

DRAFT

ANTELOPE VALLEY TRANSIT AUTHORITY (AVTA) DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

October 1, 2009, through September 30, 2010

ADOPTED MM/DD/YYYY

Antelope Valley Transit Authority (AVTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR, part 26. AVTA receives Federal financial assistance from the Department of Transportation and, as a condition of receiving this assistance, AVTA has signed an assurance that it will comply with 49 CFR, part 26.

Many of the terms, words, and phrases used in this DBE program description are defined in 49 CFR 26.5, a copy of which is Attachment 1 to this document.

It is the policy of AVTA to ensure that DBEs, as defined in part 26, have an equal opportunity participate in DOT-assisted contracts. It is also AVTA's policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE program.
7. To comply with all regulatory agencies and therefore the Caltrans DBE Race Neutral Implementation agreement is incorporated in its entirety to the AVTA DBE program for fiscal year 2009/2010 (attachment 2).

The Contract Administrator position has been designated as the DBE Liaison Officer. In that capacity, this person is responsible for implementing all aspects of the DBE program. The DBE Liaison Officer oversees all aspects of the DBE program including the annual goal setting analysis. Implementation of the DBE program is in accordance with the same priority as compliance with all other legal obligations incurred by AVTA in its financial assistance agreements with the Department of Transportation. AVTA has disseminated the DBE policy to the Board of Directors, to employees of the

organization, and to DBE and non-DBE businesses that have performed work for AVTA on DOT-assisted contracts.

Nondiscrimination (26.7)

AVTA 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 its DBE program, AVTA 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 with respect to individuals of a particular race, color, sex, or national origin.

DBE Program Updates (26.21)

AVTA will continue to carry out this DBE program until all funds from DOT financial assistance have been expended. AVTA will provide to DOT updates concerning significant changes in the DBE program.

Quotas (26.43)

AVTA will not use any quotas in the administration of this DBE program.

DBE Liaison Officer (DBELO) (26.25)

AVTA has designated the following individual as its DBE Liaison Officer:

Contract Administrator
Antelope Valley Transit Authority
42210 6th St West
Lancaster, CA 93534

The DBE Liaison Officer is responsible for implementing all aspects of the DBE program and ensuring that AVTA complies with all provisions of 49 CFR part 26. The DBE Liaison Officer has direct access to the Executive Director concerning DBE program matters. Please see Attachment 3 for an organization chart that identifies the DBELO's position in the organization.

The DBELO is responsible for developing, implementing, and monitoring the DBE program in coordination with other officials. The DBELO has the following responsibilities:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with the DBE program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurement so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes AVTA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Board of Directors on DBE matters and achievement.
9. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains AVTA's updated directory on certified DBEs.
14. Delegates the above and other DBE tasks to appropriate staff.

Federal Financial Assistance Agreement Assurance (26.13)

AVTA has signed the following assurance that applies to all DOT-assisted contracts and their administration:

AVTA 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. AVTA shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. AVTA's DBE program, as required by 49 CFR part 26

and 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 AVTA 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.).

Directory (26.31)

AVTA uses three sources to identify firms eligible to participate as DBEs in the program: (1) the DBE directory maintained by the California Unified Certification Program (CUCP) Database for Certified DBEs at http://www.dot.ca.gov/hq/bep/dbe_query.htm; (2) the American Public Transportation Association (APTA) Database for transit-related companies at "http://www.apta.com" and selecting Industry Information, then selecting COMPS (Catalog of Member Products & Services); (3) and the 2005 US Census Bureau County Business Patterns for all firms at "<http://censtats.census.gov/cbpnaic/cbpnaic.shtml>".

Over concentration (26.33)

When capital projects are undertaken, AVTA hires a primary contractor. The primary contractor is asked to identify any over concentrations of DBE firms. In the unlikely event that such a situation exists, AVTA will work with the primary contractor and obtain DOT approval of determinations of over concentration and measures for dealing with them.

Required Contract Clauses (26.13, 26.29) Contract Assurance

AVTA will ensure that the following clause is included in every DOT-assisted contract and subcontract:

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 AVTA deems appropriate.

Prompt Payment

AVTA will include the following clause in each DOT-assisted prime contract:

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

AVTA. The prime contractor further agrees 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 AVTA. This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement Mechanisms (26.37)

AVTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the DBE program of which AVTA becomes aware so that DOT can take appropriate action as provided for in Section 26.109 (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules). AVTA will also consider similar action under its own legal authority that is available in the event of non-compliance with the DBE program by a participant in AVTA's procurement activities, including responsibility determinations in future contract awards.

Overall DBE Goal (26.45)

The purpose of the overall goal is to achieve a "level playing field" for ready, willing, and able DBEs seeking to participate in federally-assisted contracts at AVTA. In an effort to establish this level playing field, AVTA has examined its programs and relevant local markets and has determined the amount of participation that DBEs would be expected to achieve in the absence of present and past effects of discrimination.

The Code of Federal Regulations (49 CFR part 26) requires recipients of DOT federal aid to use a two-step process in the development of their Overall DBE Goal.

Step One: Determine the base figure for the Overall DBE Goal. AVTA first identified the upcoming Federally-funded operational and capital projects and the total FTA funding amount, which is required to be at least \$250,000. Revenue vehicle purchases were not considered. AVTA then identified subcontracting opportunities attributable to the upcoming Federally-funded capital and operational projects and used the North American Industry Classification System (NAICS) Codes and the American Public Transportation Association (APTA) comparables. AVTA then decided on the Los Angeles County market range for each subcontracting opportunity.

AVTA next calculated the relative availability of certified DBE firms that are ready, willing, and able to work on DOT-assisted contracts. This figure is a measurement of the current percentage of ready, willing, and able certified firms and is based on demonstrable evidence of the Antelope Valley, Los Angeles County, and nationwide labor market conditions. In determining this percentage, AVTA used three data sources immediately available to the agency, consisting of (1) the CUCP Database for Certified DBEs Directory at http://www.dot.ca.gov/hq/bep/dbe_query.htm; (2) the American Public Transportation Association (APTA) Database for transit related companies at

<https://www.apta.com> and selecting Industry Information, then selecting COMPS (Catalog of Member Products & Services); and (3) the 2005 US Census Bureau County Business Patterns for all firms located at <http://censtats.census.gov/cbpnaic/cbpnaic.shtml>.

The percentage of available certified DBE firms was multiplied by each subcontracting opportunity cost to arrive at a Weighted Cost for each subcontracting opportunity. The total of all Weighted Costs was divided by the total FTA funding amount to arrive at the current Overall DBE Goal. See Attachment 3 for Overall DBE Goal.

Step Two: Adjust the Overall DBE Goal calculated in Step One to account for other evidence, such as prior years' actual percentages that were lower than the current year's calculations. See Attachment 3 for Overall DBE Goal.

Transit Vehicle Manufacturers (26.49)

AVTA will require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on an FTA-assisted transit vehicle procurement, to certify that it has complied with the requirements of Section 26.49 of 49 CFR part 26. Alternatively, AVTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the DBE program.

Process

AVTA submits its Overall DBE Goal to DOT on August 1 of each year. Before establishing the overall goal each year, AVTA will consult with the State of California CUCP Database to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs, and will review AVTA's efforts to establish a level playing field for the participation of DBEs.

Following this review, AVTA will publish a notice of the proposed Overall DBE Goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at AVTA's principal office for 30 days following the date of the notice, and that AVTA will accept comments on the goal for 45 days from the date of the notice. This notice will be placed in a local newspaper of general circulation, and on the AVTA website. AVTA will issue this notice by June 15 of each year. The notice will include the address to which comments may be sent and the address (including offices and websites) where the proposal may be reviewed.

AVTA's Overall DBE Goal submission to DOT will include a summary of information and comments received during this public participation process and AVTA's responses. AVTA's will begin using its Overall DBE Goal on October 1 of each year, unless other instructions are received from DOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

AVTA will meet the maximum feasible portion of its Overall DBE Goal by using race-neutral means to facilitate DBE participation.

AVTA will use race-neutral means to increase DBE participation, including outreach, technical assistance, and revisions to the procurement process to ensure increased opportunities for all small businesses, not just DBEs. Specific goals for the use of DBEs on individual contracts will not be established. Additional actions may include:

- A. Advertise small contracts with a local newspaper of general circulation.
- B. Assist small businesses in writing responses to Requests for Proposals through individual counseling or group training sessions.

AVTA will meet the maximum feasible portion of its Overall DBE Goal by using race-neutral means to facilitate DBE participation. Race-neutral DBE participation is deemed to have occurred when a DBE is awarded 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, is awarded a subcontract by 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:

- A. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate the participation of DBEs, and other small businesses (e.g., unbundling large contracts to make them more accessible to small businesses and requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces).
- B. 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).
- C. Providing technical assistance and other services.
- D. Conducting information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; and providing information in languages other than English, where appropriate).

- E. 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.
- F. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of work, handle increasingly significant projects, and achieve eventual self-sufficiency.
- G. Assist in establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low.
- H. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
- I. Assisting DBEs, and other small businesses, to develop their capability to use emerging technology and to conduct business through electronic media.

AVTA estimates that, in meeting its Overall DBE Goal of 8.56%, it will obtain 100% from race-neutral participation.

AVTA will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation, and AVTA will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (26.51)

AVTA will use contract goals to meet any portion of the Overall DBE Goal that AVTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the Overall DBE Goal that is not projected to be met through the use of race-neutral means.

AVTA will establish contract goals, or its contractor will establish goals, only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal will not be established on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, and availability of DBEs to perform the particular type of work). AVTA will express its contract goals as a percentage of the Federal share of a DOT-assisted contract.

Good Faith Efforts (26.53)

AVTA treats bidder/offeror compliance with good faith efforts requirements as a matter of significance.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information prior to award of the contract:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm;
4. Written and signed commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to 49 CFR part 26.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. AVTA will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before AVTA commits to the performance of the contract by the bidder/offeror.

Administrative reconsideration

Within 30 days of being informed by AVTA that it is not responsible, because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The bidder/offeror should make this request in writing to the following reconsideration official: Contract Administrator, 42210 6th St West, Lancaster, CA 93534. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with AVTA's reconsideration official to discuss the issue of whether it

met the goal or made adequate good faith efforts to do. AVTA will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The decision resulting from this reconsideration process is not appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

AVTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. AVTA will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, AVTA will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the prime contractor fails or refuses to comply in the time specified, AVTA's purchasing office will issue an order stopping all or part of payment or work until satisfactory action has been taken. If the prime contractor still fails to comply, the Purchasing Supervisor may initiate a termination for default proceeding.

Counting DBE Participation (26.55)

AVTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Certification Process

The State of California CUCP Database has a unified certification program.

Certification Appeals

Any complainant may appeal the State of California's decision in a certification matter to:

Department of Transportation
Office of Civil Rights
Certification Appeals Branch
400 7th St., SW, Room 2104

No Change" Affidavits and Notices of Change

AVTA requires all DBEs to inform AVTA, in a written notice, of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26, or of any material changes in the information provided with the DBE's application for certification.

Information Collection and Reporting

Bidders List

AVTA will update its bidders list, which consists of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to enable use of the bidders' list approach in calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. This information will be obtained through a contract clause requiring prime bidders to report the names, addresses, and other information for all firms that quote to them on subcontracts.

Monitoring Payments to DBEs

AVTA will require prime contractors to maintain records of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request of any authorized representative of AVTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

AVTA will keep a running tally of actual contract payments made to DBE firms for work committed to them at the time of contract award.

AVTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Reporting to DOT

AVTA will report DBE participation on a semi-quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Confidentiality

AVTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, AVTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Attachments

- 1 49 CFR 26.5 Definition of Terms
- 2 Caltrans DBE Race Neutral Implementation Agreement
- 3 Antelope Valley Transit Authority Organizational Chart
- 4 Antelope Valley Transit Authority Overall DBE Goal

ATTACHMENT 1
49 CFR 26.5
Definitions of Terms

26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

1. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - a. One concern controls or has the power to control the other; or
 - b. Third party or parties controls or has the power to control both; or
 - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian, Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska

Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.). "Compliance" means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern -

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it?

DOT- assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See the definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the four digit Standard Industrial Classification (SIC) code designation, which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site (www.ntis.gov/naics).

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it

(13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.
2. Any individual in the following groups, members of which are reputedly presumed to be socially and economically disadvantaged:
 - a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - c. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - e. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka.
 - f. Women.
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ)

ATTACHMENT 2

CALIFORNIA DEPARTMENT OF TRANSPORTATION

DIVISION OF MASS TRANSPORTATION

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 Antelope Valley Transit Authority; 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 A 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.

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.

Signed agreement on file

[Signature of Agency's Chief Executive Officer]

Date:

6/5/2009

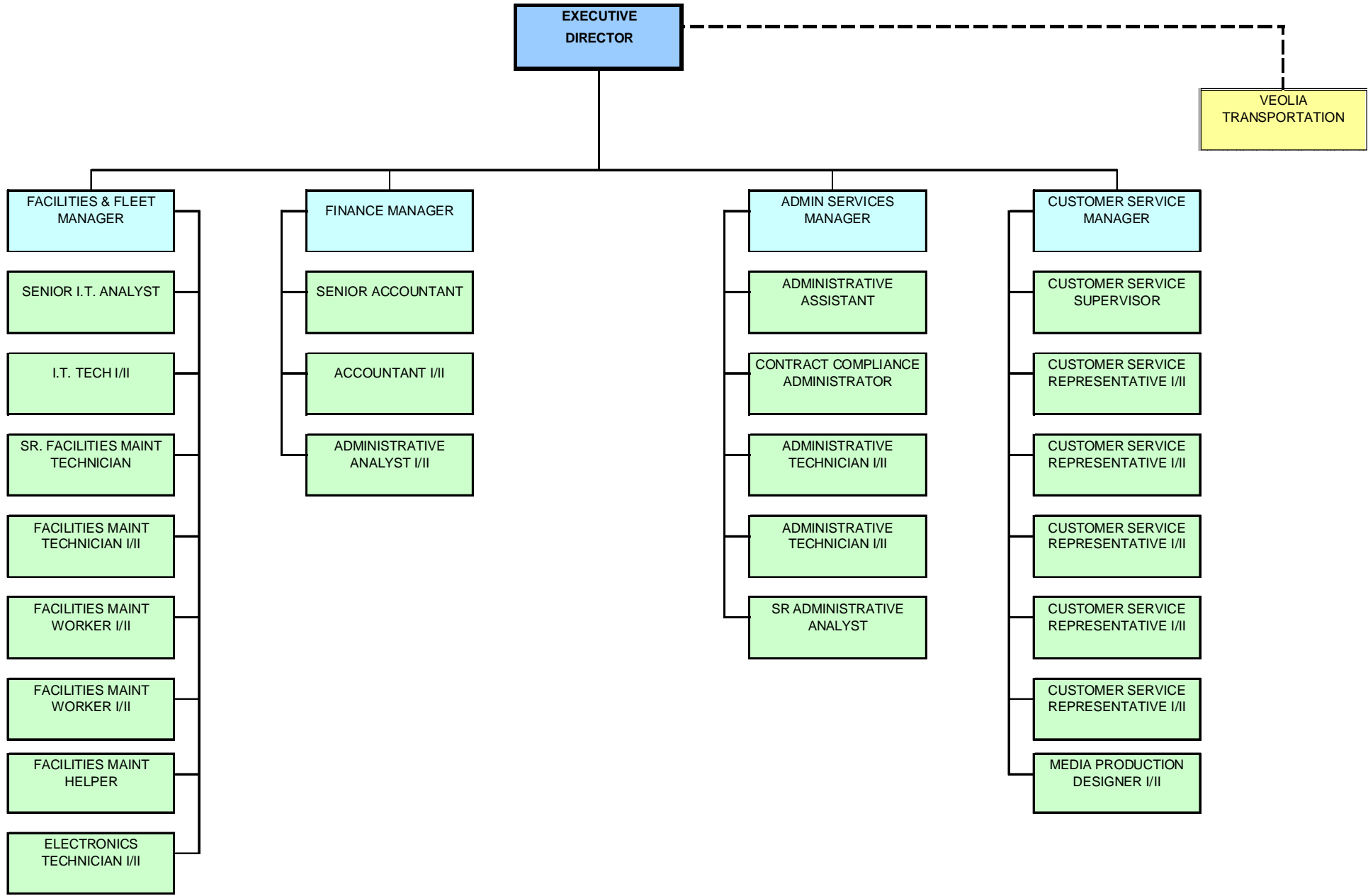
Randy Floyd

[Print Name of Agency's Chief Executive Officer]

Phone Number:

661.729.2206

ATTACHMENT 3
Antelope Valley Transit Authority Organizational Chart



ATTACHMENT 4
Antelope Valley Transit Authority Overall DBE Goal

Antelope Valley Transit Authority

Overall Disadvantaged Business Enterprise (DBE) Goal for 10/1/2009 to 9/30/2010

* Does not include Buses

(A)	(B)	(C)	(D)= (BXC)	(E)	(F) = (D) X (E)	(G)	(H)	(I)	(J) = (G/I)	(K) = (J) X (F)
Project Title and Subcontracting Opportunities	Total Project Cost	FTA Funding %	FTA Amount	Weight: Estimated % of Project Total of Col (A)	Estimated FTA % of Total Project Cost	CUCP # DBE Firms Available	Range of Market	2006 US Census # of DBE & Non DBE Firms in LA County	% of relative DBE availability	DBE % of FTA Project Cost
9 (service, support & shuttle) vehicles (ARRA)	\$469,000	100%	\$469,000							
New Car Dealers #441110				95.00%	\$445,550	2	LA County	566	0.35%	\$1,574
Insurance for vehicles #524210				3.00%	\$14,070	26	LA County	3267	0.80%	\$112
Automobile Maintenance #423120				2.00%	\$9,380	5	LA County	824	0.61%	\$57
Land Purchase	\$1,000,000	80%	\$800,000							
Lending Institution#522110 for land purchase				90.00%	\$720,000	0	LA County	1548	0.00%	\$0
Realtor #531210				4.00%	\$32,000	27	LA County	3941	0.69%	\$219
Appraisers #531320				1.00%	\$8,000	10	LA County	267	3.75%	\$300
Escrow/Deed Transfer/surety bond #531390				1.00%	\$8,000	19	LA County	1011	1.88%	\$150
Notary #541199				0.30%	\$2,400	6	LA County	155	3.87%	\$93
Title Company# 541191				1.00%	\$8,000	1	LA County	79	1.27%	\$101
Environmental Consulting Services #541620				2.70%	\$21,600	198	LA County	208	95.19%	\$20,562
Maint & Admin Construction - Phase II (ARRA)	\$2,600,000	100%	\$2,600,000							
Photovoltaic equipped parking structure #22111				100.00%	\$2,600,000	3	LA County	22	13.64%	\$354,545
Maint & Admin Construction - Phase II	\$436,000	80%	\$348,800							
Perimeter Fencing w/controlled access #238190				100.00%	\$348,800	10	LA County	127	7.87%	\$27,465

Modifications - Facilities (ARRA)	\$439,000	100%	\$439,000							
Px Transfer Center (park&ride) #236220				100.00%	\$439,000	46	LA County	929	4.95%	\$21,737
Modifications - Bus Shelters	\$348,000	80%	\$278,400							
Shelter & Bench project @ Bus stops #236220				100.00%	\$278,400	46	LA County	929	4.95%	\$13,785
Bus Stop Modifications - Signage/Lighting	\$642,692	80%	\$514,154							
Shelter & Bench project @ Bus stops #339950				100.00%	\$514,154	4	LA County	156	2.56%	\$13,183
ITS Implementation/Upgrade	\$300,000	80%	\$240,000							
Additional IT/ITS projects #541513				51.00%	\$0	51	LA County	86	59.30%	\$0
Operating Expense	\$3,328,200	50%	\$1,664,100							
Fuel #324191				99.55%	\$1,656,612	3	LA County	9	33.33%	\$552,204
Contractor Oversight Services #621511				0.45%	\$7,488	1	LA County	202	0.50%	\$37
Fareboxes	\$1,300,000	88.53%	\$1,150,890							
Purchase New Fareboxes/TAP #334514				100.00%	\$1,150,890	1	LA County	0	0.00%	\$0
Refurbish/Engine Rebuilds/Repowers							nationwide (apta)			
#333618	\$751,152	80%	\$600,922	100.00%	\$600,922	0		0	0.00%	\$0
Preventative Maintenance #811111	\$3,400,000	80%	\$2,720,000	100.00%	\$2,720,000	6	California	2528	0.24%	\$6,456
Line Total	\$15,014,044		\$11,825,265		\$11,585,265					\$1,012,581
Total FTA Funding without revenue buses										\$11,825,265
Overall DBE Goal for FFY2009/2010 (a/b)										8.56%