

Request for Proposals
RFP #2022-01
For:
Architectural/Engineering Hydrogen Fuel
Station Consultant

Eastern Contra Costa Transit Authority

801 Wilbur Avenue

Antioch, CA 94509

March 9, 2022

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Section 1

Notice Inviting Proposals

Notice Inviting Proposals

For

Hydrogen Fuel Station Consultant

Eastern Contra Costa Transit Authority

Notice and Invitation to Proposers

Eastern Contra Costa Transit Authority (ECCTA), a Joint Powers Agency (JPA) located in eastern Contra Costa County, California, is accepting proposals for consulting services to assist ECCTA with the design and installation of a hydrogen fueling station for use by buses powered with hydrogen fuel-cells, to be located at ECCTA's facility in the City of Antioch, California. This project shall include the furnishing of all labor, equipment, materials, testing, tools, training, and other services as required by the Scope of Work section and other contract documents.

ECCTA was formed in 1976 as a JPA consisting of the cities of Antioch, Brentwood, Pittsburg and the county of Contra Costa. Oakley incorporated as a city and joined the JPA in 1999. ECCTA provides over 2,000,000 trips each year to a population of nearly 315,000 residents in the 225 square miles of eastern Contra Costa County.

Pre-Proposal Conference

A pre-proposal conference will be followed by a site tour at 10:00 a.m. local time, on Thursday, March 17 in the ECCTA boardroom located at the address above. A site tour will be conducted after the meeting. All prospective proposers are encouraged to attend. The purpose of the site tour is to acquaint the proposers with any and all conditions at the work site.

Deadline for Receipt of Proposals

Proposals will be received by Eastern Contra Costa Transit Authority (ECCTA) until 3:00 p.m. local time, on Monday, April 11 at ECCTA's facility located at 801 Wilbur Avenue, Antioch, CA 94509. Proposals received after the said time or at any other place other than the time and place stated in this RFP will not be considered. Proposals must be received on the enclosed ECCTA proposal form with the required certification forms listed in the proposal documents. Proposals submitted on any other forms will be considered non-responsive and will be rejected.

Proposal Documents/ECCTA Representative

Copies of the RFP documents may be obtained from the following ECCTA representative:

Joe Chappelle
Manager of Administrative Services
Eastern Contra Costa Transit Authority
801 Wilbur Avenue
Antioch, CA 94509
Fax: (925) 757-2530
procurement@eccta.org

ECCTA may change the identity or contact information of the ECCTA representative at any time.

Following the closure of the proposal submittal period, proposals will be evaluated as provided in the Information for Proposers.

All proposals must be furnished in accordance with the terms and conditions of the contract documents, including the Information for Proposers, General Conditions, Special Conditions, Scope of Work, and Proposal Form. All prospective proposers receiving proposal documents directly from ECCTA will be notified of all addenda and will receive copies.

Federal Requirements

This contract is subject to the receipt of financial assistance from the U.S. Department of Transportation (U.S. DOT), Federal Transit Administration (FTA) and local sales tax funds, and may also be subject to a grant contract between the Metropolitan Transportation Commission (MTC). The contract is subject to laws and regulations governing the use of such funds. Proposers will be required to certify that they have not been suspended or debarred from participation in federal or state funded contracts. Full compliance with applicable Safety and Health Standards, DBE requirements, Equal Employment Opportunity and Americans with Disabilities Act laws and regulations will be required of the successful proposer.

ECCTA has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. DOT, 49 Code of Federal Regulations (C.F.R.) Part 26, and as a recipient of federal financial assistance, ECCTA has signed an assurance that it will comply with 49 C.F.R. Part 26. As such, ECCTA hereby notifies all proposers that it will affirmatively ensure that in regard to any contract entered into pursuant to this RFP, Disadvantaged Business Enterprises (DBEs) will be afforded full opportunity to submit a proposal in response to this request. ECCTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contracts or in the administration of its DBE Program or the requirements of 49 C.F.R. Part 26. ECCTA shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. ECCTA's DBE Program, as required by 49 C.F.R. Part 26 and as approved by U.S. DOT, is incorporated by reference in this contract.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this contract. Upon notification to ECCTA of its failure to carry out its approved program, the U.S. DOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Substitution of Securities

Pursuant to Public Contract Code Section 22300, for monies earned by the contractor and withheld by ECCTA to ensure the performance of the contract, the contractor may, at its option, choose to substitute securities meeting the requirements of Public Contract Code Section 22300.

Reserved Rights

ECCTA reserves the right to reject any and all proposals, to waive any irregularities or informalities in any proposal or in the proposal procedure, to make any awards or any rejections in what it alone considers to be in the best interest of ECCTA, or to postpone the proposal opening or award for any reason whatsoever in ECCTA's sole discretion. No proposer may withdraw its proposal for a period of 60 calendar days after the due date of the proposals. Each proposer will be notified of the award of contract, if an award is made.

Office of the Chief Executive Officer
March 9, 2022

Section 2

Key Proposal Dates

Key Proposal Dates
Hydrogen Fuel Station Consultant
RFP #2022-01

<u>Task</u>	<u>Date</u>
Request for Proposal issue date:	Wednesday, March 9, 2022
Pre-proposal conference:	Thursday, March 17 at 10:00 a.m.
Last day for questions:	Monday, April 4 by 12:00 p.m.
Technical and Cost Proposal due date:	Monday, April 11 by 3:00 p.m.
On-site interviews with selected proposers:.....	Wednesday April 13 and Thursday, April 14; times TBD
Technical Review Committee recommendation:	Wednesday, April 20
ECCTA Board of Directors award contract:.....	Wednesday, April 27 at 4:00 p.m.

Section 3

Information for Proposers

Information for Proposers
Hydrogen Fuel Station Consultant

RFP #2022-01

Scope and Location of Work

The work to be performed under this contract consists of the furnishing of all labor, materials, tools, equipment, and services for consultation on the design and installation of a hydrogen fueling station for use by buses powered with hydrogen fuel-cells. The work is to be performed in the City of Antioch, County of Contra Costa, State of California. Contract documents contain a complete description of the work.

Inspection of Site of Work

Proposers are encouraged to inspect the work site in order to satisfy themselves, by personal examination, or by such other means as they may prefer, of the location of the proposed work and the actual conditions of, and at, the site. Proposers may apply to ECCTA for additional information and explanation before submitting proposals. However, no supplemental information requested or furnished shall vary the terms of the contract documents or impact the contractor's sole responsibility to satisfy itself as to the conditions of the work to be performed. No claim for additional compensation will be allowed which is based upon a lack of knowledge of the actual conditions or location of the work.

Submission of a proposal by the proposer shall constitute acknowledgment that, if awarded the contract, the proposer has relied, and is relying, on their own examination of (a) the work site, (b) access to the site, and (c) all other data, matters, and things requisite to the fulfillment of the work, including but not limited to, the availability of labor and materials and on their own knowledge of existing facilities on, and in the vicinity of, the site of the work to be performed under the contract, and not on any representation of warranty of the above items.

Examination of Contract Documents/Notification of Errors

Each proposer shall thoroughly examine and be familiar with legal and procedural documents, general conditions, specifications, and addenda (if any). Submission of a proposal shall constitute acknowledgment, upon which ECCTA may rely, that the proposer has thoroughly examined and is familiar with the contract documents. Failure or neglect of a proposer to receive or examine any of the contract documents shall in no way relieve them of any obligation with respect to their proposal or to the contract. No claim for additional compensation will be allowed which is based upon a lack of knowledge of any contract documents.

Additionally, proposers shall review the technical specifications and prior to submission of the proposal, report any errors and omissions noted by the contractor to ECCTA. The review by the contractor shall be confined to the contractor's capacity as a contractor and not as a licensed contractor.

It shall also be the proposer's responsibility to call to ECCTA's attention any missing pages in the contract documents, including the addenda. These items shall be brought to the attention of ECCTA, in writing, at least one week prior to the proposal due date.

Interpretation of Contract Documents

No oral representation or interpretations will be made to any proposer as to the meaning of the contract documents. Requests for interpretation shall be made in writing and delivered to ECCTA no later than 10 business days before the time announced for the proposal due date. Interpretations, where necessary, will be made by ECCTA in the form of an addendum to the contract documents. Addendums will be sent as promptly as is practical to all parties to whom the proposal documents have been issued. All such addenda shall become part of the contract. Requests for information before the award of contract shall be directed to the ECCTA representative identified in the Notice Inviting Proposers.

Term and Time of Performance

Within 20 business days from the Notice to Proceed or date specified in the Notice to Proceed, the contractor shall commence work on the project. The project is to be completed within 36 months from the date work is commenced. This contract shall be in effect, commencing on the date of the Notice to Proceed, and lasting until the completion of the project.

Pre-proposal Conference and Site Tour

A pre-proposal conference and site tour will be held at the time and place indicated in the Notice Inviting Proposers and in the Key Dates section. Attendance at this conference is recommended but not required.

At the pre-proposal conference, ECCTA's Disadvantaged Business Enterprise (DBE) participation policy will be explained. While this contract has no specific DBE goals associated with this contract, ECCTA encourages the use of DBEs.

Questions about the proposal or exceptions/objections to the requirements of the proposal, including any objections to the terms and conditions of the contract, should be submitted in writing to the ECCTA representative prior to the meeting in order to provide ECCTA staff sufficient time to prepare responses.

Written questions submitted prior to, and questions raised at the conference, will be answered in a written addenda to the proposal and will be made available to all proposers regardless of whether they attended the pre-proposal conference.

Following the pre-proposal conference, ECCTA will make a list of all those to whom the proposal was furnished, as well as those attending the meeting, available to interested parties. Representatives of certified DBE firms will be identified on the list.

Proposals

General

Proposing firms must not be on the Comptroller General's list of ineligible proposers. The contractor will be required to comply with all applicable Equal Employment Opportunity laws and regulations. DBEs

will be afforded full opportunity to submit proposals in response to this RFP and will not be subjected to discrimination on the basis of race, disability, color, sex, or national origin in consideration for an award.

All proposals shall give, in the space provided, all other information requested therein, and shall be signed by the proposer, or an authorized representative, with their address. Proposals will be evaluated as provided in “Evaluation of Proposals” below.

Proposers must prepare and submit all required documents. Failure to properly complete and sign any forms may be cause for rejection of a proposal.

Format of the Technical Proposal, the Cost Proposal and the Required Forms

The intent of this RFP is to encourage responses that clearly communicate the proposer’s understanding of the project, and the proposer’s proposed approach to meet the requirements of ECCTA. Information should be provided in a concise and well-organized manner. Submittals should not contain any unnecessary promotional material.

Copies of the proposal should be prepared in at least a 12-point font. All signatures must be signed in ink and shall be made by an officer of the proposer with the authority to bind the proposer to the terms of the solicitation.

Content of Technical Proposal

To be considered, the technical proposal must address the requirements of the Scope of Work and shall include:

1. Statement of Qualifications
2. Work Plan
3. Properly Executed Certifications
4. Identification of parts of the proposal that are proprietary
5. Listing of exceptions/objections

1. Statement of Qualifications

Description of Organization

This section should contain a concise description of the proposer’s background, including size and years in business, and experience in providing services similar to those outlined in the Scope of Work.

Resumes of Key Personnel

This section should contain, if applicable, resumes of the proposer’s:

- Design Manager
- Project Manager
- Training Manager

These individuals are encouraged to attend the interview if the proposer is invited to the interview.

The resume should feature all job experience over the past three years including:

- Years employed by proposer
- Current assignment, location and primary responsibilities for each position
- Education
- Professional registrations or certifications
- Key skills
- Total years of professional experience

References

This section should contain a listing of at least three projects within the last three years. The information submitted should include:

- Name, address, and telephone number of the project manager
- Service provided
- Dates service encompass
- Cost of the contract
- The status of the contract

Financial Statements

This section should contain audited financial statements for the previous three years.

2. Work Plan

The proposals shall include a complete work plan that completely address each aspect of the Scope of Work as defined in Section 6 of the RFP.

This work plan shall include the following information:

- The identity of the project manager and key personnel associated with each task in the work plan.
- Time estimates for each significant segment of the work.
- A description of the involvement of any sub-consultants used in the project, the tasks they will perform, and their qualifications to perform the work.
- The project schedule indicating milestones reached in order to meet the completion dates for each major task in the Scope of Work.

3. Properly Executed Certifications

All properly executed certifications in Section 8 of this RFP and:

If the proposal is made by a partnership or joint venture:

- The signature, printed name, title, and company name of at least one of the general partners. Additionally, the proposal shall include a notarized Power of Attorney form which certifies that the individual(s) signing the proposal have the authority to sign the cost proposal form and to bind the partnership or joint venture.

If the proposal is made by a corporation:

- The signature, printed name, and title of at least one officer authorized to sign on behalf of the corporation.
- The state under the laws of which the corporation is incorporated must be indicated. Additionally, the proposal shall include a notarized Power of Attorney form which certifies that the individual(s) signing the proposal have the authority to sign the cost proposal form and to bind the corporation.

4. Proprietary Information

Proposers are to identify all parts of the proposal the proposer considers proprietary and include written justification for the claim, as the proposal could be made public as a result of Freedom of Information Act requests.

5. Exceptions/Objections

Proposers should make a statement listing any exceptions/objections to the requirements of the RFP. This shall include any objections to the terms and conditions of the contract between the successful proposer and ECCTA. Failure to specify any exceptions or objections to the requirements, and/or the terms and conditions, of this RFP will constitute acceptance of ECCTA's requirements.

Content of Cost Proposal

To be considered, the cost proposal must address all requirements of the Scope of Work.

The cost proposal shall include everything necessary for the completion of and fulfillment of the contract including, but not limited to, transportation, materials, equipment, and all management, superintendence, labor and services, except as may be provided otherwise in the contract documents, and all applicable federal, state, and local taxes.

In the event that the product of a unit price and an estimated quantity does not equal the extended amount quoted, the unit price shall govern and the correct product of the unit price and the estimated quantity shall be deemed to be the amount proposed.

Where there is a conflict between words and figures, the words shall govern and the figures shall be disregarded.

To be considered, the cost proposal must address the requirements of the Scope of Work and shall include:

- A properly completed and signed Proposal Cover Form located in Section 7 of the RFP
- A properly completed Cost Proposal Form located in Section 7 of the RFP.

Any cost proposal submitted on any other form will be considered non-responsive and will be rejected. The cost proposal shall give all information requested. Any cost proposal with blank spaces will be considered non-responsive and will be rejected.

Proposal Submission Procedures

All proposals shall be enclosed in a sealed envelope or package, labeled and delivered to the ECCTA at the place, and on or before the time, indicated in the Notice Inviting Proposals. Proposals received after this time, or at any other location, will not be considered. ECCTA shall not be responsible for the failure of mailed or delivered proposals to actually be received by ECCTA by the time due on the date due. No oral, telegraphic, or telephone (including facsimile) proposals or modifications will be considered.

Copies of a proposer's technical and cost proposal must be submitted as follows:

1. One original proposal with required signatures in ink by an officer of the proposer with the authority to bind the proposer to the terms of the RFP submitted in a securely sealed envelope marked as follows:

ORIGINAL: HYDROGEN FUEL STATION CONSULTING SERVICES – TECHNICAL PROPOSAL

ORIGINAL: HYDROGEN FUEL STATION CONSULTING SERVICES – COST PROPOSAL

The technical proposal and cost proposal must be separately sealed and must not be included together.

2. Five copies of the technical and cost proposal, each submitted in a securely sealed envelopes, marked as follows:

COPY: HYDROGEN FUEL STATION CONSULTING SERVICES – TECHNICAL PROPOSAL

COPY: HYDROGEN FUEL STATION CONSULTING SERVICES – COST PROPOSAL

The technical proposal and cost proposal must be separately sealed and must not be included together.

3. One electronic copy on a thumb drive in a securely sealed envelope marked as follows:

ELECTRONIC: HYDROGEN FUEL STATION CONSULTING SERVICES – TECHNICAL AND COST PROPOSAL

Telephones will not be available to proposers for the preparation of the proposal or for calling proposal results. Proposal forms received after the designated time will not be accepted. Proposers and their authorized agents may be invited to attend the on-site interview.

No proposer may withdraw its proposal for a period of 60 calendar days after the proposal due date.

ECCTA reserves the right to reject any or all proposals, to make any awards or any rejections in what it alone considers to be in the best interest of ECCTA, and to waive any informalities or irregularities in the proposals.

Addenda

Each proposal shall include specific acknowledgment (in space provided) of the receipt of all addenda issued during the proposal period. Failure to so acknowledge all addenda may result in the proposal being rejected as non-responsive.

Proposal Prices

Proposal prices shall include everything necessary for the completion of, and fulfillment of, the contract including, but not limited to, furnishing all transportation, materials, equipment, tools, and all management, superintendence, labor and services, except as may be provided otherwise in the contract documents. In the event that the product of a unit price and an estimated quantity does not equal the extended amount quoted, the unit price shall govern and the correct product of the unit price and the estimated quantity shall be deemed to be the amount proposed. In the event that the indicated sum of any column of figures is incorrect, the correct sum shall govern and the correct sum shall be deemed the amount indicated.

Proposal prices shall include all applicable federal, state, and local taxes. Upon award of contract the contractor shall submit to ECCTA a completed IRS Form W-9 Request for Taxpayer Identification Number and Certification.

All proposal prices shall include freight (FOB) to the designated delivery point. ECCTA will reject requests for additional compensation for freight charges unless it has requested expedited delivery.

Evaluation of Proposals

General

If a contract is to be awarded, it shall be awarded to the contractor that is the most qualified responsive proposer who demonstrates the attributes of trustworthiness as well as quality, fitness (including financial qualifications), and the capacity and experience to enable it to prosecute the work successfully and properly and to complete the work within the time period named in the contract documents. The most qualified and highest ranked proposer, after any applicable interviews, will be invited to negotiate the final scope of services, schedule, and fees with ECCTA. If ECCTA is unable to reach an agreement on cost and other technical requirements, negotiations will be initiated with other qualified firms in order of their ranking in the competitive range.

Evaluation of Proposals

ECCTA's technical review committee will employ the following selection criteria:

Experience and Staffing (30%)

- Proposer's knowledge of, and experience with, with hydrogen fueling stations or similar work
- Knowledge of, and experience with, hydrogen fuel handling and use

- Knowledge of local permitting requirements
- Knowledge of, and experience with, public transit agencies
- Qualifications, knowledge and experience of proposer's staff to be involved in the project
- References

Approach to Scope of Work (70%)

- Completeness and thoroughness of the technical proposal
- Work Plan

The technical review committee may use numerical scores in applying the evaluation criteria. The significance of the difference in numerical scores is not the numerical difference itself and is based on the considered judgment of the technical review committee.

Thus, proposals with essentially equal total scores may be deemed significantly different because of the significance of differences in scores on individual evaluation criteria. Likewise, proposals with substantially different total numerical scores may be deemed essentially equal.

ECCTA has attempted to state the evaluation criteria in a manner that makes the relative importance of each criterion readily apparent. Any prospective proposer that is unsure about the meaning or relative importance of an evaluation criterion should request clarification as soon as possible.

Modification of Proposals

Modification of a proposal already received will be considered only if the modification is received prior to the time established for receiving proposals. All modifications shall be made in writing, executed, and submitted in the same form and manner as the original proposal.

Postponement of Due Date

ECCTA reserves the right to postpone the date and time for receiving the proposals at any time prior to the date and time established in the Notice Inviting Proposals.

Protest Procedures

These procedures will apply to all procurement actions whether by sealed bid, request for proposal or sole source and regardless of the stage of the procurement process at which the protest is filed.

Protest Before Proposals Due

Protests based upon restrictive specifications or alleged improprieties in the proposal procedure shall be filed, in writing, 10 business days prior to the proposal due date. A detailed description of the facts underlying the protest plus any supporting documentation must be included with the written protest. The protest must be submitted to the ECCTA representative identified in the Notice Inviting Proposals.

Protest of Award

A proposer may file a protest with ECCTA alleging a violation of applicable federal or state law relative to the seeking, evaluating and/or awarding of a procurement contract. Such protest must be submitted to

the ECCTA representative identified in the Notice Inviting Proposals no later than three business days after the date of the notice of intent to award of the contract by ECCTA.

The initial protest document must contain a detailed description of the legal and/or factual grounds for the protest, including references to the specific portion(s) of all document(s) that form the basis for the protest and all supporting documentation. The protest must state the form of relief requested. For protests containing elements not based on publicly released information, the protest must contain documentation clearly showing the date on which the protestor received the information.

The protest must contain the RFP solicitation number and title under which the protest is submitted, and must include the name, address, and telephone number of the person representing the protesting party, and the signature of the protestor or authorized representative of the protestor.

The written decision of the ECCTA representative or designee on the protest shall be served upon the protesting proposer and any proposer subject to the protest within five business days of receipt of the protest. The ECCTA representative or designee may extend the five business days if necessary to review additional information requested from any proposer or otherwise received.

If the subject matter of the project is receiving any state or federal funds which require a protest procedure different than the procedures stated above, then that protest procedure shall control.

The procedure and time limits set forth in this section are mandatory and are the proposer's sole and exclusive remedy in the event of a protest. A proposer's failure to comply with these procedures shall constitute a waiver of any right to further pursue the proposal protest, including appealing the ECCTA representative's decision, filing a Government Code Claim or other legal proceedings. A proposer may not rely on a protest submitted by another proposer, but must timely pursue its own protest.

Appeal of Decision

If any proposer is not satisfied with the decision of the ECCTA Representative, the proposer may appeal the decision, in writing, within three business days to ECCTA's CEO:

Office of the CEO
Eastern Contra Costa Transit Authority
801 Wilbur Avenue
Antioch, CA 94509

The CEO shall investigate and shall respond in writing, within five business days, specifying any differences between their findings and those of the Manager of Administrative Services. The CEO shall state the action to be taken by ECCTA or the fact that no action shall be taken. The decision of the CEO is the final decision of ECCTA.

Section 4

General Conditions

General Conditions
Hydrogen Fuel Station Consultant
RFP #2022-01

Interpretation of Contract Documents

Intent of Contract Documents

The intent of the contract documents is to prescribe the details for the completion of the work which the contractor undertakes to perform in accordance with the terms of the contract. Where the specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used.

Unless otherwise specified, the contractor shall furnish all labor, material, tools, equipment, and incidentals, and do all the work involved in executing the contract in a satisfactory and workmanlike manner.

Coordination of Contract Documents

The Information to Proposers, General Conditions, Special Conditions, Scope of Work, and all other documents required by the RFP are essential parts of the contract. The documents are intended to be complementary, and a requirement occurring in one is binding as though occurring in all.

In the case of discrepancy or ambiguity in the contract documents, the following order of precedence shall prevail:

1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying
2. Contract (sample included in Section 9 of this RFP)
3. Special Conditions and Scope of Work
4. General Conditions and Information to Proposers

Any conflict between a bill or list of materials shown in the contract documents and the actual quantities required to complete the work required by contract documents, will be resolved in favor of the actual quantities.

Approximate Quantity Estimate

The quantities given in the proposal and contract forms are approximate only, being given as a basis for the comparison of proposals, and ECCTA does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by ECCTA.

General

Rendition of Services

By submitting a proposal, the proposer agrees to undertake, carry out, and complete all work established in a professional and timely manner satisfactory to ECCTA standards as described in this RFP.

Release of Information

Neither the successful contractor nor any unsuccessful proposer shall release any reports, information, or promotional materials prepared in connection with a contract award without obtaining prior permission from ECCTA.

Prohibited Interest

By submitting a proposal, the proposer represents and warrants that neither the CEO, nor any director, officer, agent nor employee of ECCTA, has in any manner any interest, contractual or non-contractual, financial or otherwise, in this transaction or in the business of the proposer.

If any such interest comes to the knowledge of the proposer at any time, a full and complete disclosure of all such information shall be made in writing to ECCTA, even if such interest would not be considered a conflict of interest under Article IV Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3600) of the Government Code of the State of California.

No member, officer, or employee of ECCTA or of any of its member jurisdictions during their tenure of office, or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds therefrom.

No member or a delegate to the Congress of the United States shall be admitted to any share or part of the contract awarded under this proposal or to any benefits arising therefrom.

Proposer's Status

Neither the proposer nor any party contracting with the proposer shall be deemed to be an agent or employee of ECCTA. The proposer is and shall be an independent contractor, and the legal relationship of any person performing work for the proposer shall be one solely between said parties.

Ownership of Work

All reports, drawings, plans, specifications, and other materials prepared, or in the process of being prepared, for the services to be performed by the proposer shall be and are the property of ECCTA, and ECCTA shall be entitled access to, and copies of, during the progress of the work.

In the event that the work which is the subject of the contract is not completed, for any reason whatsoever, all designs and materials generated under this contract shall be delivered as ECCTA may direct.

Subcontracts

Pursuant to California Public Contract Code section 4100 et seq., applicable subcontracts under this contract must have the prior written approval of ECCTA's CEO. In the event the contractor enters into one or more subcontracts pursuant to this paragraph, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to the contractor and that ECCTA shall have no obligation to them.

Insurance, Bonds and Indemnity

Insurance Requirements

A. Insurance Certificates, Riders, Stipulations

Within 10 business days, the successful contractor shall furnish original certificates of insurance showing a commencement date no later than the effective date of the contract. The insurance shall be in compliance with the stipulations outlined in the scope of work.

With respect to all coverages, the certificates of insurance shall include a stipulation that the insurer will notify ECCTA no less than 30 calendar days prior to any change, termination or cancellation of the insurance policy or coverages provided under such policy.

With respect to all coverages, the certificates of insurance shall indicate that ECCTA, its directors, officers, agents, and employees are additional insureds under said policies and that the contractor's policies are primary and no insurance of ECCTA shall be called upon to contribute to any loss up to the limits of contractor's policy.

The contractor shall indemnify, keep and hold harmless, ECCTA, its directors, officers, agents, employees, and member jurisdictions against all suits or claims that may be based on any injury to persons or property that may occur, or that may be alleged to have occurred, in the course of the performance of this contract by the contractor, whether or not it shall be claimed that the injury was caused through a negligent act or omission of the contractor or its employees, and the contractor shall, at its own expense, defend any and all such actions, and shall at its own expense pay all charges of attorneys and all costs and other expense arising therefrom or incurred in connection therewith, and if any judgment shall be rendered against ECCTA in any such action, the contractor shall, at its own expense, satisfy and discharge the same.

B. Worker's Compensation

The contractor and subcontractors, at their own cost and expense, shall carry and maintain Statutory Worker's Compensation Insurance and Employer's Liability Insurance with limits not less than \$1,000,000 with an insurance carrier that is satisfactory to ECCTA that has a Best's rating of no less than A: VII.

C. General Liability

The contractor and subcontractors, at their own cost and expense, shall maintain liability insurance for the period covered by the contract in an amount not less than \$1,000,000 per occurrence combined single

limit coverage. Such coverage shall include, but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under the contract. The insurance is to be placed with insurers with a Best's rating of no less than A: VII, shall be with insurers and under forms of policies that is satisfactory in all respects to ECCTA, and shall provide that notice to ECCTA 30 calendar days prior to cancellation or material change. The following endorsements shall be included with the policy:

- The policy shall cover on "an occurrence basis."
- The policy shall cover personal injuries as well as bodily injuries. The exclusion of contractual liability must be eliminated from personal injury endorsement.
- The policy shall cover contractual liability insuring the obligations assumed by contractor under the contract.
- ECCTA, its officers, agents, and employees shall be named as additional insureds, and the policy shall stipulate that this insurance will operate as primary insurance and that no other insurance held by ECCTA will be called upon to contribute.

D. Vehicle Liability

The contractor and subcontractors, at their own cost and expense, shall maintain liability insurance for the period covered by the contract in an amount not less than \$1,000,000 combined single limit. Coverage shall include owned vehicles, hired vehicles, and non-owned vehicles, as well as bodily injury, property damage, collision and comprehensive, and include coverage for damage to ECCTA vehicles.

The insurance is to be placed with insurers with a Best's rating of no less than A: VII, shall be with insurers and under forms of policies that is satisfactory in all respects to ECCTA, and shall provide that notice to ECCTA 30 calendar days prior to cancellation or material change.

E. All Risk Property Insurance

The contractor and subcontractors, at its own cost and expense, shall maintain insurance coverage for full replacement cost on the contractor's tools, equipment, or other property whether it is owned or leased, brought onto ECCTA property, or used in connection with the project. The insurance is to be placed with insurers with a Best's rating of no less than A: VII.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. Separation of Insureds

The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured and the coverages afforded shall apply as though separate policies had been issued to each insured.

B. Additional Insured Status

ECCTA and its member jurisdictions, together with their respective officers, officials, employees, and volunteers are to be covered as additional insureds on the general liability policy with respect to liability arising, directly or indirectly, out of work, operations, services, acts, errors or omissions in performance by or on behalf of the contractor, including services, materials, parts or equipment furnished in connection with such work or operations. General liability coverage must be provided in the form of an endorsement to the contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms, if later revisions are used).

ECCTA and its member jurisdictions, together with their respective officers, officials, employees, and volunteers are to be covered as additional insureds on the vehicle liability policy with respect to liability arising out of contractor's use of vehicles in connection with this RFP.

C. Primary Coverage

For any claims related to this contract, the contractor's insurance coverage shall be primary and noncontributing insurance as respects ECCTA and its respective officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by ECCTA and its respective officers, officials, employees, or volunteers shall be excess of the contractor's insurance and shall not contribute with it.

D. Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with 30 calendar days' notice to ECCTA by certified mail. The contractor shall obtain an endorsement to each policy required by this RFP reflecting the contract by the insurer to provide such notice. In addition, the contractor is responsible to notify ECCTA within 5 business days of any cancellation, non-renewal, reduction in limits, or material change that affects required insurance coverage.

E. Waiver of Subrogation

The contractor will grant to ECCTA a waiver of subrogation of any right to subrogation which any insurer of said contractor may acquire against ECCTA and its respective officers, officials, employees, and volunteers by virtue of the payment of any loss under such insurance, including the coverages required in this RFP.

The contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not ECCTA has received a waiver of subrogation endorsement from the insurer.

F. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by ECCTA. ECCTA may require the contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense

expenses within the retention. Any deductibles or self-insured retention shall be the responsibility of the contractor to satisfy.

G. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to ECCTA.

H. Verification of Coverage

The contractor shall furnish ECCTA with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by these insurance requirements. The certificates, endorsements and applicable policy language to be provided must include proof of (1) the coverages required; (2) the required limits; (3) separation of insureds; (4) additional insured status; (5) primary coverage; (6) notice of cancellation; and (7) waiver of subrogation. All certificates and endorsements are to be received and approved by ECCTA before work commences, and must be provided annually thereafter for the duration of the contract. However, failure to obtain the required documents prior to the work beginning or thereafter shall not waive the contractor's obligation to provide them. ECCTA reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractor Insurance

All subcontractors shall maintain the same insurance required to be maintained by the contractor with respect to their portions of the work unless otherwise indicated in contract documents, and the contractor shall cause the subcontractors to furnish proof thereof to ECCTA within ten days of ECCTA's request. At the contractor's discretion, the contractor may cover subcontractor under the contractor's own insurance policy.

Indemnity

To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), the contractor shall defend, indemnify, and hold harmless, ECCTA and each of its officers, officials, employees, consultants and agents including, without limitation, the governing board, project manager and each ECCTA representative, from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the work, failure to perform the work, or condition of the work that is caused in whole or part by any act or omission of the contractor, subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except for liability for loss, damage, or expense arising from ECCTA's sole negligence, willful misconduct, or active negligence.

With respect to third-party claims against the contractor, the contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against ECCTA and each of its officers, officials, employees, consultants and agents including, without limitation, ECCTA,

the governing board, project manager and each ECCTA representative. ECCTA shall provide timely notice to the contractor of any third-party claim relating to the contract documents, in accordance with Public Contract Code section 9201.

Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of the contractor, its subcontractors of any tier, or the officers or agents of any of them.

To the furthest extent permitted by law (including, without limitation, Civil Code section 2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout contract documents shall apply even in the event of breach of contract, passive negligence, fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the work or the terms of contract documents. If the contractor fails to perform any of these defense or indemnity obligations, ECCTA may in its discretion back charge the contractor for ECCTA's costs and damages resulting therefrom and withhold such sums from progress payments or other contract moneys which may become due.

Commencement of Work

Notice to Proceed

As soon as practical after execution of the contract, and after receipt of acceptable insurance certificates by ECCTA, a written "Notice to Proceed" will be mailed to successful proposer. The effective date of the notice to proceed will be the date stated in the notice.

Commencement of Work, Progress, and Time for Completion

The contractor shall begin work within 10 business days after receipt of the Notice to Proceed or the date specified therein and shall diligently prosecute the same to completion within the time set forth in these contract documents.

Changes

General

ECCTA reserves the right to make such alterations, deviations, additions to or omissions from the contract documents, including the right to increase or decrease the quantity of any item or portion of the work or to omit any item or portion of the work, as may be deemed necessary or advisable and to require such extra work as may be determined by ECCTA to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work to be done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by ECCTA.

All changes in the work shall be made as provided in the contract documents. Notice is hereby given that under certain circumstances, changes may require the approval of the legislative body, and may further require notice to affected property owners and the conduct of a public hearing.

Extra Work

New and unforeseen work will be classed as extra work when such work cannot be covered by any of the various items or combination of items for which there is a proposal price. The contractor shall do no extra work except upon written order from ECCTA. Compensation for authorized extra work will be paid as previously agreed upon in writing.

Owner Rights

Authority of ECCTA

ECCTA shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner or performance and loss of progress of the work; all questions which may arise as to the interpretation of the technical specifications; all questions as to the acceptable fulfillment of the contract on the part of the contractor; and all questions as to compensation. ECCTA's decision shall be final and shall have authority to enforce and make effective such decisions and orders which the contractor shall carry out promptly.

Contractor's Responsibility for Work and Materials

Until the final acceptance of the contract, the contractor shall have the charge and care of the work and of the materials to be used therein, including materials for which partial payment has been received. ECCTA shall not be held responsible for the care or protection of any material or parts of the work prior to final acceptance and must be notified of any potential deliveries of any materials or parts prior to delivery.

Risk of Loss

All loss of damage arising from any unforeseen obstruction or difficulties, either natural or artificial, which may be encountered in the furnishing of the supplies, materials, or equipment, or from any action of the elements prior to final written acceptance of the supplies, materials, or equipment, or from any act or omission not authorized by the contract documents on the part of the contractor or any agent or person employed by it, shall be sustained and borne solely by the contractor.

Compliance with Applicable Laws and Regulations

The contractor shall keep fully informed concerning all requirements of law including, but not limited to, all federal, state, and local laws, regulations, and ordinances which affect the performance of work under the contract.

The contractor shall at all times observe, and shall cause all employees and subcontractors to observe, all such requirements of law and shall protect, indemnify, and hold harmless ECCTA, its directors, officers, agents, and employees against all claims and liabilities arising from, or based on, the violation of any such requirement of law whether by the contractor or their employees or subcontractors.

If any discrepancy or inconsistency is discovered in the contract documents of the work in relation to any such requirements or laws, the contractor shall immediately report the same to ECCTA.

The contractor shall, if requested by ECCTA, provide certification and evidence of such compliance. If any part of the contract documents is declared invalid by a court of law, such decision will not affect the validity of the remaining portion, which shall remain in full force and effect.

Prior to award of a contract, the proposer shall furnish upon ECCTA's request verification of payment to its employees California's minimum wage as required by law. In addition, upon ECCTA's request, the proposer shall promptly furnish verification that its employees have legal rights to work in the United States of America and in the State of California.

Labor

Fair Employment Practices: California State Fair Employment Housing Act

The contractor shall comply with the State Fair Employment and Housing Act (California State Government Code Sections 12900 through 12996), and the regulations promulgated by the California State Fair Employment and Housing Commission to implement said Act.

The contractor shall comply with Section 1735 of the California State Labor Code, which reads as follows:

“No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works in violation this section is subject to all the penalties imposed for a violation of this chapter.”

The contractor shall include, and shall cause all sub-consultants to include, the provision of California's Fair Employment Practices Article in every subcontract entered into, related to this contract.

The contractor shall complete and submit with the proposal documents the “Fair Employment Practices Certificate” form in Section 8 of this RFP.

Nondiscrimination

In the performance of the contract, the contractor agrees that it shall not discriminate against any employee or applicant for employment because of race, color, national origin, ancestry, sex, gender, sexual orientation, gender expression, gender identity, religious creed, age, medical condition, disability, genetic information, marital status, or military and veteran's status in any manner prohibited by law.

The contractor shall take affirmative actions to ensure that applicants are hired and that employees are treated during employment in accordance with this non-discrimination obligation.

Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and

selection for training, including apprenticeship. The contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this article.

Violation of the State Fair Employment and Housing Act

Upon finding a violation of the California State Fair Employment and Housing Act by contractor, or a finding in a final judgment by a court of competent jurisdiction in an action to which contractor is a party, that contractor has unlawfully discriminated against any employee or applicant for employment, ECCTA will notify contractor that unless it demonstrates to the satisfaction of ECCTA within a stated period that the violation has been corrected, contractor's right to proceed with the work may be suspended or terminated, in whole or in part. ECCTA will deem a finding of violation of the California State Fair Employment and Housing Act to have occurred in performance of this contract upon receipt of written notice from the California State Fair Employment and Housing Commission that it has investigated and determined that contractor has violated this act in performance of this contract, and that said Commission has issued a final order under California State Government Code Section 12970 or obtained a final judgment under California State Government Code Section 12973; provided, however, that for purposes of this Fair Employment Practices Article, a judgment, order or injunction shall not be considered final: (a) if, and for the period that, the same is stayed or subject to further administrative or judicial review, or (b) if the same is vacated, reversed or set aside in whole or in substantial part as a result of subsequent administrative or judicial proceedings.

Contractor Responsibilities

Contractor's Licensing Laws

All proposers and subcontractors shall be licensed in accordance with the laws of this State and any proposer or subcontractor not so licensed is subject to penalties imposed by such laws.

Warranty of Title

The contractor warrants to ECCTA, its successors, and assigns that the title to the materials, supplies, or equipment covered by the contract, when delivered to ECCTA or to its successors or assigns, is free from all liens and encumbrances.

Warranty of Fitness

The contractor warrants that all materials, supplies, and products furnished meet the requirements and conditions of the contract documents and are fit for the purpose intended.

Environmental Compliance

The contractor shall comply with all laws, regulations, orders and decrees of any federal, state or local government authority or court concerning environmental compliance including, but not limited to, (i) air pollution and emission of air contaminants, including without limitation the regulations of the California Air Resources Board and the Bay Area Air Quality Management District; (ii) management of waste water and groundwater, including without limitation the requirements of the State Water Resources Control Board, the San Francisco Bay Regional Water Quality Control Board and local sanitary districts; and (iii) management and disposal of solid and hazardous wastes generated or discovered in connection with the

work, including without limitation Title 22 of the California Code of Regulations, Title 40 of the Code of Federal Regulations and the requirements of the California Integrated Waste Management Board.

Records/Audit

The contractor and subcontractors shall establish and maintain records pertaining to this contract. The contractor's accounting systems shall conform to generally acceptable accounting principles and all records shall provide a breakdown of total costs charged under this contract, including properly executed payrolls, time records, invoices and vouchers.

The contractor shall permit ECCTA and its authorized representatives to inspect, audit, and examine the contractor's books, records, accounts, and any and all data relevant to this contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by the contractor pursuant to this contract. The contractor shall provide such assistance as may be reasonably required in the course of such inspection.

Contractors shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three years after the termination of this contract. ECCTA further reserves the right to examine and re-examine said books, records, accounts, and data during the three-year period following the termination of this contract.

Pursuant to California Government Code, the parties to this contract shall be subject to the examination and audit of a representative of the Auditor General of the State of California for a period of three years after the termination of this contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract.

Where ECCTA has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of contractor's business, ECCTA may, by written request, require that custody of the records be given to ECCTA and that the records and documents be maintained at ECCTA's facility. Access to such records and documents shall be granted to any party authorized by contractor, contractor's representatives, or contractor's successor in interest.

Liquidated Damages/Excusable Delays

Liquidated Damages

In the event of delay in completion of the work listed in the Scope of Work, or beyond authorized extensions thereof, damage will be sustained by ECCTA. It is and will be impracticable to determine the actual amount of damage by reason of such delay. It is therefore agreed that ECCTA shall be paid liquidated damages in the amount of \$500.00, or in the amount otherwise specified in the contract, for each and every workday that the completion extends beyond the delivery date, unless the delay is caused by an Excusable Delay (as defined below). The parties agree this sum is reasonable considering the totality of circumstances, including the relationship of the sum to the range of harm to ECCTA that reasonably could be anticipated and the anticipation that proof of actual damages would be costly, inconvenient, or impossible.

An extension of time without liquidated damage liability shall be granted by ECCTA upon a proper showing and finding by ECCTA that the extension is justified. Proposer shall have the burden of showing that the delay was beyond their control. The findings by ECCTA shall be final and conclusive.

Liquidated damages for delay shall only cover administrative, overhead and general loss of public use damages suffered by ECCTA as a result of delay. Liquidated damages shall not cover the cost of completion of the work and/or damages resulting from defective work.

Excusable Delays

Excusable Delays include only the following, to the extent not caused by the fault or negligence of contractor: fire, flood, earthquake, acts of ECCTA, acts of another contractor (not a contractor subcontractor) in the performance of a contract with ECCTA, epidemics, quarantine restrictions, strikes, freight embargoes (not freight delays by a contractor subcontractor or supplier), and adverse weather (as specified below).

Claims Procedures

Should it appear to the contractor that the work to be performed or any of the matters relative to the contract documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the contract documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the contractor may be required to perform, time extensions, payment to the contractor during performance of this contract, performance of the contract, and/or compliance with contract procedures, or should contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER (collectively, "Disputed Work"), the contractor shall seek resolution as otherwise provided in contract documents or, if no procedures are specified, through regular project communication procedures. If a dispute remains, the contractor shall give submit a written claim to ECCTA. Routine contract materials, for example, correspondence, RFI, change order requests, or payment requests shall not constitute a claim. The contractor shall bear all costs incurred in the preparation and submission of a claim.

The contractor's written claim must identify itself as a "claim" under this Claims Procedures section and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact evaluation of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the claim's accuracy. The claim shall be priced like a change order, and must be updated monthly as to cost and entitlement if a continuing claim.

Any claim shall be decided by ECCTA's CEO, who shall reduce their decision to writing and mail or otherwise furnish a copy thereof to contractor. The decision of the CEO shall be final and conclusive unless within 30 calendar days from the date of receipt of such copy, the contractor mails or otherwise furnished a written appeal to ECCTA's Board of Directors.

Notwithstanding any dispute, Disputed Work or claim, the contractor shall continue to prosecute the Work and the Disputed Work in accordance with ECCTA's determinations. The contractor's sole and exclusive remedy for Disputed Work is to file a written claim within the time limits set forth in this Article setting forth the contractor's position as required herein.

Public Contract Code Section 9204 specifies provisions on resolving contract claims of any size, and Public Contract Code Section 20104, et seq., specifies required provisions on resolving contract claims less than \$375,000. Those statutes constitute a part of this contract. In the event any other contract provision violates such statutes, the applicable statute controls.

Abandonment or Delay of Work

ECCTA may terminate the contract for the following causes:

- The contractor is insolvent or has made a general assignment for the benefit of creditors, or a receiver has been appointed on account of the insolvency of the contractor.
- The contractor or any of its subcontractors violate any of the material provisions of the contract or fail to perform the work within the time specified in the contract documents.
- The contractor or any of its subcontractors should fail to make prompt payment to subcontractors or material suppliers for material or for labor.
- The contractor or a subcontractor persistently disregards laws, ordinances, or the instructions of ECCTA.
- The contractor fails to abide by a proper stop work notice or fails to correct rejected work or materials.
- The contractor fails to provide and keep in full force and effect all required insurance or fails to cause all subcontractors to so comply.
- The contractor fails to supply a sufficient number of properly skilled workers or proper materials, or fails to diligently prosecute the work.
- The contractor commits any substantial violation of the contract which constitutes a material breach of the contract.

ECCTA may, without prejudice to any other right or remedy, give written notice to the contractor of its intention to terminate the contract. Unless within seven business days of the delivery of such notice, the contractor shall cease such violation or otherwise make satisfactory arrangements for a correction thereof, which arrangements are set forth in a written agreement signed by the contractor and ECCTA, the contractor's right to complete the work shall cease and terminate.

In the event of any such termination, ECCTA shall immediately give written notice thereof to the contractor. If ECCTA takes over the work, it may prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the contractor and the contractor shall be liable to ECCTA for any excess costs, including management, supervision, and design support, occasioned thereby. In such event, ECCTA may, without liability, take possession of and utilize in completing the work, the contractor's materials and equipment to be incorporated into the work, whether stored at the site or elsewhere. Whenever the contractor's right to proceed is terminated, the contractor shall not be entitled to receive any further payment until the work is finished.

If ECCTA terminates the contract for cause, ECCTA may retain out of any funds due or to become due the contractor the amount of the cost of completing the work and any expense incidental to reletting the contract or performing the work, and may also hold the contractor and the contractor's sureties responsible for such cost and expense, and for any damages resulting from the abandonment or failure, upon the bond. The contractor shall not receive any further payment until the work is complete.

Payment and Invoicing

General

During the term of this contract, ECCTA will make payments to the contractor in accordance with receiving an invoice. Invoices for payments that are due and which are received shall be paid within 30 business days following the approval and authorization of payment.

Substitutions of Securities for Withheld Amounts

Pursuant to Public Contract Code Section 22300, the contractor may substitute securities for any monies withheld to ensure performance. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with ECCTA, or with a state or federally chartered bank in California as the escrow agent, and ECCTA shall then pay such monies to the contractor.

Alternatively, the contractor may request that ECCTA make payment directly to the escrow holder, to be invested at the contractor's expense and direction.

Eligible securities shall include those listed in Government Code Section 16430, or bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the contractor and the ECCTA. The contractor shall be the beneficial owner of any securities substituted for monies, and shall receive any interest on such securities.

Any escrow agreement shall be substantially similar in form to the form of escrow agreement included in Public Contract Code Section 22300(f).

Conflict of Interest

No employee, director, officer, or agent of ECCTA shall participate in selection, award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, agent, any member of their immediate family, their partner, an organization which employs, or is about to employ, any of the above interest in the firm is selected for award.

ECCTA's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or have a financial or other interest in the firm selected for award.

Prohibited Interest

By submitting a proposal, the contractor represents and warrants that neither the CEO, nor any director, officer, agent, nor employee of ECCTA, has in any manner any interest, contractual or non-contractual, financial or otherwise, in this transaction or in the business of the contractor. If any such interest comes to the knowledge of the contractor at any time, a full and complete disclosure of all such information shall be made in writing to ECCTA, even if such interest would not be considered a conflict of interest under Article IV Division 4 (commencing with Section 1090) or Division 4.5 (commencing with Section 3600) of the Government Code of the State of California.

No member, officer, or employee of ECCTA or of any of its member jurisdictions during their tenure of office, or for one year thereafter, shall have any interest, direct or indirect, in this contract or the proceeds therefrom.

No member or a delegate to the Congress of the United States shall be admitted entitled to any share or part of the contract awarded under this proposal or to any benefits arising therefrom.

Penalty for Collusion

If at any time it shall be found that the person, firm or corporation to whom a contract has been awarded has, in presenting any proposal or bids colluded with any other party or parties, then the contract so awarded shall be null and void and the proposer shall be liable to ECCTA for all loss or damage which ECCTA may suffer thereby and the Board of Directors may advertise for a new contract for said labor, supplies, materials, or equipment.

Termination

Termination for Convenience. ECCTA may terminate this contract, in whole or in part, at any time by written notice to the contractor when it is in the ECCTA's best interest. The contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The contractor shall promptly submit its termination claim to ECCTA to be paid the contractor. If the contractor has any property in its possession belonging to ECCTA, the contractor will account for the same, and dispose of it in the manner ECCTA directs.

Termination for Default [Breach or Cause]. If the contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the contractor fails to perform in the manner called for in the contract, or if the contractor fails to comply with any other provisions of the contract, ECCTA may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the contractor is in default.

The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by ECCTA that the contractor was prevented from performing due to an Excusable Delay, ECCTA, after setting up a new delivery of performance schedule, may allow the contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure (General Provision). ECCTA in its sole discretion may, in the case of a termination for breach or default, allow the contractor 10 business days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If contractor fails to remedy to ECCTA's satisfaction the breach or default or any of the terms, covenants, or conditions of this contract within 10 business days after receipt by contractor or written notice from ECCTA setting forth the nature of said breach or default, ECCTA shall have the right to terminate the contract without any further obligation to contractor.

Any such termination for default shall not in any way operate to preclude ECCTA from also pursuing all available remedies against contractor and its sureties for said breach or default.

Waiver of Remedies for any Breach. In the event that ECCTA elects to waive its remedies for any breach by contractor of any covenant, term or condition of this contract, such waiver by ECCTA shall not limit ECCTA's remedies for any succeeding breach of that or of any other term, covenant, or condition of this contract.

Termination for Default (Supplies and Service). If the contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the contractor fails to comply with any other provisions of this contract, the ECCTA may terminate this contract for default.

ECCTA shall terminate by delivering to the contractor a Notice of Termination specifying the nature of the default. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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

Legal and Miscellaneous

Severability Clause

If any provision or any part of any provision of these contract documents is, for any reason, held to be invalid, unenforceable, or contrary to any public policy, law, statute, regulation or ordinance, then the remainder of these specifications shall not be affected thereby and shall remain valid and fully enforceable.

Governing Law

California law (including that state's statutes of limitation but excluding its choice of law rules) shall govern all matters arising under the contract.

Section 5

Special Conditions

Special Conditions
Hydrogen Fuel Station Consultant
RFP #2022-01

DBE Program and Participation

General

ECCTA, a recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Program for contracts in accordance with federal regulations 49 C.F.R. Part 26, issued by the U.S. Department of Transportation (U.S.DOT).

It is the policy of ECCTA to ensure nondiscrimination in the award and administration of all contracts and to create a level playing field on which DBE's can compete fairly for contracts and subcontracts relating to ECCTA's construction, procurement, and professional services activities.

To this end, ECCTA has developed procedures to remove barriers to DBE participation in the proposal, bidding and award processes and to assist DBE's to develop and compete successfully outside of the DBE Program. In connection with the performance of this contract, the contractor will cooperate with ECCTA in meeting these commitments and objectives.

Pursuant to 49 C.F.R. Section 26.13 and as a material term of any agreement with ECCTA, the contractor hereby makes the following assurances and agrees to include this assurance in any agreements it makes with contractors in the performance of this contract:

“The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as ECCTA deems appropriate, which may include, but is not limited to:

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

Any contractor who would like to request additional information or ask questions regarding ECCTA's DBE Program may contact Tania Babcock, DBE Liaison Officer, 801 Wilbur Avenue, Antioch, CA 94509, telephone (925) 754-6622.

List of Subcontractors

Proposers shall complete and submit with proposal documents the "Designation of Subcontractors and DBE Firms" form found in Section 8 of this RFP. Each form shall list the name and address of each subcontractor to whom the proposer proposes to sublet portions of the work. Any and all subcontractors must be listed on the "Designation of Subcontractors and DBE Firms" regardless of the dollar value that will be performed. For the purpose of this paragraph, a subcontractor is defined as anyone who contracts with the contractor to furnish materials and labor, labor only, and/or one who specifically fabricates and/or installs a portion of the work or improvement according to the contract documents.

All listings and subsequent substitutions, if any, shall be done in conformance with the Subletting and Subcontracting Fair Practices Act, Public Contract Code Section 4100 et seq. All subcontractors must be currently registered with the DIR.

Substitution of DBE Subcontractors or Suppliers

Should substitution of any DBE firm listed on the Designation of Subcontractors or DBE form in this RFP become necessary, the contractor shall, subject to the approval of ECCTA, replace the affected DBE firm with another DBE firm or show that it made reasonable efforts to do so.

DBE Records

The contractor shall maintain records to verify DBE participation as set forth in the proposal and as modified in any way during the course of the contract. Such records shall show the name and business address of each DBE firm participating in the contract and the total dollar amount actually paid each DBE firm and the date of payment. A closing report based on these records and certified to be correct by the contractor shall be submitted with the final invoice.

The contractor shall also submit with the report copies of all DBE firm's subcontracts and purchase orders that have been entered into or issued in connection with the contract, and shall submit with the report copies of all invoices submitted by each DBE firm during the contract period. No invoice will be approved for payment unless the current report and all required attachments have been furnished. A DBE final report shall be submitted with the final invoice.

Participation in DBE Programs

The contractor shall participate in federal, state, and local programs designed to assist DBE firms.

Discrimination Prohibited

No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of this contract on the grounds of race, color, national origin or sex.

Prompt Payment to Subcontractors

In accordance with ECCTA's DBE Program, ECCTA will decline to hold retainage and prohibit prime contractors from holding retainage from subcontractors.

The prime contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 10 days from receipt of each payment the prime contractor receives from ECCTA. Any delay or postponement of payment from the above reference time frame may occur only for good cause following written approval of ECCTA. This applies to all subcontractors.

If the contractor fails or refuses to comply with requirements of this prompt payment clause, ECCTA will issue an order stopping all or part of the payment or work until satisfactory action is taken. If the contractor still fails to comply, ECCTA may issue a termination for default proceeding.

ECCTA encourages all businesses to use minority-owned financial institutions when seeking financial services.

Veteran's Preference

In accordance with 49 U.S.C. Section 5325(k), to the extent practicable, the contractor will give a hiring preference to veterans, as defined in 5 U.S.C. Section 2108, who have the skills and abilities required to perform construction work. This preference does not extend to any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Civil Rights Requirements

Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12132, and federal transit law at 49 U.S.C. Section 5332, the contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability.

In addition, the contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e and federal transit laws at 49 U.S.C. Section 5332, the contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations,

"Office of Federal Contract Compliance programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project.

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, national origin, sex or age. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin.
2. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
3. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
4. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
5. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under Section 202 of Executive order No. 11246 of September 24, 1965, and shall post copies of the notices in conspicuous places available to employees and applicants for employment.
6. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
7. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
8. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
9. The contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each sub-consultant or contractor. The contractor will take such action with respect to any sub-contract or purchase order as the administering agency 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 sub-consultant or contractor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

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

Disabilities. In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C Section 12112, the contractor agrees that it will comply with requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment provisions of the Americans with Disabilities Act," C.F.R. part 1630, pertaining to employment of persons with disabilities. In addition, the contractor agrees to comply with any implementing requirements FTA may issue.

Access for Individuals with Disabilities. The Recipient agrees to comply with 49 U.S.C. Section 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. Section 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. Section 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. Section 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities. In addition, the Recipient agrees to comply with applicable Federal regulations and directives and any subsequent amendments thereto, except to the extent the Federal Government determines otherwise in writing, as follows:

- U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and

- U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;
- FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- Federal civil rights and nondiscrimination directives implementing the foregoing regulations.

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

Contractor's Organization and Equipment

Character of Workers

If any subcontractor or person employed by the contractor shall appear to ECCTA to be incompetent or to act in a disorderly or improper manner, they shall be discharged immediately on the request of ECCTA, and such person shall not again be employed on the work.

COVID-19

Without limiting the contractor's other contract documents obligations to comply with applicable laws, the contractor shall comply with all federal, state, and local (including Contra Costa County) laws and requirements relating to COVID-19, whether in existence on the date proposals are due or on any date thereafter, including without limitation (if and to the extent applicable) the Cal/OSHA COVID-19 General Checklist for Limited Services then in effect and all active health orders of the Contra Costa County Health Officer, all as amended, supplemented, and replaced from time to time ("Covid Requirements").

The contractor shall not be entitled to any increases in compensation or payment of any additional amounts on account of any changes to any applicable Covid Requirements or any new Covid Requirements, including without limitation any change in Contra Costa County's tier under California's Blueprint for a Safer Economy. Further, Contractor shall be solely responsible for keeping informed and current of all changes and additions to the Covid Requirements.

Environmental Matters

Environmental Protection

The contractor recognizes that many federal and state laws imposing environmental and resource conservation requirements may apply to the project. Some, but not all, of the major federal laws that may affect the project include: the National Environmental Policy Act of 1969, as amended, 42 U.S.C. Section 4321 through 4335; the Clean Air Act, as amended, 42 U.S.C. Section 7401 through 7671q and scattered sections of Title 29, United States Code; the Clean Water Act, as amended, 33 U.S.C. Section 1251 through 1377; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901 through 6992k; the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. Section 9601 through 9675, as well as environmental provisions within Title 23, United States Code, and 49 U.S.C. chapter 53. The contractor also recognizes that U.S. EPA, FHWA and other federal agencies have issued, and in the future are expected to issue, federal regulations and directives that may affect the project. Thus, the contractor agrees to comply, and assures the compliance

of each subcontractor and each third party contractor, with any applicable federal laws, regulations and directives as the federal government are in effect now or become effective in the future, except to the extent the federal government determines otherwise in writing. Listed below are environmental provisions of particular concern to FTA and ECCTA. The contractor understands and agrees that those laws, regulations, and directives may not constitute the contractor's entire obligation to meet all federal environmental and resource conservation requirements.

National Environmental Policy

ECCTA is obligated to facilitate FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. Section 4321 through 4335 (as restricted by 42 U.S.C. Section 5159, if applicable); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. Section 4321 note; FTA statutory requirements at 49 U.S.C. Section 5324(b); U.S. Council on Environmental Quality regulations pertaining to compliance with NEPA, 40 C.F.R. Parts 1500 through 1508; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622, and subsequent Federal environmental protection regulations that may be promulgated. As a result of enactment of 23 U.S.C. Section 139 and 326 as well as to amendments to 23 U.S.C. Section 138, environmental decision making requirements imposed on FTA projects to be implemented consistent with the joint FHWA/FTA document, "Interim Guidance for Implementing Key SAFETEA LU Provisions on Planning, Environment, and Air Quality for Joint FHWA/FTA Authorities," dated September 2, 2005, and any subsequent applicable Federal directives that may be issued, except to the extent that FTA determines otherwise in writing.

Clean Air Requirements

The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401, et. seq. The contractor agrees to report each violation to ECCTA and understands and agrees that ECCTA will, in turn, report each violation as required to assure notification to the FTA and the appropriate EPA regional office.

The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in part or in whole with federal assistance provided by the FTA.

Clean Water Requirements

The contractor agrees to 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. The contractor agrees to report each violation to ECCTA and understands and agrees that ECCTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in part or in whole with federal assistance provided by the FTA.

Energy Conservation

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

Privacy Act

The following requirements apply to contractor and any of its employees that may administer any system of record on behalf of the federal government under any contract:

The contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirement of the Privacy Act of 1974, U.S.C. Section 552a.

Among other things, the contractor agrees to obtain the express consent of the federal government before the contractor or its employees are a system of record on behalf of the federal government.

The 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 contract.

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

FTA Funding Requirement

The 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 Master Agreement between ECCTA and the FTA, as they may be amended or promulgated from time to time during the term of this contract. The contractor's failure to do so comply shall constitute a material breach of this contract.

Conflict of Interest

The contractor understands that its professional responsibility is solely to ECCTA. The contractor warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this contract. The contractor shall not knowingly, and shall take reasonable steps to ensure that it does not, employ a person having such an interest in the performance of this contract. If contractor discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this contract, contractor shall promptly disclose the relationship to ECCTA and take such action as ECCTA may direct to remedy the conflict.

The contractor (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this contract or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of contractor's services hereunder.

The contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this contract.

The contractor is not a designated employee within the meaning of the Political Reform Act because contractor:

- Will conduct research and arrive at conclusions with respect to their rendition of information, advice, recommendation or counsel independent of the control and direction of ECCTA or of any ECCTA official other than normal contract monitoring.
- Possesses no authority with respect to any ECCTA decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a) (2)).

No Federal Government Obligation to Third Parties

ECCTA 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 contract and shall not be subject to any obligations or liabilities to ECCTA, contractor, or any other party (whether or not a party to that agreement) pertaining to any matter resulting from the underlying agreement.

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

Program Fraud and False or Fraudulent Statements of Related Acts

The contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 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. Upon execution of the underlying agreement, the 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 contract work is being performed. In addition to other penalties that may be applicable, the contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the contractor to the extent the federal government deems appropriate.

The 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 a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Section 5307, the federal government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the contractor, to the extent the federal government deems appropriate.

The contractor agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Cost and Pricing Data

Prior to award of a contract resulting from this solicitation, the contractor shall furnish, in accordance with the provisions of 15.403-4 of the Federal Acquisition Regulation (FAR), cost or pricing data and the certificate of current cost or pricing data as set forth in FAR 15.406-2.

Federal Changes

The 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 master agreement between ECCTA and the FTA, as they may be amended or promulgated from time to time during the term of this contract. The contractor's failure to so comply shall constitute a material breach of this contract.

Records

The contractor and its subcontractors shall establish and maintain complete records pertaining to the contract. The contractor and subcontractors accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under the contract, including properly executed payrolls, time records, invoices and vouchers.

The contractor shall permit the U.S. Secretary of Transportation, the Comptroller General of the United States, the State of California, ECCTA and/or their authorized representatives to inspect and examine contractor's books, records, accounts, and any and all data relevant to the contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by contractor pursuant to the contract and shall provide such assistance as may be reasonably required in the course of such inspection.

The contractor shall not dispose of, destroy, alter, or mutilate said books, records, accounts, and data for three years after the termination of the contract. ECCTA reserves the right to examine and re-examine said books, records, accounts, and data during the three year period following the termination of the contract. In addition, the parties to the contract shall be subject to the examination and audit by a representative of the Auditor General of the State of California for a period of three years after final payment under the contract.

Disclosure of Governmental Positions

Depending on the nature of the work performed, a consultant to ECCTA may be subject to the same conflict of interest prohibitions established by the Federal Transit Administration and California law (California Government Code, Section 1090 et seq.) that govern ECCTA employees and officers. In order to analyze possible conflicts that might prevent a consultant from acting on behalf of ECCTA or other governmental agency prior to contract award, ECCTA requires that all potential participants disclose in their proposals any positions that they hold as director, officer, consultant, or employee of any governmental agency. Additional disclosure may be required prior to contract award or during the term of the contract. Responses will be kept confidential to the extent permitted by law.

Therefore, each contractor and sub-consultant should complete and submit with proposal documents the "Disclosure of Governmental Positions Form" in Section 8 of this RFP, whether or not any owner or employee of the firm currently hold positions as directors, officers, consultants, or employees of a governmental agency or have held such positions in the past twelve months.

Incorporation of Federal Transit Administration (FTA) Terms

All contractual provisions required by U.S. DOT, as set forth in FTA circular 4220.1F, dated March 18, 2013, whether or not expressly set forth in the contract provisions herein, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract document.

The contractor shall not perform any act, fail to perform any act, or refuse to comply with any ECCTA requests, which would cause ECCTA to be in violation of the FTA terms and conditions.

The contractor shall complete and submit with the proposal documents the "Incorporation of Federal Transit Administration (FTA) Terms" form in Section 8 of this RFP.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

The contractor is required to verify that none of the contractor, its principals, as defined at 2 C.F.R. 180.905, or affiliates, as defined at 2 C.F.R. 180.995, are excluded or disqualified as defined at 2 C.F.R. 180.940 and 180.935.

For this purpose, the contractor must complete and submit with proposal documents the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" form in Section 8 of this RFP. The contractor also agrees to include this provision in any subcontract exceeding \$100,000 and to obtain a similar certification from any subcontractor seeking a subcontract exceeding \$100,000 and forward the certification to ECCTA.

Certification Regarding Lobbying

The contractor shall complete and submit with proposal documents the certification required by 49 C.F.R. part 20, "Lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements" form in Section 8 of this RFP. Contractors shall certify that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. Section 1352.

The contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contact on its behalf with non-federal funds with respect that federal contract, grant or award covered by 31 U.S.C. Section 1352. Such disclosures shall be forwarded to ECCTA. The contractor shall ensure that all of its sub-consultants under this contract shall certify the same. ECCTA is responsible for keeping the certification of the contractor, who is in turn responsible for keeping the certification forms of sub-consultant.

Fly America Requirements

The contractor agrees to comply with 49 U.S.C. Section 40118 (the “Fly America Act”) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301.10, which provide that recipients and sub recipients 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. The 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. The contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

The contractor shall complete and submit with the proposal documents the” Fly America” form in Section 8 of this RFP.

Seismic Safety

The contractor agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 et seq., in accordance with Executive Order No. 12699, “Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction,” 42 U.S.C. § 7704 note, and comply with U.S. DOT regulations, “Seismic Safety,” 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.117)

Americans with Disabilities Act

Proposers shall complete and submit with the proposal documents the certification regarding “Americans with Disabilities Act” form in Section 8 of this RFP.

Section 6

Scope of Work

Scope of Work
Hydrogen Fuel Station Consultant
RFP #2022-01

Scope of Services Requested

ECCTA has developed a list of desired consultant services. Please provide details regarding experience for each service identified in your proposal.

1. Hydrogen Refueling Station Analysis

The consultant will conduct an analysis of the bus operations and ECCTA's operating logistics to establish station requirements and maintenance facility upgrades. The consultant will supply a document identifying station characteristics and input variables. These will include but not limited to: daily throughput, fill quantities, fill rates, fueling window, days of back up supply, station footprint, utility services, backup electrical service and a possible maintenance service contract. The consultant will also supply the information for upgrading the maintenance facility to safely repair hydrogen fueled buses.

2. Develop Hydrogen Refueling Station Scope of Work Specifications

The consultant will develop the Scope of Work document, and any necessary forms, that ECCTA will include in a boiler-plate RFP to solicit proposals from contractors to provide a liquid hydrogen refueling station and maintenance facility up-grades. The Scope of Work will seek contractors to design and engineer the station and upgrades in coordination with ECCTA; specify the civil, electrical, and plumbing site work; equipment installation; station commissioning process; and employee and first responder training. Additionally, the Scope of Work will seek proposals for maintenance service contracts, fuel prices and warranties.

The consultant will participate in the pre-proposal conference and be responsible for addressing technical questions and providing meeting minutes.

The consultant will respond to requests for technical clarifications or questions submitted by contractors and assisting ECCTA's staff in the development of any Addenda's to the RFP requested by potential proposers.

The consultant will be responsible for assisting ECCTA to prepare a list of preferred equipment vendors to solicit proposals to ensure maximum participation from vendors who are capable of providing the desired hydrogen refueling station equipment.

3. Proposal Evaluation

The consultant will participate in the evaluation of the capability of the contractor to successfully build the hydrogen refueling station.

The consultant will evaluate the contractor on their experience in constructing hydrogen refueling stations for transit operations or stations of similar size and required performance.

The consultant will evaluate project and fuel cost for reasonableness.

The consultant shall determine and provide an evaluation summary for each proposal identifying the advantages of each proposal, including but not limited to equipment quality, experience, and cost.

In consultation with ECCTA staff, the consultant shall provide a ranking for each proposal.

The consultant will provide assistance with contract negotiations with the successful proposer.

4. Project Management

The consultant will assist ECCTA in acquiring all required permits necessary to own and operate a hydrogen fuel cell fueling station.

The consultant will assist ECCTA with the project oversight during the construction phase.

The consultant will provide technical assistance to the contractor and ECCTA during the construction, equipment installation, facility upgrades, and station commissioning. This will be inclusive of any change orders, Requests for Information, and certified payroll.

The consultant shall maintain all project related electronic or written correspondences including drawings, certified payroll, project schedule, and change order approvals, meeting minutes and etc.

5. Training

The consultant shall coordinate or provide technical expertise to ECCTA to facilitate the training that will be provided by the refueling station vendor to employees and first responders. Included in this task will be performance/safety seminars and proper maintenance training for their equipment.

Section 7

Proposal Form

PROPOSAL COVER FORM

**For
RFP #2022-01**

Eastern Contra Costa Transit Authority (ECCTA)
Antioch, CA

DATE SUBMITTED: _____

NAME OF INDIVIDUAL SUBMITTING PROPOSAL: _____

CONTACT PERSON: _____

NAME UNDER WHICH BUSINESS IS CONDUCTED: _____

STREET ADDRESS: _____

MAILING ADDRESS, IF DIFFERENT: _____

TELEPHONE: _____

FAX: _____

CONDITIONS:

1. The undersigned understands that they will be bound by the proposal as expressed by these forms if an award is made by ECCTA. The contract will be in accordance with this proposal.
2. The Request for Proposal, Information for Proposers, General Conditions, Scope of Work, Special Conditions, Proposal Forms, Required Certifications, and Addenda, if any, are made a part of this proposal.
3. The undersigned understands that any clarification made to the proposal form or any new and different conditions or information submitted in or with the proposal form, other than that requested, may render the proposer unresponsive.
4. The undersigned acknowledges the receipt of the following addenda:

5. The undersigned understands that ECCTA reserves the right to reject any or all proposals or to waive any informality or technicality in any proposal in the interest of ECCTA.
6. The undersigned understands that all proposals shall remain in effect for sixty calendar days from the due date of the proposal.
7. The undersigned has carefully examined the location of the proposed work, the annexed proposed form of contract, and the contract documents therein referred to.

8. The undersigned certifies that the proposal includes all costs for labor, materials, taxes, insurance, overhead, profits, storage, delivery, and all other costs necessary to perform the work in accordance with the contract documents.
9. The undersigned will place the proposal package in one or more sealed envelopes marked and deliver them to ECCTA in manner, and by the times, provided in the RFP.

COST PROPOSAL FORM
For
RFP #2022-01

Provide cost breakdowns, as applicable, for each phase of the project below. List all key personnel to be involved in each phase. Do not use average hourly rates. Estimated hours must be supplied for each named individual. Additional pages may be added to include additional personnel.

Phase 1: Hydrogen Refueling Station Analysis

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____
 Special Tooling/Equipment: _____
 Travel: _____
 Subcontractor Costs, if applicable: _____
 G&A Percentage: _____
 Profit Percentage: _____
Net Total for Phase 1: _____

Phase 2: Develop Hydrogen Station Specifications

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____
 Special Tooling/Equipment: _____
 Travel: _____
 Subcontractor Costs, if applicable: _____
 G&A Percentage: _____
 Profit Percentage: _____
Net Total for Phase 2: _____

Phase 3: RFP Participation and Evaluation

A. Development of vendor list

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____
 Special Tooling/Equipment: _____
 Travel: _____

Subcontractor Costs, if applicable: _____

G&A Percentage: _____

Profit Percentage: _____

B. Attend pre-proposal conference and assist with technical questions/issues that arise

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____

Special Tooling/Equipment: _____

Travel: _____

Subcontractor Costs, if applicable: _____

G&A Percentage: _____

Profit Percentage: _____

C. Evaluation of submitted RFPs

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____

Special Tooling/Equipment: _____

Travel: _____

Subcontractor Costs, if applicable: _____

G&A Percentage: _____

Profit Percentage: _____

Net Total for Phase 3A through Phase 3C: _____

Phase 4: Project Management

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____

Special Tooling/Equipment: _____

Travel: _____

Subcontractor Costs, if applicable: _____

G&A Percentage: _____

Profit Percentage: _____

Net Total for Phase 4: _____

Phase 5: ECCTA Staff Training

Direct Labor:

Personnel Title	Estimated Hours	Hourly Rate	Total

Labor Overhead: _____

Special Tooling/Equipment: _____

Travel: _____

Subcontractor Costs, if applicable: _____

G&A Percentage: _____

Profit Percentage: _____

Net Total for Phase 5: _____

GRAND TOTAL FOR PHASE 1 THROUGH PHASE 5: _____

IF INDIVIDUAL OR SOLE OWNER OF BUSINESS:

Signature and Printed Name

IF PARTNERSHIP OR JOINT VENTURE:

The undersigned certify that we have full and proper authority to sign this proposal form.

Partnership or Joint Venture Composed of:

Signature, Printed Name, Title, and Company Name

Signature, Printed Name, Title, and Company Name

Partnerships and Joint Ventures must complete and submit the Power of Attorney form included with these proposal documents.

IF CORPORATION:

The undersigned certify that we sign this proposal form with full and proper authorization to do so. We also have included a fully executed Power of Attorney form identifying the Managing Sponsor in our proposal packet.

Signature, Printed Name, and Title

Signature, Printed Name, and Title

The Corporation is incorporated under the laws of the State of: _____

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS. That _____ (name of partnership/joint venture/corporation) which is desirous of entering into a contract with the Eastern Contra Costa Transit Authority, do so hereby designate and appoint _____ (one of the general partners/ventures' or officer of the corporation) hereinafter called the "Managing Sponsor," as their true and lawful attorney with the power, on their behalf and in the name and on behalf of the _____ (name of partnership/joint venture/corporation), to execute a proposal for RFP #2022-01 and to execute and enter into a contract with the Eastern Contra Costa Transit Authority, and to represent and bind the partnership/joint venture/corporation, in all matters in connection with such proposal and contract, and the undersigned specifically acknowledge and agree that the execution of such proposal or contract by the Managing Sponsor shall constitute the agreement of each general partner/venturer/corporation to be jointly and severally liable for any and all of the duties and obligations of the partnership/joint venture/corporation arising from such proposal or contract.

In witness whereof the undersigned have executed this Power of Attorney this ____ day of _____, 20__.

Company Name: _____

By: _____

Title: _____

Subscribed and Sworn to before me

This ____ day of _____, 20__.

Notary Public in and for State of _____

Residing at _____

Section 8

Required Certifications

Required Certifications

All forms must be properly signed and notarized (as required) and returned with the Proposal Form.

- Affidavit Concerning Conflicts of Interest and Non-Competitive Practices
- Americans with Disabilities Acts
- Certification Concerning Control of Employee or Contractor
- Certification of Current Cost or Pricing Data
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- Certification Regarding Workers' Compensation
- Designation of Subcontractors and DBEs
- Disclosure of Governmental Positions
- Drug-Free Workplace Certification
- Fair Employment Practices Certificate
- Fly America Requirements
- Incorporation of Federal Transit Administration (FTA) Terms
- Lobbying Certification for Contracts, Grants, Loans, and Cooperative Agreements
- Non-Collusion Affidavit

**AFFIDAVIT CONCERNING CONFLICTS OF INTEREST AND
NON-COMPETITIVE PRACTICES**

State of: _____

County of: _____

A. **Conflict of Interest.** That the proposer by entering into this contract with ECCTA to perform or provide work, services or materials to ECCTA has thereby covenanted, and by this affidavit does again covenant and assure that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any such interest, which conflicts in any manner or degree with the services required to be performed under this contract and that it shall not employ any person or agent having any such interest. In the event that the proposer or its agents, employees or representative hereafter acquires such a conflict of interest, it shall immediately disclose such interest to ECCTA and take action immediately to eliminate the conflict or to withdraw from this contract, as ECCTA may require.

1. **Contingent Fees and Gratuities.** That the proposer, by entering into this contract with ECCTA to perform or provide services or material for ECCTA has thereby covenanted, and by this affidavit does again covenant and assure: That no person or selling agency except bona fide employees or designated agents or representative of the proposer has been employed or retained to solicit or secure this contract with an agreement or understanding that a commission, percentage, brokerage or contingent fee would be paid; and
2. That no gratuities, in the form of entertainment, gifts or other, were offered or given by the proposer or any of its agents, employees or representatives, to any official, member or employee of ECCTA or other governmental agency with a view toward securing this contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this contract.
3. That no contracts of communication or lobbying efforts were made by proposer, its agents or officer with any member of the Board of Directors or staff of ECCTA with regard to this process.

Company Name

By

Title

Subscribed and Sworn to before me
This _____ day of _____, 20____.

Notary Public in and for State of _____

Seal _____

AMERICANS WITH DISABILITIES ACT

The contractor and any of its subcontractors under this contract agree to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. Sections 12101 **et seq.**; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794; 49 U.S.C. Section 5301(d); and the following regulations and any Addendums thereto.

Authorized Signature: _____

Date: _____

CERTIFICATION CONCERNING CONTROL OF EMPLOYEES

The proposer, by entering into this contract with ECCTA to perform or provide work, services, or materials to ECCTA, does hereby certify and assure that in performing the services under this contract, the proposer shall act as an independent proposer and shall have full control of the work and proposer's employees. Proposer, and its employees, in no circumstances whatsoever shall imply or be considered as an agent(s) or employee(s) of ECCTA. Proposer employees in no circumstances shall be entitled to part of any pension plan, insurance, bonus or any similar benefits which ECCTA provides its own employees.

Any infraction of this certification shall be cause for termination of this contract.

PRINTED NAME

SIGNED

AUTHORIZED REPRESENTATIVE OF PROPOSER

TITLE

DATE

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of architectural and engineering consulting services are accurate, complete, and current as of _____. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm: _____

Signature: _____

Name: _____

Title: _____

Date of execution: _____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

(Pursuant to 49 C.F.R. Part 29, Appendix B)

By signing and submitting this proposal, the proposer is providing the signed certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

The proposer shall provide immediate written notice to the Eastern Contra Costa Transit Authority if at any time the proposer learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms “*covered transaction*,” “*debarred*,” “*suspended*,” “*ineligible*,” “*lower tier covered transaction*,” “*participant*,” “*person*,” “*primary covered transaction*,” “*principal*,” “*proposal*,” and “*voluntarily excluded*,” as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 (49 C.F.R. Part 29). You may contact the Eastern Contra Costa Transit Authority for assistance in obtaining a copy of those regulations.

The proposer agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the department of agency with which this transaction originated.

The proposer further agrees by submitting this proposal that it will include the clause entitled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion”, as set out below in Subsection (B), in all subcontracts and in all solicitations for lower tier covered transactions as modified to identify the sub-contractor.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge

and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 4 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

1. The proposer certifies, by submission of this proposal or bids, that neither it nor its “principals,” as defined at 49 C.F.R. § 29.105(p), is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. If proposer is unable to certify to the statements in this certification, proposer shall attach an explanation to this proposal.

_____ Firm Name

_____ Signature of Authorized Official

_____ Name and Title of Authorized Official

_____ Date

CERTIFICATE REGARDING WORKERS' COMPENSATION

Contract with the EASTERN CONTRA COSTA TRANSIT AUTHORITY, 801 Wilbur Avenue, Antioch, California 94509, for the consultation services for the design and installation of a hydrogen fuel station.

RFP #2022-01

Labor Code Section 3700:

“Every employer, except the State, and all political subdivisions or institutions thereof, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers, duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to employees.”

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker’s compensation or to undertake self-insurance. In accordance with the provisions of that code, I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____, 20____.

BY: _____

OFFICIAL TITLE: _____

(SEAL)

(Labor Code Section 1861, provides that the above certificate must be signed and filed by the proposer with the Authority prior to performing any work under this contract.)

DESIGNATION OF SUBCONTRACTORS AND DBES

Pursuant to 49 CFR Part 26, the Proposer must list on this form all DBEs to be used regardless of the dollar value of the work the DBE will perform.

Pursuant to California Public Contract Code Section 4100 et seq., the following list gives the name, business address, and portion of work (description of work to be done) for each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvements, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specifically fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of one percent of the prime contractor's total proposal or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of one percent of the prime contractor's total proposal or ten thousand dollars (\$10,000), whichever is greater.

Pursuant to 49 C.F.R. Part 26.11c, the following list will also provide the age and annual gross receipts for each subcontractor, both DBE and non-DBE.

Bidders' attention is directed to page 19 of the General Conditions. All subcontractors (DBEs and non-DBEs) are subject to the requirements of this section.

Attach additional copies of this form if more space is needed and paginate the forms (i.e., Page ___ of ____). Attach a copy of DBE certifications for all DBE subcontractor and suppliers listed.

Only 49 C.F.R., Part 26 certification accepted.

Name and Location of business	Description of Portion of Work or Services Subcontracted	Value of Subcontracted Work or Service	Age of Firm?	Annual Gross Receipts (check one)	DBE?
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000- \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	

Authorized Signature: _____

Date: _____

DESIGNATION OF SUBCONTRACTORS AND DBES (CONTINUED)

Name and Location of business	Description of Portion of Work or Services Subcontracted	Value of Subcontracted Work or Service	Age of Firm?	Annual Gross Receipts (check one)	DBE?
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000- \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	
				<input type="checkbox"/> \$0 - \$500,000 <input type="checkbox"/> \$500,000 - \$1mil <input type="checkbox"/> \$1 mil or more	

DRUG-FREE WORKPLACE CERTIFICATION

Company Name: _____

The contractor named above hereby certifies compliance with U.S. DOT regulations 49 C.F.R. Part 29, Subpart F and Government Code Section 8355 in matters relating to providing a drug-free workplace. The above named contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations of the prohibition
2. Establish a Drug-Free Awareness Program as required to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace,
 - b. The person's or organization's policy of maintaining a drug-free workplace,
 - c. Any available counseling, rehabilitation and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations
3. Every employee who works on the proposed contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment on the contract; and
 - c. Notify the employer (proposer) in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after the conviction
4. Notify the Federal Transit Administration (FTA) in writing within 10 calendar days after receiving notice required by paragraph 3(c) from an employee or otherwise receiving actual notice of that conviction. The proposer, as employer of any convicted employee, must provide notice, including position title, to every project officer or otherwise designee on whose project activity the convicted employee was working. Notice shall include the identification number(s) of each affected vehicle and related equipment and accessories.
5. Taking one of the following actions within 30 calendar days of receiving notice under paragraph 3 (c) with respect to any employee who is convicted:
 - a. Taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - b. Requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
6. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs 1, 2, 3, 4, and 5 of this certification. The proposer agrees to maintain a list of identifying its headquarters location and each workplace it maintains in which activities provided by this contract are conducted, and make that list readily accessible to the State Department of Transportation.

CERTIFICATION

I, the official named below, hereby swear that I am duly authorized legally to bind the contractor to the above described certification. I am fully aware that this certification, executed on the date and in the county below, is made under penalty of perjury under the laws of the State of California.

OFFICIAL'S NAME

DATE EXECUTED

EXECUTED IN THE COUNTY OF

SIGNATURE

TITLE

FAIR EMPLOYMENT PRACTICES CERTIFICATION

In connection with the performance of work under this contract, the proposer agrees as follows:

1. The proposer will not willfully discriminate against any employer or applicant for employment because of race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disabilities, marital status, or medical condition as defined in Government Code §12926. The proposer will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religious creed, ancestry, national origin, age, sex, physical disability, mental disability, marital status, or medical condition as defined in Government Code §12926. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. The proposer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this Fair Employment Practices section.
2. The proposer will send to each labor union or representative workers with which it has a collective bargaining agreement or other contract or understanding, a notice, advising the said labor union or workers' representative of the proposer's commitments under this section; and the proposer shall post copies of the notice in conspicuous places available to employees and applicants for employment.
3. The proposer will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Fair Employment Practices Commission, ECCTA or any other appropriate agency of the State of California designated by ECCTA for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract.
4. A finding of willful violation of the Fair Employment Practices section of this contract or of the Fair Employment Practices Act shall be regarded by ECCTA as a basis for determining the proposer to be not a "responsible proposer" as to future contracts for which such proposer may submit proposals, for revoking the proposer's pre-qualification rating, if any, and for refusing to establish, re-establish, or renew a pre-qualification rating for the proposer.

ECCTA shall deem a finding of willful violation of the Fair Employment Practices Act to have occurred upon receipt of written notice from the Fair Employment Practices Commission that it has investigated and determined that the proposer has violated the Fair Employment Practices Act and has issued an order under Government Code §12970 or obtained a court order under Government Code §12973.

Upon receipt of such written notice from the Fair Employment Practices Commission, ECCTA shall notify the proposer that, unless it demonstrates to the satisfaction of ECCTA within a stated period that the violation has been corrected, the proposer's pre-qualification rating will be revoked.

5. The proposer agrees that should ECCTA determine that the proposer has not complied with the Fair Employment Practices section of this contract then, pursuant to Labor Code Section 1735 and 1775, the proposer shall, as a penalty to ECCTA, forfeit, for each calendar day, or portion

thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the labor code for violation of prevailing wage rates. Such monies may be recovered from the proposer. ECCTA may deduct any such damages from any monies due the proposer.

6. Nothing contained in this Fair Employment Practices section shall be construed in any manner of fashion as to prevent ECCTA from pursuing any other remedies that may be available at law.
7. Prior to award of the contract, the proposer shall certify to ECCTA that it has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by ECCTA.
 - a. The proposer shall provide evidence, as required by ECCTA, that it has notified all supervisors, foremen and other personnel officers, in writing, of the content of the anti-discrimination clause and their responsibilities under it.
 - b. The proposer shall provide evidence, as required by ECCTA, that it has notified all sources of employee's referral (including unions, employment agencies, advertisements, Employment Development Department) of the content of the anti-discrimination clause.
 - c. The proposer shall file a basic compliance report as required by ECCTA. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire or whether or not to hire.
 - d. Personally, or through its representatives, the proposer shall, through negotiations with the unions with whom it has agreements, attempt to develop an agreement which will:
 - i. Spell out responsibilities for nondiscrimination in hiring, referral, upgrading, and training.
 - ii. Otherwise implement an affirmative anti-discrimination program in terms of the unions' specific areas of skill and geography to the end that qualified minority workers will be available and given an equal opportunity for employment.
 - e. The proposer shall notify ECCTA of opposition to the anti-discrimination clause by individuals, firms, or organizations during the period of its pre-qualification.
8. The proposer will include the provisions of the foregoing Paragraphs 1 through 7 in every first tier subcontract so that such provisions will be binding upon each subconsultant.
9. Statement and Payrolls. The proposer shall maintain its records in conformance with the requirements included in the Information to Bidders and the following Special Conditions:
 - a. The submission by the proposer of payrolls, or copies thereof, is not required. However, each proposer and sub-contractor shall preserve their weekly payroll records for a period of three years from the date of completion of this contract.
 - b. The payroll records shall contain the name, address and social security number of each employee, his/her correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made, and actual wages paid.
 - c. The proposer shall make its payroll records available at the project site for inspection by ECCTA and shall permit ECCTA to interview employees during working hours on the job.

The following certification is to be executed by every proposer and enclosed and forwarded in a sealed envelope containing the proposal. The person signing the certification shall state his/her address and official capacity.

FAIR EMPLOYMENT PRACTICE CERTIFICATION

The undersigned, in submitting a proposal for performing work as specified in the Scope of Work hereby certifies that the proposer will meet the above standards of affirmative compliance with the Fair Employment Practices Act.

PROPOSER

SIGNATURE

PRINTED NAME OF SIGNER

TITLE

MAILING ADDRESS

CITY	STATE	ZIP CODE
------	-------	----------

TELEPHONE NUMBER

DATE

FLY AMERICA REQUIREMENTS

_____ agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 C.F.R. Part 301 – 10, which provide that recipients and sub-recipients of federal funds and their bidders 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. _____ shall submit, if a foreign air carrier was used, an appropriate certification of 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. _____ agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

Signed

Title

Date

Attest

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA)
TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated April 14, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. _____ shall not perform any act, fail to perform any act, or refuse to comply with any ECCTA requests which would cause ECCTA to be in violation of the FTA terms and conditions.

Signed

Title

Date

Attest

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.

Identify the status of the covered federal action.

Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.

Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or sub award recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Sub awards include but are not limited to subcontracts, sub grants and contracts and contract awards under grants.

If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional District, if known.

Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".

For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

- a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered federal action.

- b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a).

Enter Last Name, First Name, and Middle Initial (MI).

Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned).

Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

The certifying official shall sign and date the form, print his/her name, title and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503
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LOBBYING CERTIFICATION FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS

(Pursuant to 49 C.F.R. Part 20, Appendix A)

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

- (1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, Addendum, or modification of any federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government Wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

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

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

Signature of Authorized Official

Name and Title of Authorized Official

Date

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Reporting Entity:

Page

of

Authorized for Local Reproduction
Standard Form - LLL - A

BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C;
8025-01-C; 7510-01-C; 3510-FE-C; 8120-01-C; 4710-24-C;
6116-01-C; 6051-01-C; 8230-01-C; 3210-01-C; 4210-32-C;
4410-18-C; 4510-23-C; 4810-25-C; 3001-01-C; 4000-01-C;
3820-01-C; 6560-50-C; 6820-61-C; 4310-RF-C; 6718-01-C;
4150-04-C; 7555-01-C; 7537-01-C; 7536-01-C; 6050-28-C;
4910-62-C

NON-COLLUSION AFFIDAVIT

PUBLIC CONTRACT CODE SECTION 7106

NON-COLLUSION DECLARATION TO BE EXECUTED BY PROPOSER AND SUBMITTED WITH PROPOSAL

The undersigned declares:

I am the _____ of _____, the party making the foregoing proposal.

The proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The proposal is genuine and not collusive or sham. The proposer has not directly or indirectly induced or solicited any other proposer to put in a false or sham proposal. The proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the proposal price of the proposer or any other proposer, or to fix any overhead, profit, or cost element of the proposal price, or of that of any other proposer. All statements contained in the proposal are true. The proposer has not, directly or indirectly, submitted his or her proposal price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, proposal depository, or to any member or agent thereof, to effectuate a collusive or sham proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state].

PROPOSER'S SIGNATURE: _____

DATE: _____

Section 9

Sample Contract

Sample Contract

This CONTRACT, is made and entered into this _____ day of _____ by and between the Eastern Contra Costa Transit Authority (hereinafter referred to as ECCTA), an entity formed under the California Joint Exercise of Powers Act, California Government Code Sections 6500 et seq., and _____ (hereinafter referred to as “Contractor”), a company in good standing under the laws of the State of California.

NOW THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Contract Specifications

Contractor shall furnish ECCTA all labor, equipment, supplies, material, and services as specified in, and in full accordance with, the Request for Proposal as issued by ECCTA and as described in the contractor’s proposal, dated _____ (“Work”).

2. Term of Contract

The Work shall be completed and ready for ECCTA’s acceptance within _____ calendar days after receiving the Notice to Proceed with the Work.

3. Contract Sum

ECCTA agrees to pay, and the Contractor agrees to accept, in full payment for the above work, the sum \$_____. \$_____ is to paid in accordance with the contract documents.

4. Contract Documents

The following contract documents relating to this Contract are hereby made a part of and incorporated by reference into this contract:

- a. This contract
- b. RFP #2022-01
- c. The contractor’s proposal

Any work called for in one contract document not mentioned in another is to be performed and executed the same as if mentioned in all contract documents.

This contract (including all documents referred to above and incorporated herein) represents the entire and integrated contract between ECCTA and Contractor for the Work and supersedes all prior negotiations, representations, or contracts, either written or oral. This document may be amended only by written contract between the parties as provided in the contract documents.

5. Liquidated Damages

As liquidated damages for delay Contractor shall pay ECCTA \$500.00 for each day that expires after the time specified for Contractor to achieve substantial completion of the entire Work, until achieved, unless the delay is caused by an Excusable Delay.

Excusable Delays include only the following, to the extent not caused by the fault or negligence of contractor: fire, flood, earthquake, acts of ECCTA, acts of another contractor (not a contractor subcontractor) in the performance of a contract with ECCTA, epidemics, quarantine restrictions, strikes, freight embargoes (not freight delays by a contractor subcontractor or supplier), and adverse weather.

6. Workers' Compensation

By executing the contract, Contractor certifies as follows:

“I am aware of the provisions of Section 300 of the Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the Work of this contract.”

7. Injury and Illness Prevention Program

Contractor certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

8. Equal Employment Opportunity

Contractor is an equal opportunity employer and agrees to comply with all applicable state and federal regulations governing equal employment opportunity. Contractors will not discriminate against any employee or applicant for employment because of race, color, national origin, ancestry, sex, gender, sexual orientation, gender expression, gender identity, religious creed, age, medical condition, disability, genetic information, marital status, or military and veterans status.

Contractor will take affirmative action to ensure the applicants are treated during such employment without regard to race, color, national origin, ancestry, sex, gender, sexual orientation, gender expression, gender identity, religious creed, age, medical condition, disability, genetic information, marital status, or military and veterans status. Such action shall include, but shall not be limited to, the following: employment, promotion, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

9. Interest of Members and Employees of ECCTA

No member of ECCTA and no other officer, employee, or agent of ECCTA who exercises any functions or responsibilities in connection with the carrying out of any project to which this contract pertains, shall have any personal interest, direct or indirect, in this contract, nor shall any such person participate in any decision relating to this contract which affects their personal interests or the interest of any corporation, partnership or association in which they are directly or indirectly interested.

10. Liability of Members and Employees of ECCTA

ECCTA retains all rights of approval and discretion with respect to the projects and undertakings contemplated by this contract. Contractor, its officers, employees and agents shall not have any power to bind or commit ECCTA to any decision.

11. Independent Contractor

It is understood that Contractor, in the performance of the Work and services agreed to be performed by Contractor, shall act as and be an independent contractor and not an agent or employee of ECCTA; and as an independent contractor, Contractor shall obtain no rights to retirement benefits or other benefits which accrue to ECCTA’s employees, and Contractor hereby expressly waives any claim it may have to any such rights.

12. Compliance with Laws

Contractor shall comply with all applicable federal, state and local laws, codes, ordinances and regulations. Contractor represents and warrants to ECCTA that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for Contractor to perform the Work. Contractor represents and warrants to ECCTA that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this contract any licenses, permits, insurance and approvals which are legally required for Contractor to perform the Work.

13. Confidential Information

All data, documents, discussions, or other information developed or received by or for Contractor in performance of this contract are confidential and are not to be disclosed to any person except as authorized by ECCTA, or as required by law.

14. Assignment Prohibited

Contractor may not assign any right or obligation pursuant to this contract. Any attempted or purported assignment of any Contractor right or obligation hereunder shall be void and of no effect.

15. Notices

Any notices to be given by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage pre-paid, return receipt requested. Mailed notices shall be addressed to the parties at the addresses set forth below, but each party may change its address by written notice in accordance with this paragraph. Notices delivered personally shall be effective immediately. Notices sent by mail shall be effective one day after mailing.

ECCTA:

Jeanne Krieg
Chief Executive Officer
801 Wilbur Avenue
Antioch, CA 94509

CONTRACTOR:

16. Contractor's Books and Records

Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks and other records or documents evidencing or relating to charges for services or expenditures and disbursement charged to ECCTA for a minimum period of three years, or for any longer period required by law, from the date of final payment to Contractor to this contract.

Contractor shall maintain all documents and records which demonstrate performance under this contract for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this contract.

Any records or documents required to be maintained pursuant to this contract shall be made available for inspection or audit, at any time during regular business hours, upon written request by ECCTA's Attorney, ECCTA's Auditor, ECCTA's CEO, or a designated representative of any of these officers. Copies of such documents shall be provided to ECCTA for inspection at ECCTA's offices when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this contract.

Where ECCTA has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, ECCTA may, by written request by any of the above-named officers, require that custody of the records be given to ECCTA and that the records and documents be maintained at ECCTA's offices. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

17. Validity

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

18. Governing Law

This contract shall be governed by and construed in accordance with the laws of the State of California, including that State's statutes of limitation but excluding its conflict of law principles. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Contra Costa, California.

19. Severability

If any provision of this contract is declared void or unenforceable, such provision shall be deemed severed from this contract, which shall otherwise remain in full force and effect.

20. Attorney's Fees

In the event that it becomes necessary for either party to bring a lawsuit to enforce any provisions of the contract, the parties agree that the court having jurisdiction over such disputes shall have the authority to determine and fix reasonable attorney's fees to be paid to the prevailing party.

21. Subject to Disbursement of Funding

This contract shall be subject to disbursement to ECCTA by the United States Department of Transportation of funds previously allocated to ECCTA.

22. Waiver

Failure of any party to exercise any right or option arising out of a breach to this contract shall not be deemed a waiver of any right or option with respect to any subsequent or different breach, or the continuance of any existing breach.

23. Execution

This contract may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties hereto. In approving this contract, it shall not be necessary to produce or account for more than one such counterpart.

24. News Releases/Interviews

All Contractor and subcontractor news releases, media interviews, testimony at hearings and public comment shall be prohibited unless expressly authorized by ECCTA.

25. Prompt Payment to Subcontractors

The Contractor shall pay any permitted subcontractors for work that has been satisfactorily performed no later than 10 business days from the date of Contractor's receipt of progress payment from ECCTA. Within 10 business days of satisfactory completion of all work required of the subcontractor, Contractor shall release to the subcontractor any retainage payments withheld.

Any delay or postponement of payment to subcontractors for satisfactory work performance may take place only for good cause and with ECCTA's prior written approval. If the Contractor determines the work of the subcontractor to be unsatisfactory, it must notify ECCTA's project manager and CRA immediately in writing and state the reasons.

If the Contractor fails or refuses to comply with requirements of this prompt payment clause, ECCTA will issue an order stopping all or part of the payment or work until satisfactory action is taken. If the Contractor still fails to comply, ECCTA may issue a termination for default proceeding.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTOR'S STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE

COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OF OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION.

A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR CONTRACTOR'S STATE LICENSE BOARD: P.O. BOX 26000, SACRAMENTO, CA 95826.

This contract is executed by ECCTA upon approval by the Board of Directors at its regular scheduled meeting of _____, and the Contractor has caused this contract to be duly executed.

For ECCTA:

Dated: _____

By: _____
Jeanne Krieg, Chief Executive Officer

For Contractor:

Dated: _____

By: _____

Approved as to Legal Form and Content:

By: _____
Benjamin Stock, General Counsel, ECCTA

Date: _____