CALIFORNIA DEPARTMENT OF TRANSPORTATION
DIVISION OF MASS TRANSPORTATION

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENATION AGREEMENT FOR FEDERAL TRANSIT ADMINISTRATION SUBRECIPIENTS

Division of Mass Transportation (DMT) must ensure that our subrecipients of Federal Transit Administration (FTA) Sections 5310[1], 5311[2], 5316[3], and 5317[4] funds meet applicable DBE requirements when funds are used in whole or in part to finance procurement and contracts of products and service(s). To this end, subrecipients with contracting opportunities must adhere to the *California State Disadvantaged Business Enterprise Program Plan* as it applies to local agencies.

Additionally, subrecipients with contracting opportunities must submit a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Federal Transit Administration Subrecipients* (Implementation Plan). Read the entire Implementation Plan before completing. Subrecipients are responsible for complying with the requirements contained therein.

All DBE Race-Neutral Implementation Agreements will be submitted to the District Transit Representative (DTR) regardless of FTA funding grant. (include DTR link listing DTR).

Enter the agency name (Page 1 of 6), DBE Liaison Officer and staffing information (Page 3 of 6), and signature information (Page 6 of 6). These areas are highlighted in grey. Otherwise, do not change or add to the wording of the Implementation Agreement.

Subrecipients need only resubmit the Implementation Plan should the DBE Liaison Officer change or significant staffing changes occur, or should the Implementation Plan be reissued by DMT as a result of changes in federal or state guidance.

City and County subrecipients complete a *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement For Local Agencies* for Federal Highway Administration funds administered through Caltrans Local Assistance. A copy of the *Disadvantaged Business Enterprise Race-Neutral Implementation Agreement For Local Agencies* may be submitted to your DTR in lieu of the Implementation Agreement. However, references to the *Local Assistance Procedures Manual* and reporting to the District Local Assistance Engineer do not apply to FTA funding. Report FTA goal, commitment, and payment data to DMT or your local DTR when requested, not Local Assistance.

If you have any questions, please contact your DMT representative.

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[1] Elderly Individuals and Individuals with Disabilities Program
[2] Nonurbanized Area Formula Program
[3] Job Access and Reverse Commute Program
[4] New Freedom Program

CALIFORNIA DEPARTMENT OF TRANSPORTATION

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DISADVANTAGED BUSINESS ENTERPRISE

RACE-NEUTRAL

IMPLEMENTATION AGREEMENT

FOR

FEDERAL TRANSIT GRANT ADMINISTRATION SUBRECIPIENTS

JANUARY 1, 2009

DISADVANTAGED BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION AGREEMENT for the _____; hereinafter referred to as "SUBRECIPIENT".

I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The SUBRECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the SUBRECIPIENT will sign the California Department of Transportation's Disadvantaged Business Enterprise Implementation Agreement (hereinafter referred to as Agreement). The SUBRECIPIENT agrees to implement the *State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan* (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

The SUBRECIPIENT must implement a policy to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted procurement and contracts of products and services contracts.
- To create a level playing field on which DBE's can compete fairly for DOT-assisted procurement and contracts of products and services contracts.
- To ensure that their annual overall DBE participation percentage is narrowly tailored, in accordance with applicable law.
- To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- To help remove barriers to the participation of DBEs in DOT-assisted procurement and contracts of products and services contracts.
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

III Nondiscrimination (§26.7)

SUBRECIPIENT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering the local agency components of the DBE Program Plan, the SUBRECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

IV Race-Neutral Means of Meeting the Annual DBE Goal (§26.51)

SUBRECIPIENT will assist Caltrans to achieve its Overall Statewide DBE Goal by race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

Race-neutral means include, but are not limited to, the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has been historically low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

V Quotas (§26.43)

SUBRECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

VI DBE Liaison Officer (DBELO) (§26.25)

SUBRECIPIENT must designate a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the SUBRECIPIENT and ensures that the SUBRECIPIENT is fully and properly advised concerning DBE Program Plan matters.

The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment _____ to this agreement.

The DBELO is responsible for developing, implementing, and monitoring the SUBRECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected annual anticipated DBE participation level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

VII Federal Financial Assistance Agreement Assurance (§26.13)

The SUBRECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted procurement and contracts of products and services contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in

appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

VIII DBE Financial Institutions (§26.27)

It is the policy of the SUBRECIPIENT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

IX Directory (§26.31)

SUBRECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

X Required Contract Clauses (§§26.13, 26.29)

SUBRECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. Contract Assurance

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 procurement and contracts of products and services 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.
[Note – This language is to be used verbatim, as is stated in §26.13(b).]

B. Prompt Payment

Prompt Progress Payment to Subcontractors

A prime contractor or subcontractor shall pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other

remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The SUBRECIPIENT shall include either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their DOT-assisted contracts to ensure prompt and full payment of retainage (withheld funds) to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30-days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject

the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XI Bidders List (§26.11)

The SUBRECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted procurement and contracts of products and services contracts. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of the firms.

XII Reporting

SUBRECIPIENT will report bidder DBE information to the Division of Mass Transportation Procurement Management office prior to execution of contract award.

SUBRECIPIENT will submit the Disadvantaged Business Enterprise Awards-Commitments and Actual Payments form twice yearly to the District Transit Representative; Report due **April 15th** of each year for the period of October 1st to March 31st and Report due **October 15th** of each year for the period of April 1st to September 30th. Instructions and forms can be found at: http://www.dot.ca.gov/hq/MassTrans/DBE.html

XIII Certification (§26.83(a))

SUBRECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted procurement and contracts of products and services contracts.

XIV Confidentiality

SUBRECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

	Date:	
[Signature of Agency's Chief Executive Officer]		
	Phone Number:	
[Print Name of Agency's Chief Executive Officer]		