafter "Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California (hereinafter "City").

RECITALS

- A. City desires to retain a consultant having special skill and demonstrated knowledge in preparing the following documents required by the Federal Transit Administration (hereinafter "FTA") for projects seeking New Starts or Small Starts funding:
1. New Starts Templates and Applications
 2. Project Management Plans consistent with 49 USC 5327 and 49 CFR 633
 3. Safety and Security Management Plans in accordance with FTA Circular C 5800.1
 4. Draft Fleet Management Plans consistent with FTA Circular 9030.1D
 5. Quality Management Plans consistent with FTA's Quality Assurance and Quality Control Guidelines (February 2002)
 6. Real Estate Management Plans which fully comply with 49 CFR Part 24 and FTA's "Model for Development of a Real Estate Management Plan"
 7. Investment Grade Ridership Forecasts
 8. FTA Summit Analyses using FTA Summit software
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consulting firm in the field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

a. Scope of Work. Consultant shall prepare the Pre-Preliminary Engineering Analysis studies for the Santa Ana-Garden Grove Fixed Guideway Project. Said services shall be provided as set forth in City's Request for Proposals 11-025, attached hereto as Exhibit A and incorporated by reference, and Consultant's Proposal dated June 1, 2011, attached hereto as Exhibit B and incorporated by reference.

b. Time for Performance. Consultant shall perform and complete all services as may be requested pursuant to the Scope of Work in a timely and expeditious manner. Consultant shall perform such services in accordance with the schedules which Consultant and City may mutually agree as to any particular deliverable, study, job or analysis. In the event that Consultant determines that a proposed schedule for work as requested by the City is not possible or achievable, Consultant shall immediately

notify the City's Representative, in writing and seek modifications. No extension of time shall be accepted unless it is evidenced in a writing executed by each Party's Representative.

c. Notice to Proceed. Consultant acknowledges and agrees that this project will be funded through Federal funds, and that said funding is contingent on approval of the Project by the Federal Transit Administration (FTA), and FTA allocation of funds to the Project. Further, said funds are provided through the Orange County Transportation Authority on a pass-through basis. Consultant shall not commence services until it receives a written Notice to Proceed (NTP) executed by the Executive Director of Public Works. Said NTP is contingent on 1) City's receipt of FTA approval of the Project and appropriation of FTA funds for completion of the Santa Ana-Garden Grove Fixed Guideway Project Pre-Preliminary Engineering Analysis or 2) allocation of alternative funds by the Orange County Transportation Agency, in an amount to fully fund the Project. If the FTA does not authorize funding for said Project, and OCTA does not provide alternative funds, the City may terminate this Agreement, as set forth in Section 16, below.

d. Consultant acknowledges that the project will be funded in part through funds administered by the Federal Transit Administration and the Orange County Transportation Authority and agrees to comply with all federal requirements as set forth in Exhibit D.

2. REPRESENTATIVES

a. For purposes of implementing this Agreement, the representative of City shall be the Executive Director of the Public Works Agency, or his designated representative, and the representative of the Consultant shall be Catherine Higley or her designated representative. Except as may be otherwise stated herein, such representatives shall have the authority to act on behalf of their respective parties in carrying out the terms of this Agreement.

b. Consultant shall assign the appropriate key personnel to perform the services required by this Agreement, as set forth in Consultant's Proposal. Consultant shall maintain the Project Manager identified in its Proposal, and approved by the City.

3. OWNERSHIP OF REPORTS AND DOCUMENTS

a. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of City. Copies may be made for Consultant's records but shall not be furnished to others without written authorization from City. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by City.

b. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to Consultant in connection with the performance of this Agreement shall not, without prior written approval of City, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. Consultant shall comply with City's policies regarding such material.

c. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by Consultant to any other person or agency except after prior written approval by City, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be handled only by City unless otherwise agreed to by Consultant and City.

4. FINISHED AND PRELIMINARY DATA

All of Consultant's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photoprints and other graphic information required to be furnished under this Agreement, shall be City's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. Consultant further agrees that it shall have no interest or claim to such finished, City-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

5. COMPENSATION

a. City agrees to pay, and Consultant agrees to accept as total payment for its services, the rates and charges set forth in Consultant's Fee Proposal, attached hereto as Exhibit C, and incorporated by this reference. The total sum to be expended pursuant to this Agreement shall not exceed \$491,736.24 during the term of this Agreement.

b. Payment by City shall be made within thirty (30) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures. The invoice shall include a detailed breakdown of the services, the tasks, the hours, and hourly rates. It should be noted that no more than 90 percent of the total payment amount will be made prior to the final completion and approval of all work and delivery of final deliverables.

6. TERM

This Agreement shall commence on the date first written above and terminate on June 30, 2012, unless terminated earlier in accordance with Section 15, below. The term of this Agreement may be extended by a writing executed by the Executive Director of Public Works and the City Attorney.

7. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

8. INSURANCE

Prior to undertaking performance of work under this Agreement, Consultant shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability Insurance. Consultant and its subcontractors shall maintain commercial general liability insurance which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of this Agreement, including, without limitation, acts involving vehicles. The amounts of insurance shall

be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence. Such insurance shall (a) name the City, its officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not-contributory with respect to insurance or self-insurance programs maintained by the City; and (c) contain standard separation of insureds provisions.

b. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than \$1,000,000 combined single limit. Such insurance shall include coverage for owned, hired and non-owned automobiles.

c. Worker's Compensation Insurance. In accordance with the provisions of Section 3300 of the Labor Code, Consultant, if Consultant has any employees, is required to be insured against liability for worker's compensation or to undertake self-insurance. Prior to commencing the performance of the work under this Agreement, Consultant agrees to obtain and maintain any employer's liability insurance with limits not less than \$1,000,000 per accident.

d. Professional liability (errors and omissions) insurance, with a combined single limit of not less than \$1,000,000 per claim.

e. The following requirements apply to the insurance to be provided by Consultant pursuant to this section:

- (i) Consultant shall maintain all insurance required above in full force and effect for the entire period covered by this agreement.
- (ii) Certificates of insurance shall be furnished to the City upon execution of this Agreement and shall be approved in form by the City Attorney.
- (iii) Certificates and policies shall state that the policies shall not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to the City.

f. If Consultant fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the City with required proof that insurance has been procured and is in force and paid for, the City shall have the right, at the City's election, to forthwith terminate this Agreement. Such termination shall not affect Consultant's right to be paid for its time and materials expended prior to notification of termination. Consultant waives the right to receive compensation and agrees to indemnify the City for any work performed prior to approval of insurance by the City.

9. INDEMNIFICATION

Consultant agrees to and shall indemnify and hold harmless the City, its officers, agents, employees, consultants, special counsel, and representatives from liability for personal injury, damages, just compensation, restitution, judicial or equitable relief caused by the negligent acts, omissions or willful misconduct of the Consultant or its contractors, subcontractors, agents, employees, or other persons acting on its behalf, arising out of the performance of this Agreement, except to the extent caused by the sole negligence, active negligence or intentional misconduct of the City or any other indemnified party. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the negligent acts or willful misconduct of the Consultant, its contractors,

subcontractors, agents, employees or other persons acting on its behalf. City may make all reasonable decisions with respect to its representation in any legal proceeding.

10. CONFIDENTIALITY

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

11. CONFLICT OF INTEREST CLAUSE

Consultant covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

12. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by facsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
facsimile (714) 647-6956

With courtesy copies to:

Executive Director of the Public Works Agency
City of Santa Ana
20 Civic Center Plaza (M-36)
P.O. Box 1988
Santa Ana, California 92702
facsimile 714- 647-5635

and

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988

Santa Ana, California 92702
facsimile 714- 647-6515

To Consultant: Cordoba Corporation
Catherine Higley
2677 N. Main Street, Suite 240
Santa Ana, California 92705
facsimile 714-558-8467

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by facsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

13. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind nor obligate either Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

14. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other consultants retained by City.

15. TERMINATION

a. This Agreement may be terminated by the City upon thirty (30) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

1. As a condition of such payment, the Executive Director may require Consultant to deliver to the City all work products completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate. However, any use of unfinished work product shall be at City's sole risk.

2. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

b. City 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 if Consultant 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 City. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default, including but not limited to reprourement costs of the same or similar services defaulted by Consultant under this Agreement except that, Consultant shall not be liable for any costs exceeding the amount of total compensation payable under this Agreement to Consultant by the City, as identified in Exhibit C.

c. If the Federal Transit Administration does not fully fund the Project, or if after commencement of said Project, funding is terminated by FTA or OCTA, City may terminate this Agreement immediately. Upon termination, City shall pay Consultant as set forth in Section 16. a., above.

16. DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. JURISDICTION - VENUE

This Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be government and construed in accordance with the laws of the State of California. This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. PROFESSIONAL LICENSES

a. Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of her inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

b. All Consultant and sub-consultant services to be provided by Consultant pursuant to this Agreement shall be provided by personnel experienced and/or licensed in their respective fields and in a manner consistent with the standards of care and skill ordinarily exercised by professional consultants in similar circumstances in accordance with generally accepted

professional consultant practice and principles and under the supervision of professionals licensed in the State of California.

c. Consultant assumes responsibility for any and all negligence, errors or omissions that Consultant commits and any and all such negligence, errors or omissions committed by a subcontractor of Consultant in performance pursuant to this Agreement.

19. MISCELLANEOUS PROVISIONS

a. Fiscal Records and Audits. Consultant shall keep a correct and current accounting of payroll costs, travel, subsistence, field and incidental expenses. Consultant shall use recognized accounting methods in preparing such invoices and reports. The City reserves the right to designate its own employee representative(s) or its contracted representative(s) with a certified public accounting firm who shall have the right to audit Consultant's accounting procedures and internal controls of Consultant's financial systems and to examine any cost, revenue, payment, claim, other records or supporting documentation resulting from any items set forth in this Agreement. If Consultant fails to provide supporting documentation satisfactory to the City for costs charged, then Consultant agrees to reimburse the City for those costs. Any such audit(s) shall be undertaken by the City or its representative(s) at reasonable times during normal working hours and in conformance with generally accepted auditing standards. Consultant agrees to fully cooperate with any such audit(s).

This right to audit shall extend during the length of this Agreement and for a period of three (3) years, or longer if required by law, following the date of final payment under this Agreement. Consultant agrees to retain all necessary records/documentation for the entire length of this audit period.

Consultant will be notified in writing of any exception taken as a result of an audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Consultant's invoices and/or records shall be made within thirty (30) days from presentation of the City's findings to Consultant. If Consultant fails to make such payment, Consultant agrees to pay interest, accruing monthly, at a rate of ten percent (10%) per annum unless another section of this Agreement specifies a higher rate of interest, then the higher rate will prevail. Interest will be computed from the date of written notification of exception(s) to the date Consultant reimburses the City for any exception(s). If an audit inspection or examination in accordance with this article discloses overcharges (of any nature) by Consultant to the City in excess of one percent (1%) of the value of that portion of the contract that was audited, the actual cost of the City's audit shall be reimbursed to the City by Consultant. Consultant reserves the right to contest any exception.

b. Authority. Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

c. Captions and headings in this Agreement, including the title of this Agreement, are for convenience only and are not to be considered in construing this Agreement.

d. Validity. If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable.

e. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

MARIA D. HUIZAR
Clerk of the Council

PAUL M. WALTERS
City Manager

APPROVED AS TO FORM:

JOSEPH STRAKA
Interim City Attorney

By: _____
Laura Sheedy
Assistant City Attorney

CORDOBA CORPORATION

RECOMMENDED FOR APPROVAL:

RAUL GODINEZ, II
Executive Director
Public Works Agency

CATHERINE HIGLEY
Vice President – Transportations Planning

Tax ID# _____

EXHIBIT A

REQUEST FOR PROPOSALS

RFP 11-025

**SANTA ANA-GARDEN GROVE FIXED GUIDEWAY PROJECT
PRE-PRELIMINARY ENGINEERING ANALYSIS**

Key RFP Dates

| | |
|-----------------------|----------------|
| RFP Issued: | April 27, 2011 |
| Pre-Proposal Meeting: | May 18, 2011 |
| Proposal Due Date: | June 1, 2011 |
| Interview Date: | June 15, 2011 |
| Contract Award: | July 5, 2011 |

**CITY OF SANTA ANA
PUBLIC WORKS AGENCY
20 CIVIC CENTER PLAZA
SANTA ANA, CALIFORNIA 92702**

Issued by:

**Dave Biondolillo
City of Santa Ana**

REQUEST FOR PROPOSALS (RFP 11-025)

SANTA ANA-GARDEN GROVE FIXED GUIDEWAY PROJECT PRE-PRELIMINARY ENGINEERING ANALYSIS

I. INTRODUCTION

The City of Santa Ana, hereafter called "City", is soliciting proposals from qualified consulting firms, teams, or consultants, hereafter called "Consultant," with demonstrated experience in preparing the following documents required by the Federal Transit Administration, hereafter called "FTA", for projects seeking New Starts or Small Starts funding:

- A. New Starts Templates and Applications
- B. Project Management Plans consistent with 49 USC 5327 and 49 CFR 633
- C. Safety and Security Management Plans in accordance with FTA Circular C 5800.1
- D. Draft Fleet Management Plans consistent with FTA Circular 9030.1D
- E. Quality Management Plans consistent with FTA's Quality Assurance and Quality Control Guidelines (February 2002)
- F. Real Estate Management Plans which fully comply with 49 CFR Part 24 and FTA's "Model for Development of a Real Estate Management Plan"
- G. Investment Grade Ridership Forecasts
- H. FTA Summit Analyses using FTA Summit software

II. PROJECT BACKGROUND

The Cities of Santa Ana and Garden Grove, in cooperation with the Orange County Transportation Authority (OCTA), are planning to design and construct a fixed guideway project. As the lead local agency, the City of Santa Ana is seeking a Consultant to prepare Pre-Preliminary Engineering (Pre-PE) project deliverables required by the Federal Transit Administration (FTA). It should be noted that the Orange County Transportation Authority (OCTA) is the designated grant recipient for FTA funding in Orange County and shall, therefore, be providing oversight for the project.

A significant amount of work in support of the Santa Ana-Garden Grove Fixed Guideway Project has been prepared through the Conceptual Engineering/Alternatives Analysis/Draft Environmental Analysis effort. For efficiency and consistency, Consultant shall draw from those materials to the maximum extent feasible to prepare and assemble all documents and data needed for the FTA Section 5309 (New Starts/Small Starts/Urban Circulator) application.

The roles and responsibilities for project delivery, system ownership, and transit operations are being determined at this time by the City and OCTA. It is not yet known who will be responsible for implementing the remaining phases of the project (design, build, operate and maintain) – the City or OCTA. Likewise, no determination has been made as to whether any of the remaining phases of the project might be contracted out. It is anticipated that a final decision on these matters will be reached during the course of the Pre-PE Analysis, most likely during the fall of 2011. Nonetheless, the City and OCTA plan to submit a request to enter Preliminary Engineering or Project Development to FTA upon completion of the Final Environmental Impact Report/Environmental Assessment -- around December 31, 2011. It is, therefore, imperative that the Pre-PE Analysis be completed on or before December 31, 2011.

To help the City and OCTA chart the best course for completing the Pre-PE Analysis on schedule, Consultant shall develop a Pre-PE Phasing Plan that indicates the length of time required to complete each task and sub-task. The Pre-PE Phasing Plan shall also indicate which tasks and sub-tasks can be initiated without a clear understanding of which agency will be responsible for implementation of the fixed guideway system and provide target start dates for those activities that can only be initiated after agency responsibilities for further implementation have been determined.

III. SUBMITTAL REQUIREMENTS

FORM OF PROPOSAL AND DUE DATE

TRANSMITTAL LETTER

A transmittal letter signed by an official authorized to solicit business and enter into contracts for the firm must accompany the proposal. The transmittal letter should include the name and telephone number of a contact person, and describe the working relationship between the Proposer and sub-consultants, if any. The transmittal letter should include a statement that the proposal is a firm offer to contract with the City of Santa Ana to perform work according to the terms of the RFP and that the offer is binding for a minimum of ninety (90) days from the date of submission. The transmittal letter should also include a statement that the Project Manager and key personnel will be available to the extent proposed for the duration of the project and that the Project Manager and key personnel shall not be removed or replaced without the prior written approval of the City.

TITLE PAGE

The title page should show the RFP number, RFP subject, the name of the proposer's firm, local address, telephone, name of contact person, email address and the date.

TABLE OF CONTENTS

The table of contents should include a clear identification of the material by section and page number.

OVERVIEW AND SUMMARY

This section should clearly convey Consultant's understanding of the nature of the work required and the general approach to be taken in completing the Pre-PE Analysis. It should include the following:

- A. Consultant's experience in successfully preparing the following items consistent with federal/FTA regulations, policies and guidelines: New Starts Templates and Applications, Project Management Plans, Safety and Security Management Plans, Draft Fleet Management Plans, Quality Management Plans, Real Estate Management Plans, Investment Grade Ridership Forecasts, and FTA Summit Analyses using FTA Summit software.
- B. Consultant's opinion regarding the most difficult issues or risk factors affecting implementation of the project and Consultant's recommendations for addressing each of them.

QUALIFICATIONS, REFERENCES AND RELEVANT EXPERIENCE

A detailed statement of the Consultant's qualifications and previous experience in conducting similar work, and one-page resumes of the personnel the Consultant intends to use to perform the project, summarizing each individual's training and experience relevant to this project. This section should indicate the percentage of time each team member will devote to this engagement, identify the project manager, and demonstrate that the Consultant's personnel have experience and expertise in all areas required in the Scope of Work. The resumes of key sub-consultant personnel shall also be included.

A summary (no longer than one page each) of at least three (3) projects similar in subject matter and scope to this project that have been undertaken in the past thirty-six (36) months, including client agency, the contract term and amount, and a contact person (with telephone number) who may be contacted as a reference.

WORK PLAN

Consultant shall provide a narrative that addresses the Scope of Work and shows Consultant's understanding of the needs and requirements associated with the Pre-PE Analysis. Consultant shall describe the approach and work plan for completing the services specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Consultant's ability to accomplish the project objectives and overall schedule.

A detailed staffing plan for each task and subtask must be submitted and should include an organization chart. The staffing plan shall identify all staff by name and identify the specific tasks for which each individual will be responsible. The proposal must also demonstrate adequacy of labor resources for the duration of the project, utilizing a table projecting the labor-hour allocation to the project, and must include each team member's current and projected availability for the duration of the project, including a summary of the time allocated to other projects.

Cost Proposal

In a separate, sealed envelope, Consultant shall submit a fixed-fee cost proposal consistent with the Scope of Work and the requirements of this RFP. Any optional tasks proposed by the Consultant shall be estimated separately in the cost proposal. The cost proposal shall include a full description and breakdown of the expected expenditures of funds for the proposed project, as set forth in the Scope of Work, in two forms: a task budget and a line item budget. The classifications, names, and hourly billing rates of individuals proposed for the project shall be clearly identified. Cost proposals shall not be opened until a firm is awarded the contract. Firms that are not selected shall have their cost proposals returned to them unopened.

IV. SCOPE OF WORK

Task 1 - New Starts Templates and Application

A significant amount of work in support of the project has recently been prepared through the Conceptual Engineering/Alternatives Analysis/Draft Environmental Analysis effort. At project kick-off, City of Santa Ana staff will provide the selected Consultant with copies of the documents that provide information relevant to the Pre-PE scope of work. For efficiency and consistency, Consultant shall draw from those materials to the maximum extent feasible to prepare and assemble all documents and data needed for an FTA Section 5309 (New Starts/Small Starts/Urban Circulator) application, including:

- A. Project Description
- B. Standard Cost Categories (SCC) Annualized Cost Worksheets
- C. Land Use Supporting Information
- D. Project Financial Plan & Supporting Information
- E. "Making the Case" Document

Task 1 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draft Project Description, SCC Annualized Cost Worksheets, Land Use Supporting Information, Project Financial Plan & Supporting Information, and "Making the Case" Document
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the final Project Description, SCC Annualized Cost Worksheets, Land Use Supporting Information, Project Financial Plan & Supporting Information, and "Making the Case" Document

Task 2 - Project Management Plan (PMP)

As a condition of Federal assistance, a grant applicant for a major capital investment project must prepare a Project Management Plan (PMP) consistent with 49 USC 5327 (Project Management Oversight) and 49 CFR 633 (Project Management Oversight Rule). The grant applicant must submit the PMP in time for FTA to review the applicant's plan in conjunction with its New Starts/Small Starts grant application. The PMP is a dynamic document for managing engineering, design, construction and start-up of a project. The PMP must provide sufficient detail to demonstrate the grant applicant's technical capability to carry out the project.

Consultant shall develop a draft PMP that addresses the following items:

- A. Adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;
- B. Budget that covers the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstrations staff, audits, and miscellaneous payments the recipient may be prepared to justify;
- C. Construction schedule for the project;
- D. Document control procedure and recordkeeping system
- E. Change order procedure that includes a documented, systematic approach to handling of construction change orders;
- F. Organizations structures, management skills, and staffing levels required throughout the construction phase;
- G. Quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components;
- H. Material testing policies and procedures;
- I. Internal plan implementation and reporting requirements;
- J. Criteria and procedures for testing the operational system or its major components;
- K. Periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts;
- L. The recipient's commitment to submit a project budget and project schedule to the Secretary of Transportation each month; and

For purposes of this task, Consultant shall assume that items b and c, Budget and Construction Schedule, would be the same regardless of which agency chooses to implement the project.

It is assumed that a final decision regarding project ownership and management may be reached before completion of Pre-PE. If that is the case, Consultant shall prepare a final PMP focused on the single, approved scenario.

The final PMP shall include a plan for managing later stages of the project. Consistent with FTA guidance, such plan shall be laid out in general terms with a description of how and when the details will be developed. Nonetheless, the grant application prepared by Consultant shall demonstrate that the plan will be developed and implemented as necessary to stay ahead of the implementation of the project.

Task 2 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draft PMP
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the final PMP

Task 3 - Safety & Security Management Plan (SSMP)

Consultant shall prepare a SSMP which fully complies with 49 CFR 633 and is prepared in accordance with FTA's Circular C 5800.1. Sections of the SSMP shall include:

- A. Management Commitment and Philosophy
- B. Integration of Safety and Security into Project Development Process
- C. Assignment of Safety and Security Responsibilities
- D. Safety and Security Analysis
- E. Development of Safety and Security Design Criteria
- F. Process for Ensuring Qualified Operations and Maintenance Personnel
- G. Safety and Security Verification Process
- H. Construction Safety and Security
- I. Requirements for 49 CFR Part 659, Fixed Guideway Systems; State Safety Oversight
- J. Federal Railroad Administration (FRA) Coordination Plan (if necessary)
- K. Department of Homeland Security (DHS) Coordination Plan

Task 3 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draft SSMP
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the final SSMP

Task 4 - Fleet Management Plan, Draft (FMP)

Consistent with the requirements set forth in FTA's Circular 9030.1D, Consultant shall develop a draft FMP that proposes how the Santa Ana-Garden Grove fixed guideway system will be properly planned for and managed. The FMP shall be substantially consistent with the adopted Record of Decision (if applicable) and sufficiently complete in detail and analysis to readily demonstrate the project's ability to maintain and/or improve service levels, operating costs, and the reliability and quality of service for a minimum of 10 years following project construction.

- A. The FMP shall plan for and discuss the overall management of the entire fleet of vehicles and related support functions and equipment, addressing all the reasonably foreseeable factors that are relevant to the determination of equipment needs in light of demand for service. It should address in detail the composition of the fleet, operating conditions, maintenance, facilities, peak vehicle demand, and spare ratio;
- B. The FMP shall discuss in detail:
 - a. Requirements for peak and spare vehicles including schedule spares, maintenance spares, parts spares,
 - b. Requirements for support functions such as heavy maintenance, capital and operating parts inventory and information technology,
 - c. Strategies for acquiring new vehicles or overhauling existing equipment and the tradeoffs between them,
 - d. Strategies for maintenance and operations including reducing spare vehicles, and
 - e. Strategies for reducing operating costs and increasing service reliability.
- C. The FMP shall include operating and financial data such as current estimates of vehicle operating costs, reliability and life expectancy, for decision-making and performance review.
- D. The FMP shall be formatted and calculated in conformance with FTA Circular 9030.1D, specifically with respect to:
 - a. Definition of terms,
 - b. Description of existing system and expansion plans, both project and non-project related,
 - c. Justification of the demand for revenue vehicles and operating spare ratio,
 - d. Process for reconciling demand versus supply to determine if additional vehicles will be needed, overhauled, procured or other changes in maintenance practices, inventory, information technology, capital investment will be implemented instead;
 - e. Preventive maintenance schedule for the procured/overhauled rail car fleet;
 - f. Grantee's reliability program, past performance and plans to improve reliability including profile monitoring and support of maintenance, failure rates and rail cars out-of-service, and train failure definitions and actions;
- E. The FMP shall discuss the selection and specification of vehicle equipment and systems and how the specifications matched the appropriate technology with the planned transit applications for the best performance at the lowest cost.
- F. The FMP shall ensure that the project's estimates of costs, service levels, quality, or reliability are mechanically correct and complete, consistent with the grantee-defined methodologies and free of any material inaccuracies or incomplete data.

- G. The FMP shall discuss the project's forecasts and schedule, to be consistent with the plan scope and project scope adopted in the Record of Decision (if applicable) and the proposed Revenue Operations Date and shall free of any material inaccuracies or incomplete data.

Task 4 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draftFMP

Task 5 - Quality Management Plan (QMP)

Consultant shall prepare a QMP that is consistent with the requirements presented in FTA's Quality Assurance and Quality Control Guidelines (February 2002).

Task 5 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draftQMP
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the finalQMP

Task 6 - Real Estate Acquisition Management Plan (RAMP)

Consultant shall prepare a RAMP which fully complies with 49 CFR Part 24 and is based upon FTA's "Model for Development of a Real Estate Management Plan".

Task 6 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draftRAMP
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the finalRAMP

Task 7 - Investment Grade Ridership Forecasts

Consultant shall review the ridership forecasts developed during the Conceptual Engineering phase and, if necessary, perform additional work to provide defensible travel demand forecasts for the following years, taking into account typical "ramp up" effects of new transportation modes:

- A. Opening Day (2015)
- B. Interim (2025)
- C. Long-Term (2035)

The resulting forecasts shall be based upon OCTAM, but shall include refinements necessary to accurately forecast system ridership. Consultant shall secure OCTA concurrence on any proposed refinements to OCTAM and, if necessary, develop travel surveys and analyze travel forecasting uncertainties to support the proposed approach to developing Santa Ana-Garden Grove fixed guideway system ridership forecasts. The final report shall detail any post-processing or "off-model" work that was completed and include ridership forecast for Task 8, FTA Summit Analysis.

Task 7 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draft ridership forecasts
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the final ridership forecasts

Task 8 – FTA Summit Analysis

Using the FTA Summit software, Consultant shall determine Transportation System User Benefits for reduced the set of "Build" and "No Build" alternatives selected for the Santa Ana-Garden Grove fixed guideway project. This information shall be presented in a report that includes:

- A. Thematic Maps for each of the Build Alternatives versus the Baseline Alternative
- B. Production & Attraction Maps for Each Trip Purpose & Period
- C. Daily Totals

Additional inputs and outputs from Summit, such as trip length frequency reports and row and column sum outputs, shall also be provided.

Task 8 Deliverables:

1. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the draft Thematic Maps for Each of the Build Alternatives versus Baseline, Production & Attraction Maps for Each Trip Purpose & Period, and Daily Totals
2. One electronic version (on CD in Microsoft Office Word 2007 or Microsoft Office Excel 2007 format) and 12 hard copies of the final Thematic Maps for Each of the Build Alternatives versus Baseline, Production & Attraction Maps for Each Trip Purpose & Period, and Daily Totals

V. GENERAL REQUIREMENTS

All work shall be performed in conformance with the latest City of Santa Ana, OCTA, FTA, and other involved agencies' policies, procedures and standards.

The Consultant shall carry out the instructions received from the City and shall cooperate with the City and other involved agencies.

The Consultant shall have total responsibility for the accuracy and completeness of all documents and plans prepared and shall check all such materials accordingly. The documents and plans will be reviewed by the City for conformity with the requirements of the Agreement.

The documents and plans furnished under the Agreement shall be of a quality acceptable to the City of Santa Ana. The criteria for acceptance shall be a product of neat appearance, well organized, technically and grammatically correct, checked, and dated and having the maker and checker identified. The minimum standard of appearance, organization and content of the documents shall be that of similar types produced by the City and set forth in related City of Santa Ana and other involved agencies' manuals. The Consultant shall modify its work as necessary to meet the level of acceptability defined by the criteria above.

The Consultant shall have a QA/QC plan in effect during the entire time work is being performed under the Agreement. The QA/QC plan shall establish a process which includes checking procedures for report preparation, a discipline and interdiscipline check of the environmental reports and conceptual engineering plans, correcting and back checking procedures, and all job related correspondence and memoranda dated and received by affected persons and then bound in appropriate job files. The City of Santa Ana reserves the right to request proof of said documentation.

The Consultant's work will be subject to inspections by representatives of the City of Santa Ana and other involved agencies.

VI. PERFORMANCE PERIOD

The contract shall begin upon approval by the City Council, and the Consultant shall commence work after notification to proceed by the City. Unless extended by contract amendment, the contract shall terminate on February 1, 2012.

The Consultant is advised that any recommendation for contract award is not binding on the City until the Agreement and all pertinent paperwork are fully executed and approved by the City Council.

VII. CONSULTANT SELECTION PROCESS

A Consultant Selection Committee shall be established to evaluate each Proposer's proposal and interview the most qualified Proposers. The evaluation of each proposal will be based on the following evaluation criteria:

Evaluation Criteria

1. Technical Qualifications (40%)

Technical experience in performing work of a similar nature; experience preparing FTA Pre-PE application materials; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.

2. Staffing and Project Organization (30%)

Qualifications of project staff, particularly key personnel and especially the Project Manager, including each individual's relevant past experience. Key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; adequacy of labor commitment; references from past projects; logic of project organization; concurrence in the restrictions on changes in key personnel.

3. Work Plan (30%)

Depth of Consultant's understanding of City's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of labor distribution among the tasks; ability to meet the project deadline; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.

Only those Proposers whose proposals receive a combined score of 75 or better (based on a 100-point scale) shall be considered qualified to provide the services required by this scope of work. If more than one Proposer's proposal receives a score of 75 or better, the Consultant Selection Committee shall interview said Proposers to gain more insight into their technical qualifications, staffing and project organization, and work plan. Upon completion of the evaluation and interview process, if necessary, the Consultant Selection Committee will recommend that the City Council award a contract to the highest ranking consultant.

VIII. ESTABLISHING OF FEES

A fee proposal is to be submitted separately in a sealed envelope plainly labeled "Fee Proposal". The fee proposal shall include a not-to-exceed fee and a detailed labor hour breakdown by task and classifications. Include all incidental costs estimated to accrue during the life of the contract. Include a billing rate schedule for the prime consultant and any subconsultants with an hourly billing rate by classification. As this will be a multi-year project, include billing rates for the current year as well as subsequent calendar years covering the duration of the project.

The fee proposal will not be opened until the consultants have been evaluated by the proposal selection committee. In conformance with the Brooks Act, the City will select the consultant based on qualifications, and then negotiate a contract price based on available funding and a further breakdown of the not-to-exceed cost submitted in the fee proposal. The City reserves the right to a retainer to ensure project delivery.

IX. CITY RESPONSIBILITY

The City will be responsible for the following:

- A. Making available existing, pertinent work products related to the Santa Ana-Garden Grove Fixed Guideway Project.
- B. Making available other City documents, as required for project completion.

X. PRIME CONSULTANT RESPONSIBILITIES

The selected Consultant will be required to assume responsibilities for all services offered in his/her proposal. The selected Consultant will be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

XI. DELAYS

The City reserves the right to delay scheduled dates if it is to the advantage of the City.

XII. PROJECT CONTROL

Control of the project shall be the shared responsibility of the City and OCTA.

XIII. RULES FOR PROPOSALS

The signer of the proposal must declare in writing that the only person, persons, company or parties interested in the proposal as principals are named therein; that the proposal is made without collusion with any other person, persons, company, or parties submitting a proposal; that it is in all respects fair and in good faith without collusion or fraud; and, that the signer of the proposal has full authority to bind the principal proposer.

XIV. METHOD OF PAYMENT

The consultant shall submit invoices to the City, attention Dave Biondolillo. Each invoice shall include a detailed breakdown of the services, the tasks, the hours, and hourly rates. It should be noted that no more than 90 percent of the total payment amount will be made prior to the final completion and approval of all work and delivery of final deliverables.

XV. REGULATIONS

The selected consultant shall be expected to comply with all applicable federal and state regulations, and contract provisions. The ensuing contract shall contain such contractual provisions and conditions necessary to define a sound and complete agreement.

XVI. THE CITY'S AFFIRMATIVE ACTION PROGRAM

The City has an affirmative action program. The purpose of the affirmative action program is to encourage certified minority business enterprises and women business enterprises. All Submitting firms must have established affirmative action programs approvable by the City. The attached Exhibit C, "Certification of

Non-Discrimination by Contractors" shall be completed by each submitting firm and included in the proposal.

XVII. WAGE RATES

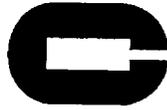
Because this PROJECT is federally funded, the rate of wages for each craft or type of worker or mechanic employed under this contract shall be specified under the current determinations of the Department of Labor as required under the Davis-Bacon Act. The current wage determination can be obtained at the following location:

<http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=Davis-Bacon&docid=CA20080035>

Notwithstanding the conditions hereinabove, the California Labor Code stipulated that not less than the general prevailing rate of per diem wages for each craft or type of worker or mechanic needed to execute the contract in the locality in which the work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work as determined by the Director of Industrial Relations of the State of California shall be paid to all workers employed. A copy of the prevailing rate of per diem wages is on file at the City of Santa Ana Public Works Agency – Construction Division, and is available on request to any interested party.

Where a discrepancy exists between federal and state prevailing wage rates, the policy of the California Department of Labor is to require that the higher of the two prevailing wage rates shall apply

EXHIBIT B
CONSULTANT'S PROPOSAL
DATED JUNE 1, 2011



CORDOBA CORPORATION

LOS ANGELES • OAKLAND • SANTA ANA • SAN BERNARDINO

June 1, 2011

Mr. David Blondillo, Project Manager
City of Santa Ana
Department of Public Works
20 Civic Center, M-21
Santa Ana, CA 92701

RE: Proposal for Santa Ana-Garden Grove Fixed Guideway Project Pre-Preliminary Engineering Analysis (RFP 11-025)

Dear Mr. Blondillo:

Over the last 18 months, Cordoba Corporation and our subconsultant partners have been working with the cities of Santa Ana and Garden Grove, and the Orange County Transportation Authority (OCTA) on the Santa Ana and Garden Grove Fixed Guideway Corridor Study. Over the next several months, we will be distributing a draft Environmental Impact Report (DEIR) and Environmental Assessment (EA) for public review, completing the Alternatives Analysis for the project, and working with the cities to adopt a Locally Preferred Alternative for approval by OCTA's Board of Directors. Concurrent with this process, the project is embarking on an all-important undertaking towards its successful implementation, preparation of a Federal Transit Administration (FTA) Section 5309 Grant Application to become eligible to receive federal funding for the project.

Cordoba Corporation is pleased to submit this proposal to once again support the City of Santa Ana and their partner agencies in moving this important project forward. In addition to key members of the current Cordoba Fixed Guideway Corridor Study team, and in recognition of the emphasis on the preparation of the materials for a federal Small Starts grant application, Cordoba has joined forces with Shiels Oblétz Johnsen Inc., Leon Skiles, JPC Consulting and E.D. Hovee and Company. This SOJ-led team, which also included URS, prepared the successful Federal Small Starts application for the Portland Streetcar Loop project. To date, the Portland Streetcar Loop is the only streetcar project in the U.S. to receive an FTA New or Small Starts grant.

We believe this is a powerful team that offers the City the following benefits: strong working relationships with Santa Ana, Garden Grove and OCTA; intimate knowledge of the Fixed Guideway Corridor project, the local environment and the community; deep understanding of, and respect for the public agency sponsors' relationships; and, most importantly, demonstrated success at achieving the desired objective of obtaining an FTA Small Starts Grant for the project.

This proposal is a firm offer to contract with the City of Santa Ana to perform work according to the terms of the RFP. This offer will be binding for a minimum of ninety (90) days from the date of submission. The Project Manager and key personnel identified in this proposal will be available to the extent proposed for the duration of the project and shall not be removed or replaced without the prior written approval of the City.

Mr. David Biondolillo
June 1, 2011
Page 2

We look forward to more fully describing our approach and work program during the interview phase of this procurement. If you should have any questions during the review of our proposal, please do not hesitate to contact either of our Co-Project Managers: Rick Gustafson, Shiels Oblatz Johnsen, Inc. (Co-Project Manager – Technical Direction) at (503) 969-4181, or Catherine Higley, Cordoba Corporation (Co-Project Manager – Contract Administration/Project Coordination) at (714) 342-2309.

Sincerely,
CORDOBA CORPORATION



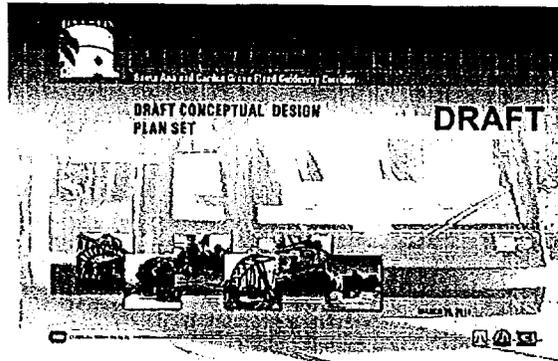
Catherine Higley
Vice President of Transportation Planning



Work Plan

Project Approach

The purpose of the Pre-Preliminary Engineering Analysis for the Santa Ana-Garden Grove Fixed Guideway is to prepare and assemble all the documents and data needed for the FTA Section 5309 (New Starts/Small Starts/Urban Circulator) application. The significant amount of information in support of this effort has been or is being prepared as part of the ongoing Conceptual Engineering/Alternatives Analysis/Draft Environmental Analysis project. Since the Cordoba team is performing the ongoing work program, we are uniquely qualified to conduct the Pre-preliminary Engineering Analysis. We have a thorough understanding of the proposed Santa



Ana-Garden Grove Fixed Guideway project and the context in which the project is being developed. We know the City of Santa Ana, its physical features, its neighborhoods and stakeholders and its staff. We understand and are committed to their impressive and comprehensive Transit Vision for the City.

We know OCTA and the Go Local Program. We understand OCTA's interest in pursuing Federal funding for the most competitive of the Go Local programs in order to fully leverage the local Measure M² dollars. We understand that OCTA as the designated grant recipient for FTA funding in Orange County, will be providing oversight for the project, similar to their role in the ongoing work effort. But we also know, based on our considerable experience and success with the FTA Section 5309 programs that, for the City to compete successfully, OCTA will need to provide more than technical oversight. In order to successfully compete with the anticipated number of New Starts projects in FTA Region IX and the nation, the Santa Ana-Garden Grove Fixed Guideway project will need to present a technically strong and compelling "story" of why the project is very competitive with respect to FTA's project evaluation criteria. To be successful in attracting Federal New Starts funds that will leverage local M² dollars, OCTA will need to join with the City, lending their considerable experience, capacity and capability, to advocate for the project. Cordoba's partner in this undertaking, SOJ, has the knowledge and experience to assist the City and OCTA to develop the most effective strategy to competitively position the project for federal funding.

We fully understand that the City and OCTA continue to work together on important issues of project ownership, management and operations. The resolution of these issue areas will be critical to the preparation of a successful Project Development application. With national experience in fixed guideway transit, and in particular modern streetcar, the Cordoba team can provide valuable insights into successful funding and grant application models nationally, to assist OCTA and the City in resolving these important issues for project success.

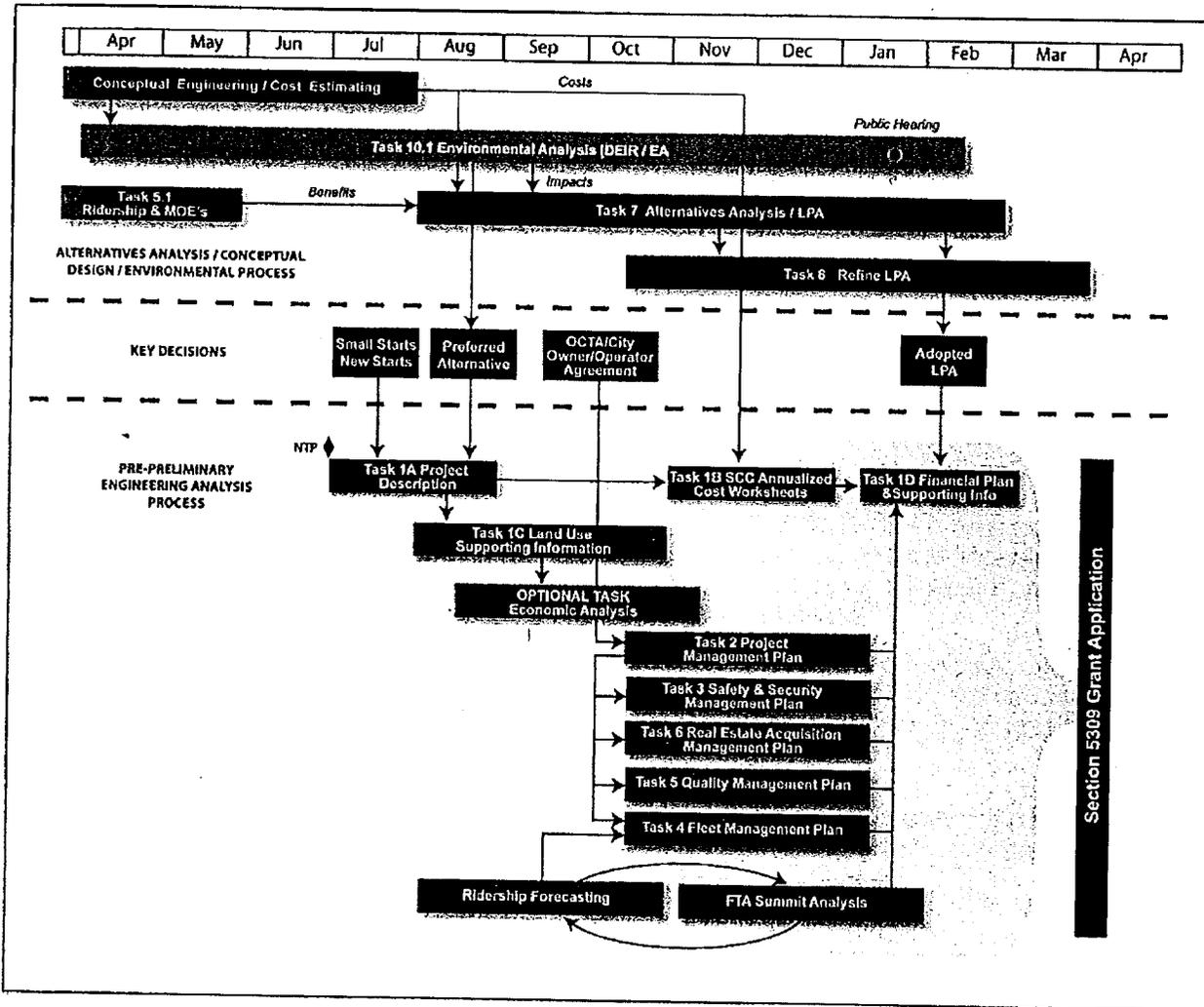
The work effort on the Conceptual Engineering/Alternatives Analysis/Draft Environmental Analysis is ongoing and will continue in parallel with the Pre-Preliminary Engineering Analysis. The Cordoba team was originally configured to provide the City with the depth of resources and local knowledge, technical expertise and demonstrated experience in successfully delivering similar projects. By selecting the Cordoba team to continue with the Pre-Preliminary Engineering Analysis, the City will take maximum advantage of the quality work product that has been developed by the team, and also the considerable knowledge and experience gained during the preceding two years.

And the current Cordoba team has been reconfigured to address the specific requirements of the Pre-Preliminary Engineering Analysis objectives and work program. We have maintained those members whose particular knowledge and expertise will be critical to seamless integration of the two work programs. We have added SOJ and

associated members to the team because they bring specific technical expertise, a fresh eye and unparalleled success at maneuvering streetcar projects through the FTA funding grant application process.

The flow chart below illustrates how the ongoing work effort will be integrated into the Pre Preliminary Engineering Analysis. Based on the timing of the ongoing work effort, and the need to proceed into the grant application with one project definition, we propose that upon completion of the environmental technical studies, during the preparation of the draft environmental documents a Preferred Alternative will be identified. Given that the two build alternatives represent a single alignment with design options, and both build alternatives along with a Transportation System Management Alternative, are being equally evaluated in the environmental documents, this will allow preparation of the grant application to move ahead while still protecting the integrity of the NEPA environmental process.

FLOW CHART/SCHEDULE





The Cordoba Team is uniquely qualified to complete the work of this Fixed-Guideway Pre-Engineering Analysis efficiently and effectively for a successful Federal capital grant application. Our team is configured to strategically use the strength of each team member based on the expertise and experience each task requires. Our recommended approach to this assignment is based on our team's in-depth understanding of the Federal New Starts and Small Starts capital grant programs, as we have discussed in the Overview and Summary.

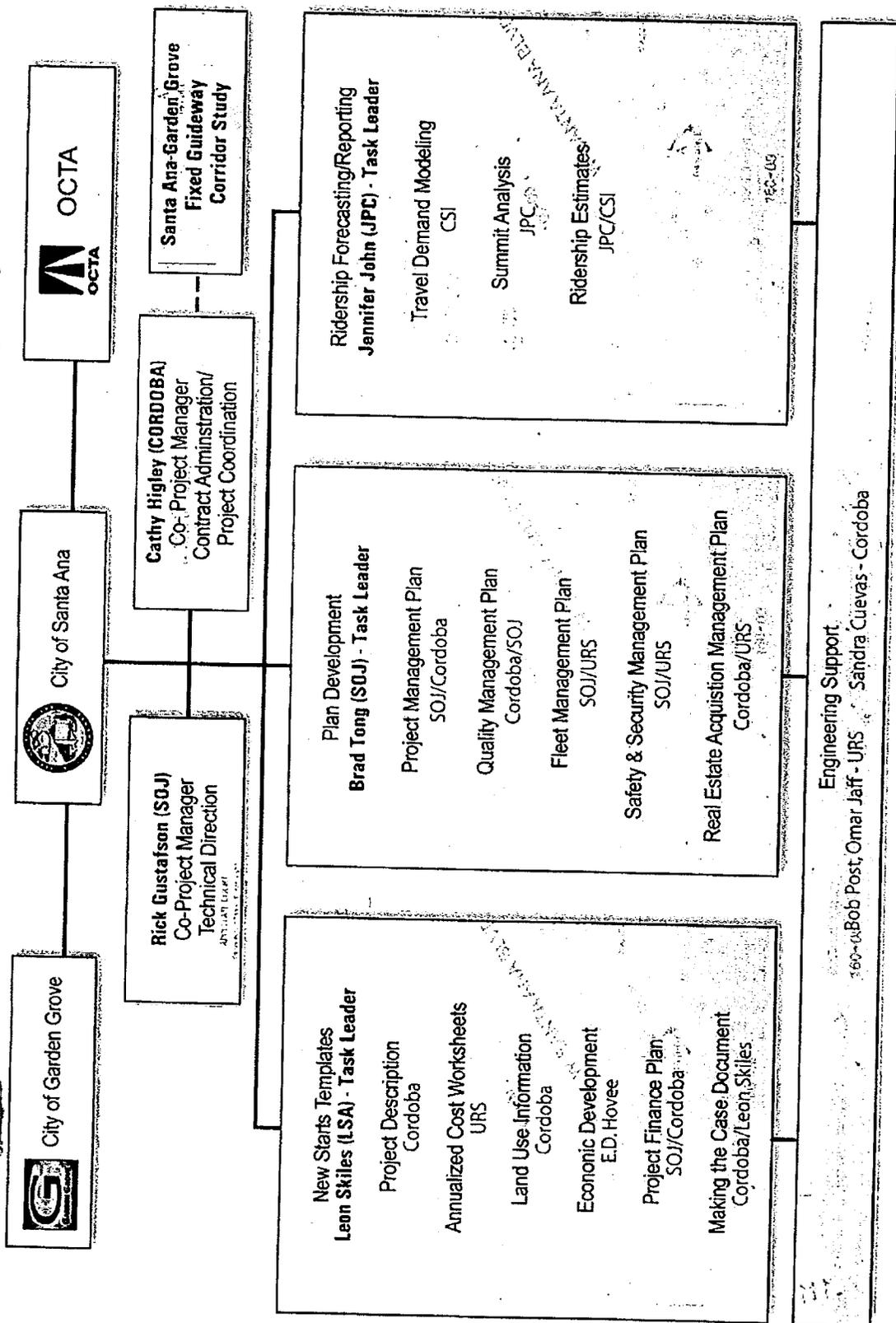
Key to our achieving success for the City of Santa Ana and completing our work efficiently on time and within budget are these advantages only our team offers:

- **Local connection.** As has been the case with the Santa Ana and Garden Grove Fixed Guideway Corridor Study, the location of offices of both Cordoba and URS in Santa Ana will aid in efficient and well-coordinated product delivery, direct communications and real-time participation with the City of Santa Ana, and with OCTA and the City of Garden Grove, whenever needed, throughout this phase of the work.
- **Strong understanding of Federal Small Starts process.** The team is unmatched in its experience of success with SOJ managing the development of the only Federal Small Starts grant application that resulted in a Small Starts grant award for a streetcar project to date (Portland Eastside Loop). The team's understanding of the entire Federal funding process and familiarity with both the FTA headquarters and regional staff will be essential to the successful navigation of the process.
- **Benefit of incorporating key members of the existing team.** The continuity with the Fixed Guideway Corridor Study provided by the Cordoba team provides great benefit to the City and to both projects. Team members have been successfully working together and with Santa Ana, Garden Grove and OCTA for nearly two years, engendering mutual understanding, trust and respect. We fully understand the characteristics and attributes of the project alternatives and will use that knowledge to quickly and efficiently develop the required FTA application materials. The quality technical work, task deliverables and supporting data and analyses, developed during the alternatives analysis, conceptual design and environmental review tasks is a valuable foundation for the pre-Preliminary Engineering effort.
- **Most qualified technical expertise.** The members of this technical team have already successfully, strategically and efficiently prepared the same format of Federal application that is being requested for the Santa Ana - Garden Grove Fixed Guideway Project. In addition, the technical leadership that will be provided to the team by SOJ is the result of SOJ's involvement nationwide with modern streetcar projects from planning through implementation and into operations and management.
- **Integrated team:** Our team is fully prepared to execute the pre-PE work program with the coordinated teamwork required to deliver success. Our members are seasoned professionals, experienced in working collaboratively across geography and disciplines, towards the best interests of the City of Santa Ana and the project.

We are confident this is the most informed and experienced team that could come forward to prepare the best possible materials for a successful Federal application for the Santa Ana - Garden Grove Fixed Guideway transit project.

Team Organization

As indicated previously, our team is configured and staff assigned to take best advantage of the particular experience and technical expertise each member can bring to each task. The Organization Chart on the following page shows are team structure.





Scope of Work

Task 1 – Small Starts Templates & Application

A successful Small Starts grant application package requires a depth of understanding of the FTA 5309 Grant Program, a thorough understanding of the project being represented and technical expertise of all aspects of Project Development from engineering, to land use and economic development to financial planning and funding. The Cordoba/SOJ team brings the expertise needed to compile and present in the most advantageous light, all of the materials required for the Small Starts grant application, and the experience necessary to perform the effort efficiently and with a well-honed understanding of the most critical elements and how to convey this information most effectively. To prepare the necessary material to support a successful Small Starts federal capital grant application, under SOJ direction Leon Skiles will coordinate the application templates by providing the outlines to the participating team members. He will review and compile the completed technical sections of the application to assure that the document is accurate, consistent and cohesive. The various elements will be prepared as follows:

Task 1A: Project Description will be written by Cordoba, who has the full and working knowledge of the history, condition and setting of this Project and its area already.

Task 1B: Annualized Cost Worksheets will be produced by URS who, together with Cordoba, has already performed and reviewed iterations of preliminary cost estimates for this Project; and will refine them to fit the requirements of this application.

Task 1C: Land Use Information will be led by Cordoba, with oversight by SOJ, support from URS and contribution from E.D. Hovee on the projected development and private investment potential of property along the proposed corridor. Santa Ana and Garden Grove's land use policies and existing development patterns support the development of higher density mixed use development that can be served with a fixed guideway system. The full documentation of local plans and commitments will be included. It will show that the transit route serves important attractions in Santa Ana, supports existing and future transit oriented development and provides important connections to Orange County's regional transit system including the Santa Ana Regional Transportation Center.

Task 1D: Project Financial Plan & Supporting Information will be led by SOJ, with document support from Cordoba. Applicants must submit an estimate for capital and operating costs and the sources targeted to fund each. FTA will judge the likelihood of the local financial commitments. A high confidence is needed to qualify for project development. While formal commitments to funding are not required for Project Development submittal, they help considerably in raising the confidence. It is clear that commitments must be made soon after Project Development approval as FTA will not seek congressional funding commitments until the local commitments are formal. The financial planning completed as part of the Conceptual Engineering/Alternatives Analysis and Environmental Analysis and the information developed as part of the application to OCTA for Preliminary Engineering will serve as the starting point for the Financial Plan.

Task 1E: "Making the Case" document will be produced by Cordoba, with major strategic input by SOJ and Leon Skiles. In addition to the information prepared as part of the of the application package, the "Making the Case" document will also draw from the Statement of Purpose and Need and other information prepared as part of the Conceptual Engineering/Alternatives Analysis/Environmental Analysis work effort to present the strongest arguments in favor of the project.

Optional Task: Economic Development submittal documents would be prepared as an "added" service by E.D. Hovee. We feel this is critical to the success of the Santa Ana-Garden Grove federal rating by the FTA for a Small Starts grant for streetcar, as well as outlining the potential economic development objectives to the community. E.D. Hovee will utilize information developed during the Alternatives Analysis initial screening, and information compiled



as part of the Land Use templates, with a particular focus on the development and private investment potential along the corridor. E.D. Hovee will consider the implications of the newly-adopted Transit Zoning Code on private development and investment within the corridor, as well as estimating the potential of those opportunities outside the Transit Zoning Code area, particularly along the western half of the corridor.

As noted in the Approach, The economic development submittal is not a formal template in the FTA application but represents 33% of the value of the rating for the project. Portland included a detailed economic development projection with their submittal to the FTA in support of the application. E.D. Hovee and Co. prepared that document which was invaluable in understanding the potential effects of the fixed guideway in attracting private investment and the potential benefits to the local community and economy.

Santa Ana and Garden Grove are well positioned to demonstrate the potential for a streetcar to increase the projected private investment and mixed use development along the corridor. Work will include survey of properties for potential development, documentation of planned developments, and projections of the amount of development likely to be attracted to the corridor, with and without a fixed guideway transit investment. Specific parcel inventory will be conducted and will be based upon adopted regional forecasting of economics and demographics resulting in base-case ("without") and streetcar-base ("with") models outlining estimated incremental value capture within each scenario.

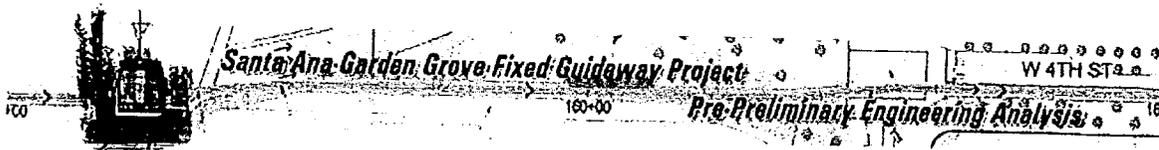
| Key Personnel: | Deliverables: |
|---|---|
| 1A: C. Higley 1B: D. Levinsohn, B. Post, R. Gustafson 1C: C. Higley, E. Yesayan, E. Hovee 1D: R. Gustafson, D. Davies, C. Higley 1E: C. Higley, L. Skiles, D. Davies OPTIONAL TASK: E. Hovee | One electronic version and 12 hard copies of draft and final Project Description, SCC Annualized Cost Worksheets, Land Use Supporting Information, Project Financial Plan & Supporting Information and "Making the Case" Document |

Tasks 2 through 6: Plan Development

Along with the rating based upon land use, economic development and cost effectiveness, FTA rates the project on local financial commitment and technical capability and capacity. These elements are judged substantially by the plans that are submitted in support of the project including the Project Management Plan (PMP), Fleet Management Plan (FMP), Quality Management Plan or Quality Assurance Quality Control (QMP or QA/QC), Safety and Security Management Plan (SSMP), and Real Estate Acquisition Management Plan (RAMP). At this point in the project, with a 5 to 10% level of engineering, these plans will begin to frame the specific physical and operational characteristics of the project and the Sponsor's approach to owning and managing the system. While fairly detailed information can (and should) be provided in the Project Management Plan (once OCTA and the City of come to an agreement) and the Quality Management Plan, the others (Fleet Management, Real Estate Acquisition Management and, Safety and Security Management) will lay out an approach and framework, to be completed in greater detail during Preliminary and Final Engineering.

Task 2 – Project Management Plan (PMP)

The FTA statutory requirement of Technical Capacity and Capability is very important. FTA does review the ability of the sponsoring organization to accomplish a project of this magnitude. The primary basis for making this judgment is past experience of the sponsoring agency and the Project Management Plan (PMP). The PMP is an important document that lays out how the applicant intends to manage and oversee the project through implementation. The preparation of the PMP will require involvement and commitment from the leadership of each of the participating agencies including OCTA, Santa Ana, and Garden Grove. The policy and management structures are to be outlined



in the PMP. SOJ will assume the lead in preparing the PMP with strong support from Cordoba and URS in terms of coordinating with and confirming the sponsoring agencies' participation and roles in the management leadership structure. The PMP will be consistent with 49 CFR USC 5327 and 49 CFR 633.

SOJ has successfully managed the implementation of the first two modern streetcar systems in the U.S. using efficient project management plans resulting from a development practice rather than a transportation engineering practice, completing these projects within ambitious timelines and budgets. Under SOJ leadership, the Portland Streetcar Loop federal project submitted its PMP to FTA under its Small Starts application and successfully received its award. Buy-in and commitment from the sponsoring agencies regarding their integration with the project team and their roles in leadership and accountability was key to their success.

The development of the PMP will be heavily influenced by decisions and agreements between the cities of Santa Ana and Garden and OCTA with respect to the ownership and operational management of the system. Cordoba and SOJ will consult with the cities and OCTA as they work toward agreements on these fundamental aspects of the project, and be fully prepared to develop a strong and compelling PMP based on the outcome.

| Key Personnel: | Deliverables: |
|----------------------------------|--|
| B. Tong, C. Higley, D. Levinsohn | One electronic and 12 hard copies of the draft and the final PMP |

Task 3 – Safety & Security Management Plan (SSMP)

Another element required to accompany the federal application, the SSMP will be prepared by SOJ with support from URS. The System Safety and Security Plan is actually two plans (Safety and Security). The SOJ/URS team prepared both plans for the entire Portland Streetcar system including the federally funded project (Loop), and SOJ continues to maintain the SSMP through Portland Streetcar Inc. operations. These documents include approaches to construction as well as the operation of the system. The format will include all of the elements listed in the RFP to comply with 49 CFR 633 and FTA Circular C 5800.1

| Key Personnel: | Deliverables: |
|-----------------------|---|
| B. Tong, B. Post | One electronic and 12 hard copies of the draft and the final SSMP |

Task 4 – Fleet Management Plan (FMP)

The FMP will be prepared by SOJ with support from URS, using the successful FMP format that was developed for the Portland Streetcar Loop application. Portland's FMP is used to guide the current vehicle fleet operations for Portland Streetcar Loop under SOJ's direct management. The vehicle to be used for the Santa Ana-Garden Grove Fixed Guideway has yet to be selected. Unlike Portland, Santa Ana and Garden Grove will need to comply with the requirements of the California Public Utilities Commission. The vehicle used in Portland does not currently meet CPUC standards. To date, only the Siemens S70 light rail transit vehicle complies with CPUC standards, while providing physical and operating characteristics similar to modern streetcars. The CPUC is aware of the broad interest in modern streetcar throughout California and has indicated a willingness to revisit their standards and vehicle requirements in light of modern streetcar operating characteristics differing from traditional LRT. Continued attention to this issue will be required as the project continues to advance so that a viable vehicle can be identified. However, for the purposes of this effort, a Draft Fleet Management Plan will be prepared until such time a vehicle is selected. Real-time, current operating and financial data from the Portland streetcar operations, coupled with input from OCTA, will be used to inform accurate assumptions for the Santa Ana – Garden Grove project. The FMP will be formatted consistently to conform to FTA Circular 9030.1D.



| | |
|---------------------------|--|
| Key Personnel: | Deliverables: |
| B. Tong, B. Post, O. Jaff | One electronic and 12 hard copies of the draft FMP |

Task 5 – Quality Management Plan (QMP)

Cordoba will produce the QMP for the implementation of the Project with assistance from URS. Appropriate levels of reporting, documentation and accountability will be outlined that ensure compliance with FTA's 2002 guidelines.

| | |
|-----------------------|--|
| Key Personnel: | Deliverables: |
| S. Cuevas, B. Post | One electronic and 12 hard copies of the draft and the final QMP |

Task 6 – Real Estate Acquisition Management Plan (RAMP)

The land use and zoning for Santa Ana-Garden Grove supports the development of higher density mixed use development that can be served with a fixed guideway transit. Cordoba will lead the preparation of this document with support from SOJ and URS Engineering. This locally-led team understands very well the local real estate along the alternative routes and their use / characteristics, and the rights-of-way, facilities / improvements, ownership, leases and politics related to major land tracts affected. The full documentation of local plans and commitments will be included, all in full compliance with 49 CFR Part 24. The transit route does serve important attractions in Santa Ana, supports transit oriented development for the future and connects to the multi-modal transit center.

| | |
|----------------------------------|---|
| Key Personnel: | Deliverables: |
| B. Tong, D. Davies, D. Levinsohn | One electronic and 12 hard copies of the draft and the final RAMP |

Tasks 7 and 8: Ridership Forecasting/Reporting

As noted in the Approach, the Cost Effectiveness criterion represents 33% of the federal rating for the project. Cost effectiveness is determined by comparing the total cost of the project to the total benefits generated from the project. The result of the comparison is an estimated cost per benefit. A cost per benefit below \$24.99 results in a medium rating. Costs higher than that result in a low rating. Portland (\$29.42) and Tucson (\$36 approximately) both received low ratings.

Project benefits are substantially determined from information provided by travel demand forecasting models. The required information is developed by applying the FTA SUMMIT software to the travel forecast results. Fixed guideway projects are judged against a baseline case of improved bus transit. Current FTA methodology does not account for the benefits of streetcar. The methodology is based substantially on travel time savings. Streetcar does not generate travel time savings over a bus operating on the same street system.

The ridership forecasting effort and subsequent FTA SUMMIT analysis require careful management and policy direction to obtain the desired outcomes while maintaining cost control given the budget allocation for this phase. The cost for conducting these elements of work iteratively can easily dominate the budget and could require more funding than is allocated. In recognition that the prospect for obtaining a medium rating is very low, it needs to be determined, in consultation with FTA, how extensive these efforts should be if the Cost Effectiveness category rating for the project will not change substantially.



Task 7 – Ridership Forecasts

In the Small Starts or New Starts application processes, the FTA carefully reviews the methods used to develop transit ridership forecasts. While the FTA does not proscribe the parameters or procedures that should be used or approve the actual forecasting procedures, they have guidelines that should be followed. Two key focus areas are (1) how reasonably the models explain transit user decisions as demonstrated by their reproduction of recently collected on-board survey data and transit ridership counts, and (2) the reasonability of mode choice model coefficients and constants.

The Cordoba team developed a transit ridership forecasting procedure for the Conceptual Engineering task that was consistent with FTA guidelines. "Data driven" techniques were used based on data from OCTA's recent transit on-board survey coupled with incremental logit model procedures. The data driven techniques are similar to innovative techniques that the FTA presented in a 2009 New and Small Starts workshop in Phoenix. This approach has received conditional approval from FTA.

The proposed approach for the Pre-Preliminary Engineering Analysis is to confirm and, if necessary, adjust the transit ridership forecasting procedure through formal coordination with FTA staff, update transit networks and socioeconomic forecasts for the project opening year, and produce refined transit ridership forecasts.

A key statistic for FTA New Starts / Small Starts is User Benefits, expressed as travel time savings that accrue from a project. While the travel models are the basis for estimating travel time savings, FTA recognizes that most conventional travel models do not capture three categories of attributes providing additional User Benefits for fixed guideway alternatives: 1) Guideway-like characteristics, 2) Span of service, and 3) Passenger amenities. FTA allows projects to include credits for fixed guideway alternatives if the sponsor can demonstrate the project possesses the attributes identified above. A maximum benefit of 15 minutes of travel time savings is possible per new rider. The Cordoba Team will work closely with FTA to ensure that the maximum benefits can be applied to the project.

Cambridge Systematics has considerable experience working with FTA to develop ridership forecasts for rail transit projects and for Section 5309 grant applications; they have prepared the 2035 ridership forecasts for the Santa Ana and Garden Grove Fixed Guideway Corridor Study. They will lead the development of the ridership forecasts for Pre-Preliminary Engineering Analysis, with support and input from JPC. Jennifer John of John Parker Consulting (JPC) in Portland prepared the Ridership Forecasts and associated submittal materials for the successful Portland Streetcar Loop Small Starts application. She will oversee the work on this task and will assist SOJ with coordination of the analysis and submittal to FTA. She will be fully supported by CSI, who will work with her and the rest of the project team to insure the most favorable outcome possible for the project in terms of the Cost Effectiveness rating. This may require modifications to the model procedures as well as additional data collection.

| Key Personnel: | Deliverables: |
|-----------------------------|--|
| D. Kurth, S. Myung, J. John | One electronic and 12 hard copies of the draft and the final ridership forecasts |

Task 8 – FTA Summit Analysis

Cambridge Systematics (CSI) has developed forecasting procedures that are compatible with OCTAM and that will allow for the output of appropriate model components to be used with the FTA Summit software tool for the Santa Ana – Garden Grove Fixed Guideway project. This software tool will be used to assist with analysis of the alternatives under consideration for this project. JPC will analyze the model and Summit outputs for the alternatives and will work with the project team and stakeholders as needed to determine what, if any, changes should be made in order to better position the alternatives from both a project standpoint in terms of providing the best possible



service to impacted markets as well as from a Cost Effectiveness standpoint to arrive at the best possible rating for a Small Starts submittal. All required templates and outputs including trip length frequency reports, thematic maps and summaries of the model results will be provided.

The project will benefit from the depth of technical expertise and experience, and the strong relations with FTA Travel Forecast staff that the Cordoba/SOJ team provides.

| Key Personnel: | Deliverables: |
|------------------------------|---|
| R. Parker, J. John, D. Kurth | Thematic Maps for Each of the Build Alternative versus Baseline Production and Attraction Maps for Each Trip Purpose and Period, and Daily Totals |

25D-40

EXHIBIT C
FEE PROPOSAL

Pre-PE Analysis Cost Proposal
SUMMARY

| Labor | Cost Proposal | Proposed Adjustment | Negotiated Amount | Revised Budget |
|--|---------------|---------------------|-------------------|----------------|
| Task 1 - New Starts Templates & Application | \$ 212,887.00 | \$ (52,163.20) | \$ 171,233.80 | \$171,719.00 |
| Task 2 - Project Management Plan | \$ 80,730.00 | | \$ 82,130.00 | \$82,029.50 |
| Task 3 - Safety & Security Management Plan | \$ 12,680.00 | | \$ 12,680.00 | \$12,680.00 |
| Task 4 - Fleet Management Plan | \$ 12,170.00 | | \$ 12,170.00 | \$12,170.00 |
| Task 5 - Quality Management Plan | \$ 13,384.00 | | \$ 13,384.00 | \$13,384.35 |
| Task 6 - Real Estate Acquisition Management Plan | \$ 3,900.00 | | \$ 3,900.00 | \$3,900.00 |
| Task 7 - Ridership Forecasts | \$ 86,165.64 | | \$ 86,165.64 | \$86,165.64 |
| Task 8 - FTA Summit Analysis | \$ 56,592.80 | | \$ 56,592.80 | \$56,649.84 |
| Optional Task - Economic Analysis | \$ 32,575.00 | | \$ 32,575.00 | \$32,575.00 |
| Other Direct Costs | \$ 511,084.44 | | \$ 470,831.24 | \$471,273.33 |
| Cordoba | | | | |
| URS | \$ 6,000.00 | | \$ 6,000.00 | \$5,500.00 |
| CSI | \$ 4,250.00 | | \$ 4,250.00 | \$4,250.00 |
| SOJ | \$ 4,195.00 | | \$ 4,195.00 | \$4,195.00 |
| Skiles | \$ 4,800.00 | | \$ 4,800.00 | \$4,800.00 |
| Hovee | \$ 35.00 | | \$ 35.00 | \$35.00 |
| | \$ 1,625.00 | | \$ 1,625.00 | \$1,625.00 |
| | \$ 20,905.00 | | \$ 20,905.00 | \$20,405.00 |
| | \$ 531,989.44 | | \$ 491,736.24 | \$491,678.33 |

EXHIBIT D

REQUIRED FEDERAL CLAUSES

DEFINITIONS

The Orange County Transportation Authority, (hereinafter referred to as "AUTHORITY"), The Federal Transit Administration, (hereinafter referred to as "FTA"), the City of Santa Ana, (hereinafter referred to as "CITY"), and Cordoba Corporation, a California corporation, (hereinafter referred to as "CONTRACTOR")

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

ARTICLE 1. FEDERAL CHANGES

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

ARTICLE 2. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY, CITY and CONTRACTOR 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, CITY, CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. CONTRACTOR agrees to include these requirements in all of its subcontracts.

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

CONTRACTOR 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, CONTRACTOR 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 or the FTA assisted project for which this Agreement's work is being performed. CONTRACTOR 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 the CONTRACTOR to the extent the Federal Government deems appropriate.

CONTRACTOR 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 the CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 4. CIVIL RIGHTS ASSURANCE

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

- (A). Compliance with Regulations: CONTRACTOR shall comply with the Regulations relative to

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

(B). Nondiscrimination: CONTRACTOR, 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. The CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

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

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

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

Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR complies; and/or

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: CONTRACTOR 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. The CONTRACTOR shall take such action with respect to any subcontract or procurement as the AUTHORITY or CITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a SUBCONTRACTOR or supplier as a result of such direction, the CONTRACTOR may request the AUTHORITY or CITY to enter into such litigation to protect the interests of the AUTHORITY or CITY, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 5. DISADVANTAGED BUSINESS ENTERPRISES

A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (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. 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 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:

1. 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.
2. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
3. Ensure non-discrimination in the award and administration of AUTHORITY's DOT-assisted contracts.
4. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
5. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
6. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

B. CONTRACTOR shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section which are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall 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 shall prevail.

C. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Authority has implemented a wholly Race-Neutral DBE Program.

A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. CONTRACTOR shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, CONTRACTOR shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

D. Definitions: The following definitions apply to the terms as 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 shall 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 CONTRACTOR.

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. "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 AUTHORITY to meet the social and economic disadvantage criteria described below.

a. Social Disadvantage: 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.

i. The individual must demonstrate that he/she has personally suffered social disadvantage.

ii. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

iii. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

iv. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

v. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

b. Economic Disadvantage

i. 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.

ii. 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

E. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award).

CONTRACTOR shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE SUBCONTRACTORS Paid Report Summary and Payment Verification" (Form 103). If CONTRACTOR is a DBE firm and/or has proposed to utilize DBE firms, CONTRACTOR will be required to complete and submit a Form 103 to AUTHORITY by the 10th of each month until completion of the contract to facilitate reporting of race-neutral DBE participation, following the first month of contract activity. CONTRACTOR shall report the total dollar value paid to DBEs for the applicable reporting period. CONTRACTOR shall also report the DBE's scope of work and the total subcontract value of commitment for each DBE reported. CONTRACTOR is advised not to report the participation of DBEs toward CONTRACTOR's race-neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the contract, CONTRACTOR will be required to prepare and submit to the Authority a "Race-Neutral DBE SUBCONTRACTORS Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. CONTRACTOR shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

F. DBE Eligibility and Commercially Useful Function Standards: A 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. A DBE may participate as a prime CONTRACTOR, SUBCONTRACTOR, joint venture partner with a prime or SUBCONTRACTOR, CONTRACTOR of material or supplies, or as a trucking company. 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. 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. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: 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>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions: When a DBE is proposed to participate in the contract, either as a prime CONTRACTOR or SUBCONTRACTOR, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards race-neutral DBE participation. If CONTRACTOR is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. If a DBE intends to subcontract part of the work of its subcontract to a lower tier SUBCONTRACTOR, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE SUBCONTRACTOR 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 CONTRACTOR's race-neutral DBE attainment. CONTRACTOR is to calculate and credit participation by eligible DBE CONTRACTORS of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer. The following types of fees or commissions paid to DBE SUBCONTRACTORS, Brokers, and Packagers may be credited toward the prime CONTRACTOR's race-neutral 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: 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; 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; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. CONTRACTOR may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at

least one fully licensed, insured, and operational truck used on the Contract. 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. 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. 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. 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. If CONTRACTOR listed a non-certified DBE 1st tier SUBCONTRACTOR to perform work on this contract, and the non-certified DBE SUBCONTRACTOR subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified SUBCONTRACTOR or CONTRACTOR, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

H. Performance of DBE SUBCONTRACTORS: DBE SUBCONTRACTORS listed by CONTRACTOR in its "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of proposal submittal shall perform the work and supply the materials for which they are listed, unless the CONTRACTOR has received prior written authorization from the Authority to perform the work with other forces or to obtain the materials from other sources. CONTRACTOR shall provide written notification to the AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

I. Additional DBE SUBCONTRACTORS: In the event CONTRACTOR identifies additional DBE SUBCONTRACTORS or suppliers not previously identified by CONTRACTOR for race-neutral DBE participation under the contract, CONTRACTOR shall notify the Authority by submitting "Request for Additional DBE Firm" to enable CONTRACTOR to capture all race-neutral DBE participation. CONTRACTOR shall 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).

J. DBE Certification Status: If a listed DBE SUBCONTRACTOR is decertified during the life of the project, the decertified SUBCONTRACTOR shall notify CONTRACTOR in writing with the date of decertification. If a non-DBE SUBCONTRACTOR becomes a certified DBE during the life of the project, the DBE SUBCONTRACTOR shall notify CONTRACTOR in writing with the date of certification. CONTRACTOR shall furnish the written documentation to AUTHORITY in a timely manner.

K. CONTRACTOR's Assurance Clause Regarding Non-Discrimination: In compliance with State and Federal anti-discrimination laws, CONTRACTOR shall 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, CONTRACTOR shall affirm that they will consider, and utilize SUBCONTRACTORS and CONTRACTORS, in a manner consistent with non-discrimination objectives.

ARTICLE 6. ACCESS TO RECORDS AND REPORTS

CONTRACTOR shall provide CITY, AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of CITY, such access to CONTRACTOR's accounting books, records, payroll documents and facilities of the CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause CITY or AUTHORITY to be in violation of the FTA terms and conditions.

ARTICLE 8. ENERGY CONSERVATION REQUIREMENTS

CONTRACTOR 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

CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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.

CONTRACTOR 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 A of this Article to CITY (through the prime CONTRACTOR in the case of SUBCONTRACTOR bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.

ARTICLE 11. PROHIBITED INTERESTS

A. CONTRACTOR covenants that, for the term of this Agreement, no director, member, officer or employee of CITY or 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.

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. CONTRACTOR 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

CONTRACTOR 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, CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR 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

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

ARTICLE 15. CODE OF CONDUCT

CONTRACTOR 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. CONTRACTOR 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 the CONTRACTOR in connection with this solicitation must be submitted in accordance with the Authority's written procedures.

ARTICLE 17. TERMINATION

A. CITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONTRACTOR written notice thereof. Upon termination, CITY shall pay CONTRACTOR 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 CITY sees fit to terminate this Agreement for convenience, said notice shall be given to CONTRACTOR in accordance with the provisions of the FAR referenced above. Upon receipt of said notification, CONTRACTOR agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

CITY may terminate this Agreement for CONTRACTOR's default if a federal or state proceeding for the relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, or for cause if CONTRACTOR 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 CITY. CONTRACTOR shall be liable for any and all reasonable costs incurred by CITY as a result of such default or breach including, but not limited to, reprourement costs of the same or similar services defaulted by CONTRACTOR under this Agreement. Such termination shall comply with CFR Title 48, Chapter 1, Part 49, of the FAR.

ARTICLE 18. RECYCLED PRODUCTS

CONTRACTOR 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. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 19. DEBARMENT & SUSPENSION:

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.

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 CITY's Executive Director of Public Works, who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Executive Director, 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, CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of CITY's Executive Director. 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 CITY 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

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

ARTICLE 22. CLEAN AIR

CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONTRACTOR shall report each violation to

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

ARTICLE 23. LOBBYING

CONTRACTORS 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. DAVIS BACON

(1) Minimum wages - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the CONTRACTOR and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the CONTRACTOR and its SUBCONTRACTORS at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in

which the work is performed.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the CONTRACTOR shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the CONTRACTOR does not make payments to a trustee or other third person, the CONTRACTOR may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the CONTRACTOR, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the CONTRACTOR to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the CONTRACTOR and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the CONTRACTOR, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) Withholding - The [insert name of grantee] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the CONTRACTOR under this contract or any other Federal contract with the same prime CONTRACTOR, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime CONTRACTOR, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the CONTRACTOR or any SUBCONTRACTOR the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [insert name of grantee] may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records - (i) Payrolls and basic records relating thereto shall be maintained by the CONTRACTOR during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the CONTRACTOR shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. CONTRACTORS employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The CONTRACTOR shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [insert name of grantee] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime CONTRACTOR is responsible for the submission of copies of payrolls by all SUBCONTRACTORS.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the CONTRACTOR or SUBCONTRACTOR or his or her agent who pays or supervises the payment of the

persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the CONTRACTOR or SUBCONTRACTOR to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The CONTRACTOR or SUBCONTRACTOR shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the CONTRACTOR or SUBCONTRACTOR fails to submit the required records or to make them available, the Federal agency may, after written notice to the CONTRACTOR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the CONTRACTOR as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a CONTRACTOR is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the CONTRACTOR's or SUBCONTRACTOR's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in

accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the CONTRACTOR will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the CONTRACTOR will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements - The CONTRACTOR shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts - The CONTRACTOR or SUBCONTRACTOR shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the SUBCONTRACTORS to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for the compliance by any SUBCONTRACTOR or lower tier SUBCONTRACTOR with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a CONTRACTOR and a SUBCONTRACTOR as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the CONTRACTOR (or any of its SUBCONTRACTORS) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility - (i) By entering into this contract, the CONTRACTOR certifies that neither it (nor he or she) nor any person or firm who has an interest in the CONTRACTOR's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29

CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

ARTICLE 25. PATENT RIGHTS

(1) General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Purchaser and CONTRACTOR agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.

(2) Unless the Federal Government later makes a contrary determination in writing, irrespective of the CONTRACTOR's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the Purchaser and the CONTRACTOR agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

(3) The CONTRACTOR also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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