



REQUEST FOR QUOTATION RFQ

CEQA and NEPA ENVIRONMENTAL ANALYSIS

Purchasing Division, Care of CITY Clerk's Office
CITY of Commerce
2535 Commerce Way
Commerce, CA 90040
Purchasing@ci.commerce.ca.us

RFP CLOSING DATE: SEPTEMBER 10, 2020
RFP CLOSING TIME: 2:00 pm PACIFIC DAYLIGHT TIME
LAST DAY TO SUBMIT QUESTIONS TO PURCHASING: AUGUST 31, 2020

SUBMITTED BY:

Company Name: _____
Address: _____
Phone No.: _____
Fax No.: _____
Contact: _____

An electronic copy of this RFQ and attachments, if any, is available from the CITY's website that navigates to Planetbids at <http://www.ci.commerce.ca.us>. The Proposer can also download the RFP directly through the CITY Planetbids website (vendor registration is required) at <http://www.planetbids.com/portal/portal.cfm?CompanyID=32906> Proposer must submit one (1) original, one (1) CD or USB drive and two (2) hard copies of the completed proposal documents. Electronic or e-mailed RFQ submissions will not be accepted.

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SECTION 1 INTRODUCTION

1.1 Overview

Introduction

CITY of Commerce Municipal Bus Lines (CMBL) is requesting Quotations from qualified consultants to prepare the environmental analysis required under the California Environmental Quality Act and the National Environmental Policy Act for a proposed new Transit Maintenance Facility (TMF). CMBL is a municipally owned and operated public transit system that provides fixed route and dial-a-ride services for the City of Commerce (CITY). The service area is approximately 6.6 square miles, with an annual ridership of approximately six-hundred and five thousand (605K). The current CITY fleet consists of one-hundred (100) passenger vehicles and light trucks, sixty (60) trailers and lawnmowers, two (2) heavy-duty Caterpillar trucks, eleven (11), thirty-five foot (35') heavy-duty CNG transit buses, six (6) forty-foot (40') heavy-duty CNG transit buses, six (6) forty (40') heavy-duty diesel over-the-road coaches and six (6) twenty four foot (24') cutaway CNG paratransit vans, and one (1) heavy-duty CNG shop truck. Transit hours of service are Monday-Sunday 4:30 am to 10:30 pm Dial-a-ride (DAR) service operates Monday-Friday from 7 am to 5 pm.

Background

The site for the proposed new TMF location is 5926 Sheila Street, Commerce, CA 90040. The site is located just South of Sheila Street, between S. Eastern Avenue and Interstate 5, in the CITY of Commerce in Los Angeles County. The site formerly Commerce Refuse-to-Energy Authority (CREA) facility (Latitude: 33.994836 N Longitude: 118.153387 W) consists of 6.51 acres (283,677 ft.²).

SECTION 2 SCOPE OF WORK AND SERVICES

Statement of Services

The consultant for this project must have experience in preparing complex CEQA and NEPA documents for schools, colleges, or similar public transportation agency projects. The consultant services provided to the CITY shall include, but not be limited to the following:

1. Work with CITY staff to develop a project description at a level of detail enough to conduct the required environmental analysis. The consultant will be responsible for leading the CITY through both the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) environmental processes.
2. The CEQA environmental work will include conducting a traffic analysis, greenhouse gas and air quality analysis, and a cultural assessment for CEQA compliance. Additionally, the consultant shall advise the CITY regarding the appropriate CEQA document for the proposed project.
3. The consultant will prepare documentation under NEPA, including any analysis required to comply with EXHIBIT #4, attached hereto, Categorical Exclusion Checklist 2020.

Additional NEPA compliance includes any investigation necessary to comply with Environmental Impact and Related Procedures under Title 23: Highways under § 771.117 Categorical exclusions.

4. The consultant shall prepare an administrative draft of the appropriate CEQA document as well as the NEPA report(s). Based on input from CITY staff and legal counsel, the consultant will finalize the CEQA and NEPA documents.
5. The consultant shall prepare the necessary documentation to enable the CITY to file/record, if appropriate, a Notice of Determination of the CEQA document and other documents required in consultation with CITY staff and legal counsel.
6. If necessary, the consultant will prepare an appropriate mitigation monitoring plan.
7. The consultant will prepare documentation to assist CITY staff and legal counsel in making the necessary CEQA and/or NEPA findings for approval of the project.
8. The consultant will prepare a timeline and a detailed schedule for CEQA and NEPA document completion.

Schedule

The schedule for this project is as follows:

Issue RFQ	August 4, 2020
Questions/Clarifications Due	August 31, 2020
Quotations Due	September 10, 2020, <u>by 5:00 pm</u>

SECTION 3 INSTRUCTIONS TO PROPOSERS

1. EXAMINATION OF QUOTATION DOCUMENTS

By submitting a Quotation, Proposer represents that it has thoroughly examined and become familiar with the scope of work and all requirements under this RFQ and that it can perform quality work to achieve the CITY's objectives.

2. ADDENDA

A written addendum will be issued regarding changes to this RFQ and incorporated into the terms and conditions of any resulting Agreement. The CITY will not be bound to any verbal or oral modifications to or deviations from the requirements outlined in this RFQ.

3. CLARIFICATIONS

A. Examination of Documents

Should a potential Proposer require clarifications of this RFQ, the Proposer shall

notify the CITY in writing. Should it be found that the point in question is not clear and fully set forth, the CITY will issue a written addendum clarifying the matter and sent to all persons who have requested the RFQ.

B. Submitting Questions and/or Requests for Clarification:

All questions, clarifications, or comments must be received in writing by the CITY and be addressed to the Purchasing Manager, 2535 Commerce Way, Commerce, CA 90040. The CITY will also accept questions sent by E-mail no later than the date/time specified above at purchasing@ci.commerce.ca.us. E-mail is the preferred method for receiving questions and/or clarifications.

C. CITY Responses

Responses from the CITY will be in the form of a written Addendum, if appropriate, to provide information to all potential Proposers.

4. SUBMISSION OF QUOTATION

A. Date and Time

Quotations must be submitted or before September 10, 2020, by 5:00 pm, local time.

Quotations received after the above-specified date and time will not be considered and will be returned unopened.

B. Address

Quotations must be marked on the exterior as "CEQA and NEPA Environmental Analysis RFQ" and addressed to:

CITY of Commerce
Attn: Purchasing Division, Care of City Clerk's Office
2535 Commerce Way
Commerce, CA 90040

Facsimile (FAX) or E-mail Quotations will not be accepted or considered.

C. Identification of Quotations

Proposer shall submit one (1) original, one (1) CD or USB drive and two (2) hard copies of the completed proposal documents in a sealed package, addressed, as shown above, bearing the Proposer's name and return address.

D. Acceptance of Quotation

1. The CITY reserves the right to accept or reject Quotations, or any item or part

thereof, or to waive any informalities or irregularities in Quotations.

2. The CITY reserves the right to withdraw this RFQ at any time without prior notice, and the CITY makes no representations that any contract will be awarded to any Proposer responding to this RFQ.

3. The CITY reserves the right to postpone Quotation openings for its convenience.

E. Failure to Respond

The CITY reserves the right to remove from its mailing lists for future RFQs, for an undetermined period-of-time, the name of any Proposer for failure to accept a contract, failure to respond to two (2) consecutive RFQs and/or unsatisfactory performance. Please note that a "No Bid" or a "Decline to Bid" is considered a response.

5. PRE-CONTRACTUAL EXPENSES

Pre-contractual expenses are defined as expenses incurred by Proposer in any of, but not limited to, the following:

1. Preparing its Quotation in response to this RFQ.
2. Submitting Quotation to the CITY.
3. Negotiating with the CITY any matter related to this Quotation.
4. Any other expenses incurred by Proposer before the date of the contract award.

The CITY shall not, in any event, be liable for any pre-contractual expenses incurred by Proposer in the preparation of its Quotation. Proposer shall not include any such fees as part of its Quotation.

6. JOINT OFFERS

Where two or more Proposers desire to submit a single Quotation in response to this RFQ, they should do so on a prime contractor/sub-contractor basis rather than as a joint venture. The CITY intends to contract with a single firm, and that firm may have agreements with other firms. This information must be disclosed and referenced as part of the RFQ response.

SECTION 4 QUOTATION REQUIREMENTS AND CONTENT

A. QUOTATION REQUIREMENTS

Specifically, Quotations shall include the following information presented in clear, comprehensive, and concise narrative statements.

B. Part I Technical Quotation

Shall contain the following sections:

1. Quotation Transmittal Letter including e-mail address;
2. Proof of insurance and/or other financial resources;
3. Narrative discussion and response to each Technical Evaluation Criteria.
4. Completed Exhibits 1 and 2, accompanied by appropriate responses and documentation.

C. Part II Cost Quotation

Submit a fully developed cost for services required in the scope of work/services in this RFQ, along with a suggested timeline and payment milestones as work/services are delivered.

D. QUOTATION FORMAT AND CONTENT

1. Presentation

Quotations shall be typed and submitted on 8 1/2" x 11" size paper, using a single method of fastening. They should not include any unnecessarily elaborate or promotional materials, and lengthy narratives are discouraged. The body of the submittal should not exceed ten (10) pages in length, not including examples of work product, letter of transmittal, or any Exhibits or Certificates/Affidavits.

2. Letter of Transmittal

A Letter of Transmittal shall be addressed to the Purchasing Manager, at a minimum, contain the following:

- a. Identification of Proposer, including name and mailing address;
- b. Proposed working relationship between Proposer and subcontractors, if applicable;
- c. Acknowledgment of receipt of all RFQ addenda, if any;
- d. Name, title, address, and telephone number of contact person during the period of Quotation evaluation.
- e. A statement to the effect that the Quotation shall remain valid for not less than 90 days from the date of submittal.
- f. Signature of a person authorized to bind Proposer to the terms of the Quotation.

3. Technical Quotation

This section of the Quotation should establish the ability of Proposer to satisfactorily perform the required work by reasons of experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; workload; a record of meeting deliverables on a timely manner on similar projects; and supportive client references.

Qualifications, Related Experience, and References for Proposer

Proposer shall:

- (1) Provide a brief resume, including the types of services offered; the year founded; a form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and the number of employees.
- (2) Describe the firm's experience in performing work of a similar nature to that solicited in this RFQ.
- (3) Provide a minimum of three (3) references.

4. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFQ, segregating "technical" exceptions from "contractual" exceptions. Where Proposer wishes to propose alternative approaches to meeting the CITY's technical or contractual requirements, these should be thoroughly explained to allow adequate evaluation by the CITY. Identify any exceptions/deviations and attach the narrative with Attachment "B."

Such exceptions/deviations will be considered in evaluating Quotations and shall, if acceptable to the CITY, will be incorporated into the final contractual Agreement.

5. Appendices

Information considered by the Proposer to be pertinent to this project and not solicited explicitly in any of the sections mentioned above may be submitted. However, Proposers are cautioned that this does not constitute an invitation to provide large amounts of extraneous materials, nor does it guarantee any consideration by CITY.

E. REQUIRED COMPONENTS OF QUOTATION

To be considered a responsive Quotation, Proposer must submit all of the following:

1. Completed Letter of Transmittals with all requested information
2. Required Forms/Certifications/Affidavits/Exhibits
3. Technical Quotation

SECTION 5 EVALUATION CRITERIA, QUOTATION EVALUATION, AND AWARD

A. Evaluation Criteria

All Quotations received as specified will be evaluated by an Evaluation Committee comprised of CITY Staff. Part 1 Technical Narrative Quotations will be reviewed with the primary focus on Technical Evaluation Criteria only. The price will not be a factor during the Technical Narrative evaluation process. For additional details, Quotation Evaluation Process below.

The CITY will evaluate Technical Narrative Quotations using the following criteria and corresponding weight:

<i>Criterion</i>	<i>Value</i>
a. Organizational management and business plan: Proposer's understanding of the project and the CITY's operating environment.	30%
b. Past performance and quality of services: Previous experience with projects of similar scope and nature.	30%
c. Quality Assurance: Ability of the proposed task plan to meet the CITY's objectives.	20%
d. Qualification of crucial personnel: Work Study Samples.	10%
e. Reference Check: Results of reference check.	10%

1. Technical Evaluation Criteria.

Technical Evaluation Criteria will be considered in descending order of importance except for Technical Evaluation Criteria a, b, and c, which is to be considered equal in value. The value of "d" and "e" descend in order of importance:

a. **Organizational management and business plan are** demonstrating an understanding of technical requirements and comprehension of the services to be provided.

- 1) General description of the Proposer, including primary business, other affiliated business or services, type of organization (joint venture, corporation, sole proprietor, etc.), and other descriptive material.
- 2) Proposer's professional and technical qualifications, experience, and communication skills that will be brought to this Contract. Tell us how you will manage and apply deliverables.
- 3) Furnish a procedural plan on how work will be processed to enable the CITY to evaluate your performance.

- 4) Adequacy of Proposer's submitted technical Quotation. Evaluators will look to see how well Proposer's submittals address the following: Does Quotation present and address all requested elements of the RFQ? Are individual components expressed fully and clearly with required supporting documentation?
- 5) You have demonstrated the ability to provide reports and PowerPoint demonstrations to CITY staff and/or CITY officials.

b. Past performance and quality of services. Proposer Qualifications and References (Exhibit-2) should be completed with three (3) current references for similar projects; and three (3) for completed projects. Public agency organizational references need to be provided whenever possible.

c. Quality Assurance.

- 1) Provide narrative descriptions of the approaches and procedures to be used to meet overall Scope of Service requirements.
- 2) Provide a sample Quality Assurance plan featuring communication with CITY resolution processes, follow-up procedures, and other accountable measures in compliance with the RFQ Quality Assurance clause.
- 3) Submit a typical scope of services timeline schedule – presenting a clear understanding of the CITY requirements and deliverables.
- 4) Describe outstanding or prior lawsuits, claims, liens, or judgments.

d. Qualification of crucial personnel.

Work-Study Samples: Two (2) executive overview sample studies developed for current Proposer customers most closely paralleling the RFQ, Scope of Services.

B. Quotation Evaluation Process.

Quotations will be evaluated based on the following criteria:

1. Evaluation is an assessment of both the Quotation and the Proposer's ability to accomplish the prospective Scope of Services and to comply with contract terms and conditions.
2. All Quotations are first evaluated and ranked on Technical Evaluation Criteria responses.
3. Quotations determined technically acceptable are re-evaluated with cost as a consideration.
4. Using a combination of both technical and cost evaluations, Quotations are ranked to establish a competitive range.

5. The CITY may negotiate with all responsible proposers in the competitive range. Or, at its sole discretion, hold clarification discussions with only one of those responsible proposers in the competitive field. Proposers should be aware, that award may be made without interviews or further discussion.

C. Award

1. The CITY reserves the right to award without written, oral discussions or negotiations; Proposers are encouraged to submit their best technical and price offer; the CITY intends to award its total requirements to one Proposer. Negotiations may or may not be conducted with Proposers. Therefore, any Quotation submitted should contain Proposer's most favorable terms and conditions, since the selection and award may be made without subsequent discussion and/or interview(s) with any Proposer.
2. The CITY will award to the Proposer whose Quotation is most advantageous to the CITY, considering cost and other criteria.
3. The intent is to award a single contract to the responsible Proposer presenting the lowest cost, responsive Quotation, and a qualified offer. The CITY may negotiate contract terms with the selected firm before award and expressly reserves the right to negotiate with several Proposers simultaneously and, after that, to award a contract to the Proposer offering the most favorable terms to the CITY. The Contract awarded will follow the outline of the "Sample Contract" presented in Exhibit 3 of this RFQ, as modified to reflect negotiated changes and applicable provisions of this RFQ.
4. All Quotations may be rejected if such action is determined to be in the best interest of the CITY.

D. Quality Assurance

Within 20 days of contract award, the Contractor shall establish a quality control program to ensure that the requirements of the Contract are performed and provided as specified and shall state how the quality of performance will be monitored. This program shall include procedures to be approved by the CITY Project Manager before implementation and shall consist of a self-inspection method covering all the services to be performed under the Contract.

The program shall also include a method for monitoring, identifying, and correcting deficiencies in the quality of services furnished to the CITY before levels of performance become unsatisfactory. The CITY Program Managers shall be notified of all corrective actions taken through a Contractor's report.

E. Contract Administration

The CITY Project Manager will administer the operational aspects of the Contract. Changes to the Scope of Services, contract cost, quantity, quality, or delivery schedules shall be coordinated with the Project Manager and will be made official by an adequately executed modification. Any proposed change, modification, and all correspondence that in any way concerns the terms and conditions of this Contract shall be submitted directly to the Project Manager at the CITY. The

Contractor shall immediately notify the Project Manager of any occurrence or condition that interferes with the full performance of the Contract. If notification is through telephone exchange, the Contractor is required to follow with a written notification within twenty-four (24) hours of the occurrence.

F. Project Manager

The Project Manager will be the primary point of contact for the CITY in coordinating contract management with the Contractor. Technical project questions, issues, and requests for clarifications should be directed to:

Director of Transportation
Claude McFerguson 5555 Jillson Street Commerce, CA 90040 ClaudeM@ci.commerce.ca.us 323-887-4419 Ext. 2235

All issues, decisions, or potential contract changes in conflict with any term and/or condition of the Contract are to be coordinated with the Purchasing Manager before a final determination.

SECTION 6 GENERAL TERMS AND CONDITIONS

1.0 QUOTATION ACCEPTANCE PERIOD

Quotations are valid for a period of 90 days after opening.

2.0 RIGHTS RESERVED

2.1 Rejection

The CITY reserves the right to reject any or all Quotations or any part thereof, or to accept any Quotation or any part thereof, or to waive any informality in any Quotation, deemed to be the best interest of the CITY.

2.2 Cover

Should the successful Proposer fail to comply with the conditions of this Quotation or fail to complete the requirements of the Quotation, the CITY reserves the right to complete the required work, at the expense of the Contractor.

2.3 Severability

If any provision, or any portion of any provision, of any contract resulting from this Quotation shall be held invalid, illegal or unenforceable, the remaining provisions or portions of any provisions shall be valid and enforceable to the extent possible.

3.0 PROHIBITED INTERESTS

- 3.1 By submitting a Quotation, the Proposer represents and warrants that neither the CITY Director of Economic Development and Planning, nor any CITY employee has interest directly or indirectly in the Quotation or in the Contract which may be awarded under it, or in any expected profits to arise.
- 3.2 No member, officer, or employee of CITY or any public entity during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in the Contract to be awarded.

4.0 CONTRACT

Proposer's signed Quotation and written acceptance by the CITY shall constitute a Contract.

5.0 PROPOSER AGREEMENT

Submission of a signed Quotation will be interpreted to mean that Proposer has hereby agreed to all the terms and conditions set forth in this document.

6.0 STATEMENT OF EXPERIENCE AND QUALIFICATIONS

The Proposer may be required upon request of the CITY to prove to his/her satisfaction that their firm has the skill and experience and the necessary facilities and financial resources to perform in a satisfactory manner.

7.0 WAIVER

The Proposer shall represent and warrant that it has sufficiently informed itself in all matters affecting the performance of the work called for in the scope of this Quotation; that it has checked its Quotation for errors and omissions; that the prices stated in its Quotation are correct and as intended by it and are a complete and correct statement of its prices for performing the work required by the Contract documents.

8.0 COMPLIANCE WITH LAWS

ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS. The Contractor shall adhere to all applicable federal, state, and local laws, codes and ordinances, including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and CITY Environmental Health Department.

9.0 LAWS GOVERNING CONTRACT

This Quotation and any resulting contract shall be governed and construed in accordance with the laws of the state of California. The parties stipulate that this Contract was entered into in the county of Los Angeles, in state of California. The parties further stipulate that the county of Los Angeles, California, is the only appropriate forum for any litigation resulting from a of breach hereof or any questions risen here from. All parties to this Quotation and any resulting contract

agreed that Venue shall be within County of Los Angeles, California. Each party will perform its obligations hereunder in accordance with all applicable laws, rules, and regulations now or hereafter in effect.

10.0 ATTORNEY FEES

In the event that suit is brought to enforce or interpret any part of this Quotation or resulting Contract, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorney's fee, including expert witness fees, as may be fixed by the court. These fees and cost shall be taxed as costs in that proceeding and shall not necessitate the filing of a separate attempt to recover. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorney's fees. No sum for attorney's fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to recover its costs or attorney's fees.

11.0 INTENTIONALLY LEFT BLANK

12.0 EFFECT OF EXTENSION OF TIME

Granting, or acceptance, of extensions of time to complete the work or furnish the labor, supplies, materials, or equipment, will not operate as a release to Contractor.

13.0 NOTIFICATION

- 13.1 If the Contractor believes that the action of CITY, lack of action by CITY, or any other reason, will result in or necessitate the revision of the Contract, CITY must be notified immediately. This will be considered the initial notice and shall be in writing. Such contract revisions might include but are not limited to: the amount agreed upon for payment to Contractor; the period of time allowed for contract performance; the types of materials specified; or the scope of work or services required.

If within two working days of the immediate notification, the identified issue has not been resolved between CITY and the Contractor, the Contractor shall provide a second written notice. At a minimum the written notice shall provide a description of the nature of the issue, the time, date, and location at which the problem was discovered, and the name of the CITY representative to whom initial notice was given.

- 13.2 Within seven calendar days of the date of the initial written notice, the Contractor shall provide in writing the following information to CITY:

- a. The date of occurrence and the nature and circumstances of the issue for which the initial notice was given.
- b. Name, title, and activity of each CITY representative knowledgeable of the issue.
- c. Identity of any documents and the substance of any oral communication related to the issue.

d. The basis for an assertion that work required is a change from the original contract work or schedule.

e. Identity of particular elements of contract performance for which additional compensation may be sought, including:

(1) Pay item(s) that has been or may be affected by the issue.

(2) Labor or materials, or both that will be added, deleted, or wasted by the problem and what equipment will be idled or required.

(3) Delay and disruption in the manner and sequence of performance that has been or will be caused.

(4) Adjustments to contract price(s), delivery schedule(s), staging, and contract time estimated due to the issue.

(5) Estimate of the time within which CITY must respond to the notice to minimize cost, delay, or disruption of the issue.

(6) The Contractor's written certification, under oath, attesting to the following:

(a) The request is made in good faith.

(b) Supporting data is accurate and complete to the Contractor's best knowledge and belief.

(c) The amount requested accurately reflects the Contractor's actual cost incurred.

13.3 The failure of the Contractor to comply with the requirement of this section constitutes a waiver of entitlement to additional compensation and/or time extension to complete work.

13.4 Within ten calendar days after the Contractor's submission, CITY will respond in writing to the Contractor to:

a. Confirm that a proposed change request is necessary and, when necessary, give appropriate direction for further performance.

b. Deny that the Contract has been revised and, when necessary, direct the Contractor to proceed with the contract work.

c. Advise the Contractor that adequate information has not been submitted to decide whether/if paragraphs a. and b. above apply and indicate the needed information and date it is to be received by CITY for further review. CITY will respond to such additional information within ten calendar days of receipt from the Contractor.

14.0 CHANGES BY CONTRACTOR

If the Contractor, on account of conditions developing during the performance of the Contract, finds it impracticable to comply strictly with the requirements of this Contract an application for modification of requirements must be made in writing. CITY will respond in writing as to the acceptability of any Contractor-proposed changes.

15.0 CHANGES BY CITY

If requirements are identified which are not specified in this document, the Contractor shall, if ordered in writing by the CITY, perform such work at the Contractor's fair market prices.

If requirements specified in the Contract are required to be omitted from the work, the Contractor shall, if ordered by CITY, omit the performance of such work. A deduction shall be made from the amount to be paid to the Contractor in an amount that CITY and Contractor shall determine and mutually agree to be the reasonable value of such work. It is understood, however, that the amount of work required by the Contract shall not, in accordance with the above provisions referring to additions and omissions, be increased or diminished to substantially alter the general character or extent of the Contract.

16.0 APPROVAL BY THE CITY MANAGER

All work shall be executed under the direction and supervision of the CITY Manager or authorized agent(s), on whose inspection of work shall be accepted or rejected. The CITY Manager shall have full power to accept or reject work performed under the Contract, which does not conform to the terms and conditions set forth in the Contract documents.

17.0 DAMAGES

All loss or damage arising from any unforeseen obstruction or difficulties, either natural or artificial, during the performance of this Contract, on the part of the Contractor or any agent or person employed by it, shall be sustained by the Contractor.

18.0 SELL OR ASSIGN

The Contractor shall not have the right to sell, assign, or transfer any obligations resulting from this Quotation without the specific written consent of the CITY.

19.0 INDEMNIFICATION

The Contractor shall indemnify, keep and save harmless CITY, its agents, officials, and employees, against all suits or claims that may be based on any injury to persons or property that may occur, or that may 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. The Contractor shall, at its own expense, defend all costs and other expenses arising from or incurred in connection to such. If any judgment shall be rendered against the CITY in any such action, the Contractor

shall at its own expense satisfy and discharge the action.

20.0 COVENANT AGAINST GRATUITIES

Contractor shall not offer or provide gifts, favors, entertainment, or any other gratuities of monetary value to any official, employee, or agent of CITY during the period of this Contract or for a period of one year after.

21.0 RIGHTS AND REMEDIES OF CITY

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

22.0 BINDING EFFECT

All of the terms, provisions and conditions of this Contract shall be binding upon the both parties and their respective successors, assigns, and legal representatives.

23.0 WAGE AND PRICE REGULATIONS

If the Federal Government should reinstate wage-price regulations, which are applicable to this Contract, the Contractor shall comply with the provisions of such laws and regulations.

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SECTION 7 SPECIAL PROVISIONS TERMS AND CONDITIONS

1.0 FTA FUNDING REQUIREMENT

This project may be financed in part by the Federal Transit Administration. Accordingly, federal requirements apply to this Contract and if those requirements change then the changed requirements shall apply to the project as required. The CITY and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the CITY, Contractor, or any other party pertaining to any matter resulting from the underlying Contract. 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.

The CITY and the Contractor recognize that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC. 3801 et seq. and US DOT regulations, "Program Fraud Civil Remedies, " 49 CFR Part 31, apply to actions pertaining to this Contract. CITY and the Contractor also agree to comply with the requirements of 49 USC. 5323 (h) (2) by refraining from the use of any FTA assistance to support procurements using exclusionary or discriminatory specifications. CITY also agrees to refrain from using state or local geographic restrictions unless otherwise allowed by FTA. 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.

2.0 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulation, policies, procedures and directives, including without limitation those listed directly or by reference in the current Master Agreement between the CITY and FTA, as amended.

Contractor's failure to so comply shall constitute a breach of Contract.

3.0 MAINTENANCE, AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representatives of the CITY, the United States Department of Transportation and the Comptroller General of the United States to inspect, audit, make copies and transcriptions of all work, materials, payrolls and other data and records of the Contractor relating to its performance under the Contract. The Contractor shall maintain all such records for a period of three (3) years after the CITY makes final payment under this Contract.

4.0 DISADVANTAGED BUSINESS ENTERPRISES

The CITY has not established a Disadvantaged Business Enterprise (DBE) Availability Advisory Percentage for this Agreement. This Agreement is subject to Title 49, Part 26 of the Code of Federal Regulations entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." Bidders who obtain DBE participation on this Contract will assist the California Department of Transportation in meeting its federally mandated statewide overall DBE goal.

DBE and other small businesses, as defined in Title 49 CFR, Part 26 are encouraged to participate in the performance of agreements financed in whole or in part with federal funds. 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 the applicable requirements of 49 CFR, Part 26 in the award and administration of US Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as recipient deems appropriate.

Any subcontract entered into as a result of this Agreement shall contain all of the provision of this section.

4.1 DBE GENERAL CONDITIONS

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 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the recipient deems appropriate.

4.1.1 The General Conditions shall include the following provisions:

"Diversity Program for Contracts". The CITY, recipient of federal financial assistance from the Federal Transit Administration (FTA) is committed to and has adopted a Diversity Program for Contracts in accordance with federal regulations 49 CFR Part 26, issued by US DOT.

It is the policy of CITY to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts and to create a level playing field on which Disadvantaged Business Enterprises (DBEs) can compete fairly for contracts and subcontracts relating to the District's construction, procurement and professional services activities. To this end, CITY has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE program. In connection with the performance of this Contract, the Contractor will cooperate with CITY in meeting these commitments and objectives.

Pursuant to 49 CFR § 26.13, and as a material term of any agreement with the CITY, the Contractor hereby makes the following assurance and agrees to include this assurance in any agreements it makes with Subcontractors 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 CFR 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 the CITY deems appropriate.

By submitting a Quotation, the Contractor is deemed to have made the foregoing assurance and to be bound by its terms.

4.2 SPECIAL REQUIREMENTS

"Prompt Payment to Subcontractors" The prime Contractor agrees to pay each subcontractor under this prime Contract for satisfactory performance of its Contract no later than 30 days from the receipt of each payment the prime Contractor receives from Monterey-Salinas Transit. The prime Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Monterey-Salinas Transit. This clause applies to both DBE and non-DBE subcontractors.

5.0 TITLE VI COMPLIANCE

5.1 The Contractor shall comply with all requirements of the Civil Rights Act of 1964, as amended; the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation Title 49, Code of Federal Regulations, Part 21, as amended; and any implementing requirements of FTA. All of these requirements are incorporated by reference and made a part of this Contract. 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.

5.2 Equal Employment Opportunity

The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. The Contractor shall take affirmative action to insure that applicants are employed, and the employees are treated during their employment, without regard to their race, color, religion, gender, disability, age, national origin, ancestry, marital status, pregnancy, medical condition, or sexual orientation. Such actions 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. Contractor shall comply with any implementing regulations FTA may issue.

5.3 Access Requirements for Individuals with Disabilities

In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 USC. 12112, the Contractor agrees that it will comply with the requirements of US Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630. These requirements pertain to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

6.0 ENERGY CONSERVATION REQUIREMENTS

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

7.0 ENVIRONMENTAL 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 USC. 1251 et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will 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 \$25,000 financed in whole or in part with Federal assistance provided by FTA.

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended 42 USC. 7401 et seq. The Contractor agrees to report each violation to the CITY and understands and agrees that the CITY will 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 \$25,000 financed in whole or in part with Federal assistance provided by FTA.

8.0 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

The Contractor shall submit with Quotation, documentation showing that neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency. For this purpose, the Contractor must complete and Execute the form entitled "Certification Regarding Debarment, Suspension, and Other Responsibility Matters," found in SECTION VI FORMS. Contractor also agrees to include this provision in any subcontract exceeding \$25,000 and forward the certification to CITY with the Quotation.

9.0 NON-COLLUSION AFFIDAVIT

Proposer will be required to submit with their Quotation a Non-Collusion Affidavit.

10.0 PENALTY FOR COLLUSION

If it is found that the person, firm or corporation to whom a Contract has been awarded has colluded with any other party or parties, then the Contract shall be null and void and the Contractor shall be liable to CITY for all loss or damage which the CITY may suffer. The CITY may advertise for a new Contract for required services.

11.0 RESTRICTIONS ON LOBBYING

Contractors who apply or propose for an award of \$25,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies 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 of employee of the CITY, grant or any other award covered by 31 USC. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC. 1352. Such disclosures are forwarded from tier to tier up to the CITY.

Each Proposer is required to review the above referenced regulations and complete and submit a Certification of Compliance with Federal Lobbying Regulations.

Pursuant to federal regulations, the Proposer is required to have all subcontractors (at any tier) providing more than \$25,000 towards the Contract also complete with this Certification, to be included with the Quotation.

Proposers are advised to review the specific Buy America requirements contained in the requirements at 49 CFR Part 661.

12.0 TERMINATION

12.1 Termination for Convenience

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

12.2 Termination for Default/Breach

If the Contractor fails 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 CITY may terminate this Contract for default. The CITY shall terminate by delivering to the Contractor a Notice of Termination specifying the default. The Contractor will only be paid the contract price for work services delivered and accepted, or services performed in accordance with the manner or performance required in this Contract.

12.3 Termination for Force Majeure

The CITY may terminate this Contract upon written notice from the Contractor for unforeseen causes beyond the control and without the fault or negligence of the Contractor. Such causes are those of acts of God, acts of the public enemy, governmental acts, fires and epidemics whose causes irrecoverably disrupt or render impossible the Contractor's performance. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense against.

12.4 Opportunity to Cure

The CITY in its sole discretion may, in the case of a termination for breach or default, allow the Contractor within ten (10) calendar 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 the CITY's satisfaction the breach or default, within ten (10) calendar days after receipt by Contractor of written notice from the CITY, the CITY shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the CITY from also pursuing all available remedies against Contractor and its sureties for said breach or default.

12.5 Waiver of Remedies for any Breach

In the event that CITY elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by the CITY shall not limit CITY's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

13.0 DISPUTE RESOLUTION

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

Unless otherwise directed by the CITY, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

14.0 PROTEST PROCEDURES

14.1 General Procedures

a. Any proposer or Contractor whose direct economic interest would be affected by the award of the Contract or the failure to award the Contract may file a protest, claim or dispute with CITY pursuant to these protest procedures prior to filing any protest, claim or dispute with the FTA.

b. Claims or disputes, where applicable, shall be in writing and filed with CITY of Commerce directed to the CITY Manager, 2535 Commerce Way, Commerce, CA 90040. FAILURE TO COMPLY WITH ANY OF THE REQUIREMENTS MAY RESULT IN REJECTION OF THE PROTEST.

14.2 Protest Before Quotation Opening

Protests shall be submitted in writing prior to the opening of Quotations, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to the opening.

In that case, the protest shall be submitted within five (5) calendar days after such aggrieved person knows or should have known of the facts giving rise to the protest. The protest shall clearly identify:

14.2.1 The name, address, and telephone number of the protester.

14.2.2 The grounds for the protest, any and all documentation to support the protest and the relief sought.

14.2.3 Steps that have been taken to date in an attempt to correct the alleged problem or concern.

14.3 Protest After Contract Award

a. Any individual or entity may file a protest with CITY alleging a violation of applicable federal, state law and/or CITY policy or procedure relative to seeking, evaluating and/or intent to award a procurement Contract. In addition, any individual or entity may file a protest with CITY alleging that CITY has failed to follow its Procurement Protest Procedures. Such protest must be filed no later than five (5) calendar days from the notice of intent to award or non-award of the procurement Contract.

b. A protest, dispute, or claim with respect to the award of a Contract through solicitation of Quotations shall be submitted in writing within five (5) days of notification of such award to the CITY Manager for a decision. All claims shall clearly identify:

(1) The name, address, and telephone number of the protester.

(2) The grounds for the protest, any and all documentation to support the protest and the relief sought.

(3) Steps that have been taken to date in an attempt to correct the alleged problem or concern.

c. A written decision by the CITY Manager, stating the grounds for allowing or denying the protest will be mailed to the protestor prior to execution of the Contract. Such decision shall be final unless the CITY Council accepts an appeal of the CITY Manager's decision.

14.4 FTA Protest Procedures

FTA will only review protests regarding the alleged failure of the CITY of Commerce to have written protest procedures, or the alleged failure to follow such procedures. An alleged violation on other grounds falls under the jurisdiction of the appropriate State or local administrative or judicial authorities. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with the Federal regulation. FTA will only review protest submitted by an intercede party as defined in FTA 4220.1E. FTA's decision on any appeal will be final.

14.5 Veterans Employment 49 U.S.C. 5325 (k)

- A. To the extent practicable, Contractor agrees that it:
 - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
 - 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- B. Contractor also assures that its sub-contractor will:
 - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
 - 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

SECTION 8 FORMS CERTIFICATIONS

The following FTA and CITY forms/certifications are to be executed by each Proposer and enclosed with the Quotation. Quotations received without these forms/certifications completed will not be considered.

Contact by mail, Telephone or Fax the CITY of Commerce, Purchasing Manager, for questions regarding forms and/or certifications.

CITY of Commerce
Attn: Purchasing Division, Care of CITY Clerk's Office
2535 Commerce Way
Commerce, CA 90040

The person signing the certification shall state his address and official capacity.

IMPORTANT NOTICE QUOTATIONS DOCUMENTS TO BE RETURNED

To be considered responsive, the following forms, certificates and/or statements must be completed and submitted on or before the Submittal Deadline. Compliance with these requirements is mandatory for contract award.

- a. Application for DBE and/or California Unified Certification DBE status Certification (if applicable)
- b. Certificate of Primary Contractor Regarding Debarment
- c. Lobbying Certificate
- d. CITY Bidders/Proposers list form
- e. Non-Collusion Certificate
- f. Proposer's Statement Regarding Insurance Coverage
- g. Worker's Compensation Insurance Certificate
- h. Experience Statement
- i. Proposer information sheet(s)
- j. Certificate of Compliance (Attachment B)
- k. Sample Contract (Exhibit 3 - Proposer to provide written exception(s) to any of the terms and/or conditions of sample contract and return Quotation submittal.)

Failures to complete, sign (where required), and return the above Quotation documents with your Quotation may render it non-responsive.

These Certificates Must Be Included in the Quotation In Order for the Submission to be Valid. Please see Professional Services contract type:

		Type of Contract					
		Procurement (Goods)	Procurement (Rolling Stock)	Construction	Transit Operations	Architectural and Engineering	Professional Services
	FTA Required Certifications						
1	Lobbying		X	X	X	X	X
2	Buy America	X	X	X			
3	DBE	X	X	X	X	X	X
4	Certification of Lower-Tier Participants (Subcontractors)						X
	Regarding Debarment, Suspension	X	X	X	X	X	X
5	Certification of Primary Contractor Regarding Debarment, Suspension	X	X	X	X	X	X

These Certificates Must Be Included in the Quotation In Order for the Submission to be Valid

If vendor wants to qualify for Disadvantage Business Enterprise (DBE) status the web address for California Unified Certification Program (UCP) is: <http://www.dot.ca.gov/hq/bep/ucp.htm> If you are a DBE please provide a copy of your UCP certificate.

AFFIDAVIT FOR DISADVANTAGED BUSINESS ENTERPRISE

STATE OF _____:

COUNTY (CITY) OF _____:

I HEREBY DECLARE AND AFFIRM THAT I AM THE _____ (Title)

and duly authorized representative of _____ (Name of corporation/firm) whose address is _____.

I hereby declare and affirm that my firm is a certified Disadvantaged Business Enterprise or Women-Owned Business Enterprise as defined and approved by California Unified Certification Program. The above, named firm will provide CITY with a copy of the document from the California Unified Certification Program so affirming their DBE status.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(AFFIANT) _____ (DATE) _____

STATE OF _____:

COUNTY (CITY) OF _____:

On this _____ day of _____, 20____,

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals:

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

If the above-named Primary Contractor is unable to certify to any of the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 USC. Section 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

Notary Public Name (Printed)

Notary Public Signature

County of

Expiration Date

CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, hereby certify on

(Name) *(Title)*

behalf of _____ that:
(Firm)

- (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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for 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 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.

This certification is a material representation of fact upon which reliance is 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 Section 1352, Title 31, US Code. 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.

Dated _____

(Name)

(Title)

(Firm)

CITY of Commerce - BIDDERS/PROPOSERS LIST

All bidders/proposers are required to provide the following information for all DBE and non-DBE contractors, who provided a Quotation, bid or quote. This information is also required from the proposed prime Contractor and must be submitted with their bid/Quotation. The CITY of Commerce (CITY) will use this information to maintain and update a "Bidders/Proposers" List to assist in the overall annual goal DBE goal setting process. *To the extent permitted by law, all information submitted will be held in strict confidence and will not be shared without your consent.*

Firm

Name _____

Address: _____

Phone: _____ **Fax:** _____

Contact Person: _____ **No. of Yrs. In Business** _____

Is the firm currently certified as a DBE by California Unified Certification Program?

☐ **No**

☐ **Yes**

Certification # _____

Type of work/services/materials provided by firm? _____

What were your firm's Gross Annual receipts for last year?

- ☐ **Less than \$1 million**
- ☐ **Less than \$5 million**
- ☐ **Less than \$10 million**
- ☐ **Less than \$15 million**
- ☐ **More than \$15 million**

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.

PROPOSER'S STATEMENT REGARDING INSURANCE COVERAGE

To Be Submitted with Quotation

PROPOSER HEREBY CERTIFIES that the Proposer has reviewed and understands the insurance coverage requirements specified in the Request for Quotations to provide CEQA AND NEPA ENVIRONMENTAL ANALYSIS. Should the Proposer be awarded the Contract for the work, Proposer further certifies that the Proposer can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name The CITY as Additional Insured for the work specified.

Name of Proposer (Person, Firm, or Corporation)

Signature of Proposer's Authorized Representative

Name & Title of Authorized Representative

Date of Signing

SECTION 9: LISTING OF ATTACHMENTS AND EXHIBITS

9.1 Attachment "A" Insurance

General:

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

Types of Insurance and Minimum Limits

Contractor shall obtain and maintain during the term of this Contract:

Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California (not required for Contractor's or subcontractors having no employees) with limits of not less than one million dollars (\$1,000,000) per occurrence.

Contractors vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by Contractor's employees), leased or hired vehicles, shall each be covered with Commercial Automobile, Liability Insurance in the minimum amount of one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.

Contractor shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of one million dollars (\$1,000,000) combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:

Other Insurance Provisions

As to all insurance coverage required herein, any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by CITY.

If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, Contractor shall maintain such insurance coverage for five (5) years after expiration of the term (and any extensions) of this Contract.

All required Automobile Liability Insurance and Comprehensive or Commercial General Liability Insurance shall contain the following

endorsement as a part of each policy: "CITY is hereby added as an additional insured as respects the operations of the named insured."

All the insurance required herein shall contain the following clause: "It is agreed that this insurance shall not be canceled until thirty (30) days after CITY shall have been given written notice of such cancellation or reduction."

Contractor shall notify CITY in writing at least thirty (30) days in advance of any reduction in any insurance policy required under this Contract.

Contractor agrees to provide CITY at or before the effective date of this Contract with a certificate of insurance of the coverage required.

If CONTRACTOR, for any reason, fails to maintain insurance coverage, which is required pursuant to this CONTRACT, the same shall be deemed a material breach of Contract. CITY, at its sole option, may terminate this CONTRACT and obtain damages from the CONTRACTOR resulting from said breach. Alternatively, CITY may purchase such required insurance coverage, and without further notice to CONTRACTOR, CITY may deduct the cost therefore from CONTRACTOR'S invoices charges for services rendered.

[The Remainder Of This Page Is Intentionally Left Blank]

9.2 **ATTACHMENT B**

(Proposer must complete and submit with his Quotation)

COMPLIANCE OR EXCEPTION TO THE TERMS AND CONDITIONS OF THE RFQ

A. COMPLIANCE:

This is to certify that Proposer agrees and shall comply with the terms and conditions of the RFQ.

Firm Name: _____

Proposer
Signature: _____

Title: _____

Date: _____

B. EXCEPTION:

This is to certify that Proposer takes exception to the following terms and conditions of the RFQ. Proposer must identify and list the terms and conditions by Section number, page number and title. Proposer must identify what its exception is.

Firm Name: _____

Proposer
Signature: _____

Title: _____

Date: _____

Proposer shall list and attach to this form proposer's exception(s):

9.3 EXHIBIT #1

NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

)
) SS COUNTY OF_)

_____, being first duly sworn, deposes and

says that he or she is _____ of
(position or title)

(the Contractor)

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

Dated: _____ By: _____

9.4 EXHIBIT 2

PROPOSER QUALIFICATIONS AND REFERENCES

The PROPOSER is required to state what work of similar magnitude or character they have done. Give references to enable CITY to judge experience, skill and business standing and provide information to assess the ability to perform the services as completely and as rapidly as is required under the terms of the Contract. All questions must be answered, and the data given must be clear and comprehensive. Provide the nature of the work performed, for whom, amount of Contract, dates of work, and the name of a point of contact, architect, engineer, or other supervising person for Transit Agency, Firm or other Public Agency. If necessary, questions may be answered on separate attached sheets.

A. GENERAL PROPOSER INFORMATION:

When organized? _____

If a Corporation, where incorporated? _____

Provide Dun and Bradstreet Number and rating. _____

How many years in business under your current firm or trade name? _____

Has the firm ever defaulted on a contract? _____ If so, where and why?

How was it resolved? _____

Has there ever been a failure to complete any work? _____ If so, where and why?

How was it resolved?

EXHIBIT 2 PROPOSER QUALIFICATIONS AND REFERENCES CONTINUED

Any claims for labor code violations? _____

B. List three (3) current projects to include the, contract value, scheduled completion date, and the contact person and telephone number.

C. List three (3) similar work experiences to this contract requirement. Provide contract value, date completed, and a contact name and phone number.

D. Is there any legal action pending pertinent to this contract work? _____ If yes, please explain:

E. The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any credit history and financial condition or other information required by CITY in verification of the information provided in this statement of PROPOSERS qualifications. I hereby certify that the above information is true and correct to the best of my knowledge and that CITY may rely on the information provided.

9.5 EXHIBIT 3

DRAFT CONTRACT

Following is a draft contract, which, once executed, becomes an Agreement between Contractor selected and CITY of Commerce.

This sample serves as a draft document and basis for finalizing agreements between the two parties.

ATTACHMENT C - SAMPLE PROFESSIONAL SERVICE AGREEMENT

This agreement ("Agreement") is made as of _____, by and between the **CITY of Commerce**, a municipal corporation ("CITY") and _____ ("Consultant"). CITY and Consultant are sometimes hereinafter individually referred to as a "Party" and collectively referred to as the "Parties."

RECITALS

WHEREAS, CITY desires to utilize the services of Consultant as an independent contractor providing the services set forth in the Scope of Services attached hereto as **Exhibit A**; and

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

NOW, THEREFORE, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

1. Company's Scope of Services. The nature and scope of the specific services to be performed by Consultant are as described in **Exhibit A**.

2. Term of Agreement. This Agreement shall commence on _____ (the "Commencement Date") and shall remain and continue in effect until tasks described in **Exhibit A** are completed, but in no event later than _____, unless sooner terminated pursuant to the provisions of this Agreement.

3. Compensation.

A. CITY agrees to compensate Consultant for services under this Agreement in compliance with the schedule set forth in **Exhibit A**. Consultant shall submit proper monthly invoices in the form and manner specified by CITY. Each invoice shall include a monthly breakdown of all monthly services performed together with the hours spent on each service. Consultant shall maintain appropriate and necessary documentation supporting the monthly invoices detailing the type of service provided. It shall be available for review by the CITY at all reasonable times upon request.

B. Total payment to Consultant pursuant to this Agreement shall not exceed _____.

C. If at the request of the CITY, Consultant is required to incur out of pocket expenses (including but not limited to, out-of-town travel and lodging) which are above and beyond the ordinary expenses associated with performance of this Agreement, Consultant shall be entitled to reimbursement of such expenses. Consultant shall only be reimbursed for those expenses which: (I) appear on Consultant's monthly invoices; (II) are accompanied by a copy of the CITY's written authorization for Consultant to incur such expenses; and (III) receipts documenting such expenses.

4. General Terms and Conditions. The General Terms and Conditions set forth in **Exhibit B** are incorporated as part of this Agreement. In the event of any inconsistency between the General Terms and Conditions and any other exhibit to this Agreement, the General Terms and Conditions shall control unless it is clear from the context that both parties intend the provisions of the other exhibit(s) to control.

5. Addresses.

CITY of Commerce

CITY of Commerce
2535 Commerce Way
Commerce, CA 90040
Attn: Edgar P. Cisneros, CITY Manager

Company

6. Exhibits. All exhibits referred to in this Agreement are listed here and are incorporated and made part of this Agreement by this reference.

Exhibit A – Scope of Services and Compensation Schedule

Exhibit B – General Terms and Conditions

GENERAL TERMS AND CONDITIONS

1. Status as Independent Contractor.

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

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold CITY harmless from any and all taxes, assessments, penalties, and interests asserted against CITY by reason of the independent Consultant relationship created by this Agreement. In the event that CITY is audited by any Federal or State agency regarding the independent status of Consultant and the audit in any way fails to sustain the validity of a wholly independent Consultant relationship between CITY and Consultant, then Consultant agrees to reimburse CITY for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold CITY harmless from any failure of Consultant to comply with applicable worker's compensation laws. CITY shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to CITY from Consultant as a result of Consultant's failure to promptly pay to CITY any reimbursement or indemnification arising under this Section 1.

D. Consultant represents to the CITY, and CITY relies on Consultant's representations, that Consultant shall serve solely in the capacity of an independent contractor to the CITY. Neither the CITY nor any of its agents will have control over the conduct of Consultant or any of Consultant's employees, except as otherwise set forth in the Agreement. Consultant may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY. The CITY has no duty, obligation, or responsibility to the Consultant's agents or employees, including the Affordable Care Act coverage requirements. Consultant is solely responsible for any tax penalties associated with the failure to offer affordable coverage to its agents and employees under the Affordable Care Act with respect to Consultant's agents and employees. Consultant warrants and represents that the CITY will not be responsible and will not be held liable for issues related to Consultant's status as an independent contractor, including Consultant's failure to comply with Consultant's duties, obligations, and responsibilities under the Affordable Care Act. Consultant further agrees to defend, indemnify, and hold the CITY harmless for any and all taxes, claims, and penalties against the CITY related to Consultant's obligations under the Affordable Care Act.

2. Standard of Performance

Consultant shall perform all work to the highest professional standards and in a manner reasonably satisfactory to the CITY Administrator or his/her designee. No additional or different tasks or services shall be performed by Consultant other than those specified in **Exhibit A**.

3. Indemnification.

A. Consultant is skilled in the professional calling necessary to perform the services and duties agreed to be performed under this Agreement, and CITY is relying upon the skill and knowledge of Consultant to perform said services and duties.

B. CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnities") shall have no liability to Consultant or any other person for, and Consultant shall indemnify, defend, protect and hold

harmless Indemnities from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which Indemnities may suffer or incur or to which Indemnities may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or other loss occurring as a result of or allegedly caused by Consultant's performance of or failure to perform any services under this Agreement or by the negligent or willful acts or omissions of Consultant, its agents, officers, directors, subcontractor, sub consultant or employees, committed in performing any of the services under this Agreement. Notwithstanding the foregoing, the provisions of this subsection shall not apply to Claims occurring as a result of the CITY's sole negligence or willful acts or omissions.

C. Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth in this Section from each and every subcontractor, sub consultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required in this Section, Consultant agrees to be fully responsible according to the terms of this Section. Failure of the CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way serve as a waiver of any rights hereunder. This obligation to indemnify and defend Indemnities as set forth herein shall survive the termination of this Agreement and is in addition to any rights which CITY may have under the law. This indemnity is effective without reference to the existence or applicability of any insurance coverage which may have been required under this Agreement or any additional insured endorsements which may extend to CITY.

4. Insurance.

A. Without limiting Consultant's indemnification of Indemnities pursuant to Section 3 of this Agreement, Consultant shall obtain and provide and maintain at its own expense during the term of this Agreement the types and amounts of insurance as described below:

- (I) Consultant shall maintain Commercial General Liability Insurance with coverage at least as broad as Insurance Services Office Commercial General Liability Form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. Defense costs must be paid in addition to limits. There shall be no cross-liability exclusion for claims or suits by one insured against another.

The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

- (II) Consultant shall maintain Business Auto Coverage on ISO Business Auto Coverage Form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

- (III) Consultant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance with on a state approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per

accident for all covered losses;

(IV) Consultant shall maintain Professional Liability or Errors and Omissions Insurance that covers the services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and Consultant agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Agreement.

B. CITY, its officers, officials, employees and volunteers shall be named as additional insureds on the policy(ies) as to commercial general liability and automotive liability.

C. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager.

D. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving CITY thirty (30) days' prior written notice thereof. Any such thirty (30) day notice shall be submitted to CITY via certified mail, return receipt requested, addressed to "Director of Human Resources & Risk Management," CITY of Commerce, 2535 Commerce Way, Commerce, California, 90040. Consultant agrees that it will not cancel, reduce or otherwise modify said insurance coverage.

E. Consultant shall submit to CITY (I) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (II) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less than one (1) day prior to beginning of performance under this Agreement. Endorsements shall be executed on CITY's appropriate standard forms entitled "Additional Insured Endorsement".

F. Consultant's insurance shall be primary as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

G. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, and such insurance is available at a reasonable cost. CITY may take out the necessary insurance and pay the premium thereon, and the repayment thereof shall be deemed an obligation of Consultant's and the cost of such insurance may be deducted, at the option of CITY, from payments due Consultant.

5. Release of Information/Confidentiality.

A. Consultant during its duties may have access to confidential data of CITY, private individuals, or employees of the CITY. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this

Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by CITY. CITY shall grant such authorization if disclosure is required by law. All CITY data shall be returned to CITY upon the termination of this Agreement. Consultant, its officers, employees, agents, or subconsultants, shall not without written authorization from the CITY Administrator, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the CITY. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives CITY notice of such court order or subpoena. Consultant's covenant under this section shall survive the termination of this Agreement.

B. Consultant shall promptly notify CITY should Consultant, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder. CITY retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding. Consultant agrees to cooperate fully with CITY and to provide the opportunity to review any response to discovery requests provided by Consultant. However, CITY's right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response

6. Ownership of Work Product.

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by the CITY that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in enough detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of the CITY or its designees at reasonable times to such books and records; shall give the CITY the right to examine and audit said books and records; shall permit the CITY to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the Consultant. With respect to computer files, Consultant shall make available to the CITY, at the Consultant's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

7. Conflict of Interest.

A. Consultant covenants that it presently has no interest and shall not acquire any interest,

direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of services to CITY as a result of the performance of this Agreement, or the services that may be procured by the CITY as a result of the recommendations made by Consultant's covenants under this section shall survive the termination of this Agreement.

8. Termination. Notwithstanding any other provision, this Agreement may be duly terminated at any time by the CITY at its sole discretion with or without cause by serving upon the consultant at least thirty (30) days prior written notice ("Notice of Termination"). Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. Unless expressly agreed upon in writing by the CITY, the CITY shall not be obligated to pay for any services rendered nor any costs or expenses paid or incurred after the date of termination. The effective date of termination shall be upon the date specified in the written Notice of Termination. Consultant agrees that in the event of such termination, Consultant must refund the CITY its prorated share, except for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written Notice of Termination, Consultant shall discontinue performing services, preserve the product of the services and upon payment for services, turn over to CITY the product of the services in accordance with written instructions of CITY.

In the event this Agreement is terminated pursuant to this Section, the CITY shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the CITY. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the CITY.

9. Personnel. Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement.

All the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services.

Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but CITY reserves the right, for good cause, to require Consultant to exclude any employee from performing services on CITY's premises.

10. Non-Discrimination and Equal Employment Opportunity.

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement and will comply with all rules and regulations of CITY relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

11. Assignment. Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant obligations hereunder, without the prior written consent of CITY, and any attempt by Consultant to assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

12. Performance Evaluation. For any Agreement in effect for twelve months or longer, the CITY Administrator may require a written annual administrative performance evaluation within ninety (90) days of the first anniversary of the effective date of this Agreement, and each year thereafter throughout the term of this Agreement. The work product required by this Agreement shall be utilized as the basis for review, and any comments or complaints received by CITY during the review period, either orally or in writing, shall be considered. CITY shall meet with Consultant prior to preparing the written report. If any noncompliance with the Agreement is found, CITY may direct Consultant to correct the inadequacies, or, in the alternative, may terminate this Agreement as provided herein.

13. Compliance with Laws. Consultant shall keep itself informed of State, Federal and Local laws, ordinances, codes and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. Consultant shall always comply with such laws, ordinances, codes and regulations. The CITY, its officers and employees shall not be liable at law or in equity occasioned by failure of Consultant to comply with this Section.

14. Licenses. At all times during the term of this Agreement, Consultant shall have in full force and effect all licenses (including a CITY business license) required of it by law for performance of the services hereunder.

15. Non-Waiver of Terms, Rights and Remedies. Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by CITY of any payment to Consultant constitute or be construed as a waiver by CITY of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by CITY shall in no way impair or prejudice any right or remedy available to CITY with regard to such breach or default.

16. Attorney's Fees. In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and Consultant.

17. Notices. Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during Consultant regular business hours or by facsimile before or during Consultant regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

18. Governing Law. This Agreement shall be construed and interpreted both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Los Angeles, State of California. However, the Parties may agree to submit any dispute to non-binding arbitration.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

20. Severability. If any provision or any part of any provision of this Agreement is found to be invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

21. Entire Agreement. This Agreement, and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between Consultant and CITY. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by the Parties which expressly refers to this Agreement. Amendments on behalf of the CITY will only be valid if signed by the Mayor and attested by the CITY Clerk.

22. Authority. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates written below.

CITY

CITY OF COMMERCE

By: _____
Ivan Altamirano, Mayor

Date

CONSULTANT

By: _____
Chief Executive Officer

Date

ATTEST:

By: _____
Lena Shumway, City Clerk

Date

APPROVED AS TO FORM:

By: _____
Noel Tapia, City Attorney

Date

**FTA REGION 9
SUPPORTING INFORMATION FOR PROBABLE
CATEGORICAL EXCLUSION**

Grant applicants should provide sufficient information for FTA to make a Categorical Exclusion (CE) determination. The purpose of this worksheet is to assist grantees in gathering and organizing materials for environmental analysis required under the National Environmental Policy Act (NEPA), particularly for projects that may qualify as a CE per 23 C.F.R. 771.118.

The following information may be included in the request letter or attached to the letter from the grantee to FTA Region 9 to support the grantee's recommendation for a Categorical Exclusion (CE) determination.

- _____ **A. DETAILED PROJECT DESCRIPTION:**
- Include project features and identify project sponsor.
 - Include funding source (e.g. CMAQ, formula funds, discretionary funds, etc.)
- _____ **B. LOCATION (INCLUDING ADDRESS): Attach a site map or diagram, which identifies the land uses and resources on the site and the adjacent or nearby land uses and resources. This is used to determine the probability of impact on sensitive receptors (such as schools, hospitals, residences) and on protected resources.**
- Site map should show a ½ mile radius and include labels for water resources and key features such as parks, designated sensitive areas, and adjacent uses.
- _____ **C. METROPOLITAN PLANNING AND AIR QUALITY CONFORMITY: Is the proposed project "included" in the current adopted MPO plan, either explicitly or in a grouping of projects or activities? What is the conformity status of that plan? Is the proposed project, or are appropriate phases of the project included in the TIP? What is the conformity status of the TIP?**
- Include the year of the adopted plan or adopted amendment and the project number.
 - Include date that the RTP was found to be conforming.
 - Is the project description consistent with what is listed in the plan?
- _____ **D. LAND USE AND ZONING: Description of zoning, if applicable, and consistency with proposed use. Attach maps.**
- Consistency with zoning also includes consideration of adjacent uses.
 - Any proposed land use zoning changes.
- _____ **E. PRIME AND UNIQUE FARMLANDS: Does the proposal involve the conversion of any prime or unique farmlands into a transportation use? If so, describe potential impacts, acreage of farmlands affected, and any coordination with the Soil Conservation Service of the U.S. Department of Agriculture (attach maps).**
- _____ **F. TRAFFIC AND PARKING IMPACTS: Describe potential traffic impacts; including whether the existing roadways have adequate capacity to handle increased bus and other vehicular traffic. Describe potential impacts to on and off street parking.**
- Will there be a permanent loss of on-street or off-street parking?
 - If the project includes a parking structure on an existing surface lot, what is the net increase in parking?
 - Will there be increased bus services or will the project accommodate existing service?
 - Will the project require traffic signal work or modification of lanes (e.g. add turn lanes, removal of medians, removal of lanes, restriping, shifting location of lanes)?

- ____ G. **AESTHETICS AND VISUAL QUALITY:** Will the project have affect or block views of a designated scenic vista? Will the project substantially change the existing visual character or quality of the site and its surroundings? Describe any new sources of light, glare and shade and shadow on adjacent land uses.
- ____ H. **AIR QUALITY:** Does the project have the potential to impact air quality? Is the project located in an non-attainment or maintenance area. If there are traffic delays at intersections, and if the area is nonattainment for CO, demonstrate that CO hot spots will not result.
- Is the area in an EPA-designated attainment, maintenance, or non-attainment area?
 - Will the project exacerbate conditions of an existing hotspot or non-attainment area?
- ____ I. **HISTORIC AND CULTURAL RESOURCES:** Describe any cultural, historic, or archaeological resource that is located in the immediate vicinity of the proposed project and the impact of the project on the resource. Discuss State Historic Preservation Officer (SHPO) consultation. Discuss consultation with t Native American tribes or historic preservation groups. Attach any relevant correspondence or call logs.
- Are there any sites eligible for listing in the National Register of Historic Places?
 - Is the project located in the vicinity of a Historic District?
 - Include documentation of any SHPO consultation.
 - Identify Native American tribes (federally recognized and non-federally recognized tribes). Consider consulting the Native American Heritage Commission (NAHC), Bureau of Indian Affairs, and other sources like Tribal Directory Assessment Tool (TDAT) (<https://egis.hud.gov/tdat/>).
 - Has a request of a search of the Sacred Lands File from the Native American Heritage Commission completed?
 - Has coordination been conducted with Native American tribes? (Note: Native American consultation, particularly for federally recognized tribes, must be conducted through FTA).
- ____ J. **NOISE:** Compare the distance between the center of the proposed project and the nearest noise receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Noise Assessment" with conclusions.
- Identify sensitive noise receptors, including residences, outdoor eating areas, parks, outdoor public gathering places, etc. Are there outdoor pools?
 - What is the distance of the closest sensitive receptor?
 - Are there existing noise barriers (walls, earthen berms, etc.) or intervening structures?
- ____ K. **VIBRATION:** If the proposed project involves new or relocated steel tracks, compare the distance between the center of the proposed project and the nearest vibration receptor to the screening distance for this type of project in FTA's guidelines. If the screening distance is not achieved, attach a "General Vibration Assessment" with conclusions.
- ____ L. **ACQUISITIONS & RELOCATIONS REQUIRED:** Describe land acquisitions and displacements of residences and businesses. Include discussion of any permanent or temporary easements required.
- Include discussion of temporary construction easements (if not already included in the construction section) and partial acquisitions.
 - If applying for the CE for "Operational Right-Of-Way," please refer to (23 CFR 771.117(c)(22), 771.118(c)(12)) and consult FTA.
- ____ M. **HAZARDOUS MATERIALS:** Is there any known or potential contamination at the project site? This may include, but is not limited to, lead/asbestos in existing

facilities or building materials; above or below ground storage tanks; or a history of industrial uses of the site.

- If real property is to be acquired, has a Phase I site assessment for contaminated soil and groundwater been performed?
- If a Phase II site assessment is recommended, has it been performed?
- Is there current, ongoing remediation?
- What steps will be taken to ensure that the community in which the project is located is protected from hazardous materials and remediation activities contamination during construction and operation of the project?
- State the results of consultation with the cognizant State agency regarding the proposed remediation?
- Resource: <http://geotracker.waterboards.ca.gov>

____ **N. COMMUNITY DISRUPTION AND ENVIRONMENTAL JUSTICE: Provide a socio-economic profile of the affected community. Describe the impacts of the proposed project on the community. Identify any community resources that would be affected and the nature of the effect.**

- Will the project physically divide a community?
- Will the project affect community character (add a feature that would be obtrusive or not consistent with its surroundings)?
- Does the project have the potential to disrupt community activities or community uses (e.g. community centers, parks, churches, etc.)
- Discuss if the project would or would not result in disproportionate high and adverse effects to environmental justice communities. Mention project benefits.
- Resource: FTA Environmental Justice Circular
https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FTA_EJ_Circular_7.14-12_FINAL.pdf

____ **O. SECTION 4(f) USE: Indicate parks and recreational areas, historic resources and any other Section 4(f) resources on the site map. If the activities and purposes of these resources will be affected by the proposed project, state how. State if the project will result in a use (direct and/or constructive use) or temporary occupancy of a Section 4(f) resource. If the project results in a Section 4(f) use, would the impacts be considered *de minimis*?**

- Will the project require right-of-way, any parks, recreation areas, historic resources or other Section 4(f) resources?
- Will the project change access or require temporary closures or detours of any Section 4(f) resource.
- What is the distance of the closest park?
- Mention any temporary use or temporary occupancy (including any temporary construction easements or construction staging areas) at any parks, recreation areas, historic resources, or other Section 4(f) resources.
- Mention consultation with agencies of jurisdiction (e.g. City Parks and Recreation departments, etc.).
- Does the project use of common concrete and steel bridges and culverts, built after 1945 and the exemption under 23 CFR 774.13(a)(1) applies?
- Does the project affect or improve railroad or transit lines that are used or were historically used for the transportation of goods or passengers? Does the exemption under Section 11502 of the FAST Act apply?
- Resource: FHWA Section 4(f) Policy Paper:
<https://www.environment.fhwa.dot.gov/legislation/section4f/4fpolicy.aspx>

____ **P. SECTION 6(f): If the project located in or adjacent to a park or recreation area, indicate if the park involved Land and Water Conservation Act funds (Section 6(f)).**

- Discuss any consultation with the National Park Service or local parks department.

- ____ Q. **SEISMIC AND SOILS.** Are there any unusual seismic or soil conditions (soils prone to liquefaction, subsidence, erosion, etc.) in the project vicinity? If so, indicate on project map and describe the seismic standards to which the project will be designed.
- ____ R. **IMPACTS ON WETLANDS:** Show potential wetlands on the site map. Describe the project's impact on on-site and adjacent wetlands.
- Are there wetlands within the project vicinity?
 - Will the project directly drain into a waterway supporting wetlands?
 - Will the project require alteration of surface water features, wetlands, navigable waterways, or waters of the U.S. (e.g. channels, storm drains, etc.?)
 - Will the project require permits (e.g. Clean Water Act Section 404 permit?)
- ____ S. **FLOODPLAIN IMPACTS:** Is the proposed project located within the 100-year floodplain? If so, address possible flooding of the proposed project site and flooding induced by proposed project due to its taking of floodplain capacity.
- Will the project introduce a large structure that will change floodplain elevations or floodways?
 - Resource: The FEMA Flood Map Service Center (MSC) is a public source for flood hazard information produced in support of the National Flood Insurance Program (NFIP). Use the MSC to find your official flood map, access a range of other flood hazard products: <http://msc.fema.gov/portal>
- ____ T. **IMPACTS ON WATER QUALITY, NAVIGABLE WATERWAYS, & COASTAL ZONES:** Describe surface and ground water resources in the project vicinity and their approximate distance to the project. State if any Clean Water Act 303d Listed Impaired Water Bodies are in the project vicinity. Explain if the project would alter or create a new direct connection to a surface water body. If any of these are implicated, provide detailed analysis.
- Describe any surface water features. Where will the water drain into?
 - What is the distance of the closest surface water body?
 - What is the distance to the coast? Is the project located in a designated coastal zone?
 - Will the project affect Clean Water Act 303d listed impaired water bodies?
 - Is the project located in the vicinity of an EPA-designated sole source aquifer (SSA)?
 - Will there be an increase in new impervious surface area or restored pervious surface area? If so, describe potential impacts and proposed treatment for stormwater runoff.
- ____ U. **IMPACTS ON ECOLOGICALLY-SENSITIVE AREAS AND ENDANGERED SPECIES:** Describe any natural areas (woodlands, prairies, wetlands, rivers, lakes, streams, designated wildlife or waterfowl refuges, and geological formations) on or near the proposed project area. If present, state the results of consultation with a federal or state resources agency on the impacts to these natural areas and on threatened and endangered fauna and flora that may be affected.
- Will the project require permits or consultation from U.S. Army Corps or Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, etc.?
 - Is the project near any designated biological or environmentally sensitive area (BSA, ESA), designated critical habitat, wildlife corridors, or essential fish habitat?
 - Does the project require mature tree removal?
 - Are there known threatened and endangered species occurrences in the area?
 - Does the site support sensitive habitat, including nesting or foraging areas?
- ____ V. **IMPACTS ON SAFETY AND SECURITY:** Describe the measures that would need to be taken to provide for the safe and secure operation of the project after its construction.
- Pedestrian Safety? ADA features? Lighting?

- Discuss safety impacts related to any railroad at-grade crossings located in close proximity.

_____ **W. IMPACTS CAUSED BY CONSTRUCTION:** Describe the construction plan and identify impacts due to construction noise, utility disruption, debris and spoil disposal, air and water quality, safety and security, and disruptions of traffic and access to property.

- Include temporary parking locations
- Mention construction staging areas.
- Traffic management plan?

_____ **X. SUPPORTING TECHNICAL STUDIES OR MEMORANDA:** List any technical studies or memoranda prepared for the project.

- This may include documentation demonstrating compliance with environmental requirements other than NEPA, such as Section 4(f), Section 106 of the National Historic Preservation Act ("Section 106"), or Section 7 of the Endangered Species Act
- For projects in California, also list the environmental document prepared pursuant to the California Environmental Quality Act (CEQA). Attach the CEQA document.

_____ **Y. PUBLIC OUTREACH AND AGENCY COORDINATION:** Describe any federal/ state agency coordination, public outreach efforts, public meetings, or public hearing held or public notices posted for the project. Discuss if project information is posted on a project website.

_____ **Z. MODAL CATEGORICAL EXCLUSIONS AND RELATED NEPA DOCUMENTS.** Has a CE or other NEPA document been prepared for the project by another federal lead agency? If so, attach the related document.

- 23 CFR 771.105 and 23 U.S.C. 139(d)(8) addresses the concept of a single NEPA document. The policy statement applies broadly to the environmental review process and specifically encourages all environmental reviews and requirements (including permits) addressed in a single process and environmental review document for all Federal permits and reviews for a project to the maximum extent practicable and consistent with Federal law.
- Under 23 CFR 771.116(d), 771.117(h), 771.118(e), this policy addresses Cross-Agency Use of Modal Categorical Exclusions (CEs). The policy statement adds provisions that allow FHWA, FTA, and FRA to use each other's CEs.

The action described above meets the criteria for a NEPA categorical exclusion (CE) in accordance with 23 CFR Part 771.118 (INSERT CE CATEGORY).

Applicant's Environmental Reviewer

Date

REFERENCE

Class II (CEs). Actions that do not individually or cumulatively have a significant environmental effect are excluded from the requirement to prepare an EA or EIS. A specific list of CEs normally not requiring NEPA documentation is set forth in 7 §771.118(c) for FTA actions. When appropriately documented, additional projects may also qualify as CEs under §771.118(d) for FTA actions.

It is FTA's responsibility to determine whether the action described by the grant applicant ("applicant") falls within the CE category (i.e., the action meets all conditions listed in the CE), whether the action is inappropriately segmented from a larger project, and whether there are unusual circumstances that would make a CE determination inappropriate).

Grant applicants should include sufficient information for FTA to make a CE determination. A description of the project in the grant application, as well as any maps or figures typically included with the application or as requested by the FTA Regional Office, should be submitted to FTA to determine whether the CE applies. Section 771.118(d), which is an open-ended categorical exclusion authority, lists example actions and requires documentation to verify the application of a CE is appropriate (i.e., the action meets the criteria established in § 771.118(a) and (b)).

Cross-Agency Use of Modal Categorical Exclusions (CEs).

Under 23 CFR 771.116(d), 771.117(h), 771.118(e), this policy addresses Cross-Agency Use of Modal Categorical Exclusions (CEs). The policy statement adds new provisions that allow Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Railroad Administration (FRA) to use each other's CEs. This will increase efficiencies, while not functionally expanding the type of projects to which the CE is applied.

Compliance with other laws

Documentation demonstrating compliance with environmental requirements other than NEPA, such as Section 106 of the National Historic Preservation Act ("Section 106"), or Section 7 of the Endangered Species Act, may be necessary for the processing of the grant. Other applicable environmental requirements must be met regardless of the applicability of the CE under NEPA, but compliance with other environmental requirements does not elevate an action that otherwise is categorically excluded under section 771.118(c) to section 771.118(d).

Pursuant to 40 C.F.R. § 1506.5, applicants or applicants' contractors may prepare NEPA documents for submittal to federal agencies. However, the applicant is responsible for submitting accurate and complete documentation to FTA. The applicant should prepare a separate transmittal letter or statement to accompany the CE verifying that they have reviewed the information contained in the document when they transmit it to FTA. The transmittal should include the following statement:

"in submitting the _(project name)_ categorical exclusion (CE) to the FTA, the applicant _(insert name/agency info)_ affirms that it has reviewed and supports the information presented documenting the proposed action as meeting the criteria for a CE in accordance with 23 CFR Part 771.118 (d)(# - insert appropriate number here). Following independent review and verification by FTA, applicant (insert DOT name/info) requests that it be notified of the acceptability of its submission"

FTA Planning and Environment Resources: <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-resources-information-0>

FTA Environmental Standard Operating Procedures: <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/environmental-standard-operating-procedures>

Please visit the Federal Register to access view other documents and/or related procedures.
<https://www.federalregister.gov/documents/2014/10/06/2014-23660/environmental-impact-and-related-procedures-programmatic-agreements-and-additional-categorical>

<https://www.federalregister.gov/documents/2018/10/29/2018-23286/environmental-impacts-and-related-procedures>

23 CFR 771.116 FRA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FRA's past experience with similar actions, do not involve significant environmental impacts. They are actions that do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require FRA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FRA determines fall within the following categories of FRA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FRA approval. FRA may request the applicant or project sponsor submit documentation to demonstrate that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.

- (1) Administrative procurements (e.g., for general supplies) and contracts for personal services, and training.
- (2) Personnel actions.
- (3) Planning or design activities that do not commit to a particular course of action affecting the environment.
- (4) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
- (5) Internal orders, policies, and procedures not required to be published in the Federal Register under the Administrative Procedure Act, 5 U.S.C. 552(a)(1).
- (6) Rulemakings issued under section 17 of the Noise Control Act of 1972, 42 U.S.C. 4916.
- (7) Financial assistance to an applicant where the financial assistance funds an activity that is already completed, such as refinancing outstanding debt.
- (8) Hearings, meetings, or public affairs activities.
- (9) Maintenance or repair of existing railroad facilities, where such activities do not change the existing character of the facility, including equipment; track and bridge structures; electrification, communication, signaling, or security facilities; stations; tunnels; maintenance-of-way and maintenance-of-equipment bases.

(10) Emergency repair or replacement, including reconstruction, restoration, or retrofitting, of an essential rail facility damaged by the occurrence of a natural disaster or catastrophic failure. Such repair or replacement may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the rail facility's original construction.

(11) Operating assistance to a railroad to continue existing service or to increase service to meet demand, where the assistance will not significantly alter the traffic density characteristics of existing rail service.

(12) Minor rail line additions, including construction of side tracks, passing tracks, crossovers, short connections between existing rail lines, and new tracks within existing rail yards or right-of-way, provided that such additions are not inconsistent with existing zoning, do not involve acquisition of a significant amount of right-of-way, and do not significantly alter the traffic density characteristics of the existing rail lines or rail facilities.

(13) Acquisition or transfer of real property or existing railroad facilities, including track and bridge structures; electrification, communication, signaling or security facilities; stations; and maintenance of way and maintenance of equipment bases or the right to use such real property and railroad facilities, for the purpose of conducting operations of a nature and at a level of use similar to those presently or previously existing on the subject properties or facilities.

(14) Research, development, or demonstration activities on existing railroad lines or facilities, such as advances in signal communication or train control systems, equipment, or track, provided that such activities do not require the acquisition of a significant amount of right-of-way and do not significantly alter the traffic density characteristics of the existing rail line or facility.

(15) Promulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.

(16) Alterations to existing facilities, locomotives, stations, and rail cars in order to make them accessible for the elderly and persons with disabilities, such as modifying doorways, adding or modifying lifts, constructing access ramps and railings, modifying restrooms, and constructing accessible platforms.

(17) The rehabilitation, reconstruction or replacement of bridges, the rehabilitation or maintenance of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges.

(18) Acquisition (including purchase or lease), rehabilitation, transfer, or maintenance of vehicles or equipment, including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment, that does not significantly alter the traffic density characteristics of an existing rail line.

(19) Installation, repair and replacement of equipment and small structures designed to promote transportation safety, security, accessibility, communication or operational efficiency that take place predominantly within the existing right-of-way and do not result in a major change in traffic density on the existing rail line or facility, such as the installation, repair or replacement of surface treatments or pavement markings, small passenger shelters, passenger amenities, benches, signage, sidewalks or trails, equipment enclosures, and fencing, railroad warning devices, train control systems, signalization, electric traction equipment and structures, electronics, photonics, and communications systems and equipment, equipment mounts, towers and structures, information processing equipment, and security equipment, including surveillance and detection cameras.

(20) Environmental restoration, remediation, pollution prevention, and mitigation activities conducted in conformance with applicable laws, regulations and permit requirements, including activities such as noise mitigation, landscaping, natural resource management activities, replacement or improvement to storm water oil/water separators, installation of pollution containment systems, slope stabilization, and contaminated soil removal or remediation activities.

(21) Assembly or construction of facilities or stations that are consistent with existing land use and zoning requirements, do not result in a major change in traffic density on existing rail or highway facilities, and result in approximately less than ten acres of surface disturbance, such as storage and maintenance facilities, freight or passenger loading and unloading facilities or stations, parking facilities, passenger platforms, canopies, shelters, pedestrian overpasses or underpasses, paving, or landscaping.

(22) Track and track structure maintenance and improvements when carried out predominantly within the existing right-of-way that do not cause a substantial increase in rail traffic beyond existing or historic levels, such as stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, and the installation or maintenance of ancillary equipment.

(d) Any action qualifying as a CE under §771.117 or §771.118 may be approved by FRA when the applicable requirements of those sections have been met. FRA may consult with FHWA or FTA to ensure the CE is applicable to the proposed action.

23 CFR 771.117 FHWA categorical exclusions.

(a) CEs are actions that meet the definition contained in 40 CFR 1508.4, and, based on FHWA's past experience with similar actions, do not involve significant environmental impacts. They are actions that: Do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action that normally would be classified as a CE but could involve unusual circumstances will require the FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such unusual circumstances include:

(1) Significant environmental impacts;

(2) Substantial controversy on environmental grounds;

(3) Significant impact on properties protected by Section 4(f) requirements or Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) The following actions meet the criteria for CEs in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section and normally do not require any further NEPA approvals by the FHWA:

(1) Activities that do not involve or lead directly to construction, such as planning and research activities; grants for training; engineering to define the elements of a proposed action or alternatives so that social, economic, and environmental effects can be assessed; and Federal-aid system revisions that establish classes of highways on the Federal-aid highway system.

(2) Approval of utility installations along or across a transportation facility.

- (3) Construction of bicycle and pedestrian lanes, paths, and facilities.
- (4) Activities included in the State's highway safety plan under 23 U.S.C. 402.
- (5) Transfer of Federal lands pursuant to 23 U.S.C. 107(d) and/or 23 U.S.C. 317 when the land transfer is in support of an action that is not otherwise subject to FHWA review under NEPA.
- (6) The installation of noise barriers or alterations to existing publicly owned buildings to provide for noise reduction.
- (7) Landscaping.
- (8) Installation of fencing, signs, pavement markings, small passenger shelters, traffic signals, and railroad warning devices where no substantial land acquisition or traffic disruption will occur.
- (9) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) Emergency repairs under 23 U.S.C. 125; and
 - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
 - (A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - (B) Is commenced within a 2-year period beginning on the date of the declaration.
- (10) Acquisition of scenic easements.
- (11) Determination of payback under 23 U.S.C. 156 for property previously acquired with Federal-aid participation.
- (12) Improvements to existing rest areas and truck weigh stations.
- (13) Ridesharing activities.
- (14) Bus and rail car rehabilitation.
- (15) Alterations to facilities or vehicles in order to make them accessible for elderly and handicapped persons.
- (16) Program administration, technical assistance activities, and operating assistance to transit authorities to continue existing service or increase service to meet routine changes in demand.
- (17) The purchase of vehicles by the applicant where the use of these vehicles can be accommodated by existing facilities or by new facilities that themselves are within a CE.
- (18) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(19) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant impacts off the site.

(20) Promulgation of rules, regulations, and directives.

(21) Deployment of electronics, photonics, communications, or information processing used singly or in combination, or as components of a fully integrated system, to improve the efficiency or safety of a surface transportation system or to enhance security or passenger convenience. Examples include, but are not limited to, traffic control and detector devices, lane management systems, electronic payment equipment, automatic vehicle locaters, automated passenger counters, computer-aided dispatching systems, radio communications systems, dynamic message signs, and security equipment including surveillance and detection cameras on roadways and in transit facilities and on buses.

(22) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.

(23) Federally funded projects:

(i) That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or

(ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.

(24) Localized geotechnical and other investigation to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.

(25) Environmental restoration and pollution abatement actions to minimize or mitigate the impacts of any existing transportation facility (including retrofitting and construction of stormwater treatment systems to meet Federal and State requirements under sections 401 and 402 of the Federal Water Pollution Control Act (33 U.S.C. 1341; 1342)) carried out to address water pollution or environmental degradation.

(26) Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (including parking, weaving, turning, and climbing lanes), if the action meets the constraints in paragraph (e) of this section.

(27) Highway safety or traffic operations improvement projects, including the installation of ramp metering control devices and lighting, if the project meets the constraints in paragraph (e) of this section.

(28) Bridge rehabilitation, reconstruction, or replacement or the construction of grade separation to replace existing at-grade railroad crossings, if the actions meet the constraints in paragraph (e) of this section.

(29) Purchase, construction, replacement, or rehabilitation of ferry vessels (including improvements to ferry vessel safety, navigation, and security systems) that would not require a change in the function of the ferry terminals and can be accommodated by existing facilities or by new facilities that themselves are within a CE.

(30) Rehabilitation or reconstruction of existing ferry facilities that occupy substantially the same geographic footprint, do not result in a change in their functional use, and do not result in a substantial increase in the existing facility's capacity. Example actions include work on pedestrian and vehicle transfer structures and associated utilities, buildings, and terminals.

(d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after Administration approval unless otherwise authorized under an executed agreement pursuant to paragraph (g) of this section. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied, and that significant environmental effects will not result. Examples of such actions include but are not limited to:

(1)-(3) [Reserved]

(4) Transportation corridor fringe parking facilities.

(5) Construction of new truck weigh stations or rest areas.

(6) Approvals for disposal of excess right-of-way or for joint or limited use of right-of-way, where the proposed use does not have significant adverse impacts.

(7) Approvals for changes in access control.

(8) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(9) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required, and there is not a substantial increase in the number of users.

(10) Construction of bus transfer facilities (an open area consisting of passenger shelters, boarding areas, kiosks and related street improvements) when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus traffic.

(11) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning, and where there is no significant noise impact on the surrounding community.

(12) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.

(i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.

(ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and

that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.

(13) Actions described in paragraphs (c)(26), (c)(27), and (c)(28) of this section that do not meet the constraints in paragraph (e) of this section.

(e) Actions described in (c)(26), (c)(27), and (c)(28) of this section may not be processed as CEs under paragraph (c) if they involve:

(1) An acquisition of more than a minor amount of right-of-way or that would result in any residential or non-residential displacements;

(2) An action that needs a bridge permit from the U.S. Coast Guard, or an action that does not meet the terms and conditions of a U.S. Army Corps of Engineers nationwide or general permit under section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act of 1899;

(3) A finding of "adverse effect" to historic properties under the National Historic Preservation Act, the use of a resource protected under 23 U.S.C. 138 or 49 U.S.C. 303 (section 4(f)) except for actions resulting in de minimis impacts, or a finding of "may affect, likely to adversely affect" threatened or endangered species or critical habitat under the Endangered Species Act;

(4) Construction of temporary access or the closure of existing road, bridge, or ramps that would result in major traffic disruptions;

(5) Changes in access control;

(6) A floodplain encroachment other than functionally dependent uses (e.g., bridges, wetlands) or actions that facilitate open space use (e.g., recreational trails, bicycle and pedestrian paths); or construction activities in, across or adjacent to a river component designated or proposed for inclusion in the National System of Wild and Scenic Rivers.

(f) Where a pattern emerges of granting CE status for a particular type of action, the FHWA will initiate rulemaking proposing to add this type of action to the list of categorical exclusions in paragraph (c) or (d) of this section, as appropriate.

(g) FHWA may enter into programmatic agreements with a State to allow a State DOT to make a NEPA CE certification or determination and approval on FHWA's behalf, for CEs specifically listed in paragraphs (c) and (d) of this section and that meet the criteria for a CE under 40 CFR 1508.4, and are identified in the programmatic agreement. Such agreements must be subject to the following conditions:

(1) The agreement must set forth the State DOT's responsibilities for making CE determinations, documenting the determinations, and achieving acceptable quality control and quality assurance;

(2) The agreement may not have a term of more than five years, but may be renewed;

(3) The agreement must provide for FHWA's monitoring of the State DOT's compliance with the terms of the agreement and for the State DOT's execution of any needed corrective action. FHWA must take into account the State DOT's performance when considering renewal of the programmatic CE agreement; and

(4) The agreement must include stipulations for amendment, termination, and public availability of the agreement once it has been executed.

(h) Any action qualifying as a CE under §771.116 or §771.118 may be approved by FHWA when the applicable requirements of those sections have been met. FHWA may consult with FRA or FTA to ensure the CE is applicable to the proposed action.

23 C.F.R Part 771.118 FTA Categorical Exclusions
[as amended, October 3, 2019]

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts.

(b) Any action which normally would be classified as a CE but could involve unusual circumstances will require FTA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper. Such **unusual circumstances** include:

- (1) Significant environmental impacts;
- (2) Substantial controversy on environmental grounds;
- (3) Significant impact on properties protected by Section 4(f) of the DOT Act or Section 106 of the National Historic Preservation Act; or
- (4) Inconsistencies with any Federal, State, or local law, requirement or administrative determination relating to the environmental aspects of the action.

(c) Actions that FTA determines fall within the following categories of FTA CEs and that meet the criteria for CEs in the CEQ regulation (40 CFR 1508.4) and paragraph (a) of this section normally do not require any further NEPA approvals by FTA.

- (1) Acquisition, installation, operation, evaluation, replacement, and improvement of discrete utilities and similar appurtenances (existing and new) within or adjacent to existing transportation right-of-way, such as: Utility poles, underground wiring, cables, and information systems; and power substations and utility transfer stations.
- (2) Acquisition, construction, maintenance, rehabilitation, and improvement or limited expansion of stand-alone recreation, pedestrian, or bicycle facilities, such as: A multiuse pathway, lane, trail, or pedestrian bridge; and transit plaza amenities.
- (3) Activities designed to mitigate environmental harm that cause no harm themselves or to maintain and enhance environmental quality and site aesthetics, and employ construction best management practices, such as: Noise mitigation activities; rehabilitation of public transportation buildings, structures, or facilities; retrofitting for energy or other resource conservation; and landscaping or re-vegetation.
- (4) Planning and administrative activities that do not involve or lead directly to construction, such as: Training, technical assistance and research; promulgation of rules, regulations, directives, or program guidance; approval of project concepts; engineering; and operating assistance to transit authorities to continue existing service or increase service to meet routine demand.
- (5) Activities, including repairs, replacements, and rehabilitations, designed to promote transportation safety, security, accessibility and effective communication within or adjacent to existing right-of-way, such as: The deployment of Intelligent Transportation Systems and components; installation and improvement of safety and communications equipment, including hazard elimination and mitigation; installation of passenger amenities and traffic signals; and retrofitting existing transportation vehicles, facilities or structures, or upgrading to current standards.
- (6) Acquisition or transfer of an interest in real property that is not within or adjacent to recognized environmentally sensitive areas (e.g., wetlands, non-urban parks, wildlife management areas) and does not result in a substantial change in the functional use of the property or in substantial displacements, such as: Acquisition for scenic easements or historic sites for the purpose of

preserving the site. This CE extends only to acquisitions and transfers that will not limit the evaluation of alternatives for future FTA-assisted projects that make use of the acquired or transferred property.

- (7) Acquisition, installation, rehabilitation, replacement, and maintenance of vehicles or equipment, within or accommodated by existing facilities, that does not result in a change in functional use of the facilities, such as: equipment to be located within existing facilities and with no substantial off-site impacts; and vehicles, including buses, rail cars, trolley cars, ferry boats and people movers that can be accommodated by existing facilities or by new facilities that qualify for a categorical exclusion.
- (8) Maintenance, rehabilitation, and reconstruction of facilities that occupy substantially the same geographic footprint and do not result in a change in functional use, such as: Improvements to bridges, tunnels, storage yards, buildings, stations, and terminals; construction of platform extensions, passing track, and retaining walls; and improvements to tracks and railbeds.
- (9) Assembly or construction of facilities that is consistent with existing land use and zoning requirements (including floodplain regulations) and uses primarily land disturbed for transportation use, such as: Buildings and associated structures; bus transfer stations or intermodal centers; busways and streetcar lines or other transit investments within areas of the right-of-way occupied by the physical footprint of the existing facility or otherwise maintained or used for transportation operations; and parking facilities.
- (10) Development of facilities for transit and non-transit purposes, located on, above, or adjacent to existing transit facilities, that are not part of a larger transportation project and do not substantially enlarge such facilities, such as: Police facilities, daycare facilities, public service facilities, amenities, and commercial, retail, and residential development.
- (11) The following actions for transportation facilities damaged by an incident resulting in an emergency declared by the Governor of the State and concurred in by the Secretary, or a disaster or emergency declared by the President pursuant to the Robert T. Stafford Act (42 U.S.C. 5121):
 - (i) Emergency repairs under 49 U.S.C. 5324; and
 - (ii) The repair, reconstruction, restoration, retrofitting, or replacement of any road, highway, bridge, tunnel, or transit facility (such as a ferry dock or bus transfer station), including ancillary transportation facilities (such as pedestrian/bicycle paths and bike lanes), that is in operation or under construction when damaged and the action:
 - (A) Occurs within the existing right-of-way and in a manner that substantially conforms to the preexisting design, function, and location as the original (which may include upgrades to meet existing codes and standards as well as upgrades warranted to address conditions that have changed since the original construction); and
 - (B) Is commenced within a 2-year period beginning on the date of the declaration.
- (12) Projects, as defined in 23 U.S.C. 101, that would take place entirely within the existing operational right-of-way. Existing operational right-of-way means all real property interests acquired for the construction, operation, or mitigation of a project. This area includes the features associated with the physical footprint of the project including but not limited to the roadway, bridges, interchanges, culverts, drainage, clear zone, traffic control signage, landscaping, and any rest areas with direct access to a controlled access highway. This also includes fixed guideways, mitigation areas, areas maintained or used for safety and security of a transportation facility, parking facilities with direct access to an existing transportation facility, transportation power substations, transportation venting structures, and transportation maintenance facilities.
- (13) Federally funded projects:
 - (i) That receive less than \$5,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) of Federal funds; or

- (ii) With a total estimated cost of not more than \$30,000,000 (as adjusted annually by the Secretary to reflect any increases in the Consumer Price Index prepared by the Department of Labor, see www.fhwa.dot.gov or www.fta.dot.gov) and Federal funds comprising less than 15 percent of the total estimated project cost.
 - (14) Bridge removal and bridge removal related activities, such as in-channel work, disposal of materials and debris in accordance with applicable regulations, and transportation facility realignment.
 - (15) Preventative maintenance, including safety treatments, to culverts and channels within and adjacent to transportation right-of-way to prevent damage to the transportation facility and adjoining property, plus any necessary channel work, such as restoring, replacing, reconstructing, and rehabilitating culverts and drainage pipes; and, expanding existing culverts and drainage pipes.
 - (16) Localized geotechnical and other investigations to provide information for preliminary design and for environmental analyses and permitting purposes, such as drilling test bores for soil sampling; archeological investigations for archeology resources assessment or similar survey; and wetland surveys.
- (d) Additional actions that meet the criteria for a CE in the CEQ regulations (40 CFR 1508.4) and paragraph (a) of this section may be designated as CEs only after FTA approval. The applicant must submit documentation that demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result. Examples of such actions include but are not limited to:
- (1) Modernization of a highway by resurfacing, restoring, rehabilitating, or reconstructing shoulders or auxiliary lanes (e.g., lanes for parking, weaving, turning, climbing).
 - (2) Bridge replacement or the construction of grade separation to replace existing at-grade railroad crossings.
 - (3) Acquisition of land for hardship or protective purposes. Hardship and protective buying will be permitted only for a particular parcel or a limited number of parcels. These types of land acquisition qualify for a CE only where the acquisition will not limit the evaluation of alternatives, including shifts in alignment for planned construction projects, which may be required in the NEPA process. No project development on such land may proceed until the NEPA process has been completed.
 - (i) Hardship acquisition is early acquisition of property by the applicant at the property owner's request to alleviate particular hardship to the owner, in contrast to others, because of an inability to sell his property. This is justified when the property owner can document on the basis of health, safety or financial reasons that remaining in the property poses an undue hardship compared to others.
 - (ii) Protective acquisition is done to prevent imminent development of a parcel that may be needed for a proposed transportation corridor or site. Documentation must clearly demonstrate that development of the land would preclude future transportation use and that such development is imminent. Advance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.
 - (4) Acquisition of right-of-way. No project development on the acquired right-of-way may proceed until the NEPA process for such project development, including the consideration of alternatives, has been completed.
 - (5) [Reserved]
 - (6) Facility modernization through construction or replacement of existing components.
 - (7) Minor transportation facility realignment for rail safety reasons, such as improving vertical and horizontal alignment of railroad crossings, and improving sight distance at railroad crossings.

- (8) Modernization or minor expansions of transit structures and facilities outside existing right-of-way, such as bridges, stations, or rail yards.
- (e) Any action qualifying as a CE under §771.116 or §771.117 may be approved by FTA when the applicable requirements of those sections have been met. FTA may consult with FHWA or FRA to ensure the CE is applicable to the proposed action.
- (f) Where a pattern emerges of granting CE status for a particular type of action, FTA will initiate rulemaking proposing to add this type of action to the appropriate list of categorical exclusions in this section.