

**AN ORDINANCE TO ESTABLISH
THE LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE.**

**BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE LOS ANGELES
COUNTY METROPOLITAN TRANSPORTATION AUTHORITY:**

SECTION 1: The Los Angeles County Metropolitan Transportation Authority Administrative Code is hereby established to read as follows:

**Los Angeles County
Metropolitan Transportation Authority
Administrative Code**

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LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE

Title 1

General Provisions

Chapter 1-01

Establishment

1-01-010 Adoption of Code. There is hereby adopted the Administrative Code of the Los Angeles County Metropolitan Transportation Authority. Throughout this code, wherever reference is made to the Metropolitan Transportation Authority or to the MTA, that reference shall mean the same as the Los Angeles County Metropolitan Transportation Authority. Except as otherwise provided in section 1-01-040, where any provision of this code is substantially similar to a previous ordinance of the MTA, the Southern California Rapid Transit District or the Los Angeles County Transportation Commission, that provision of this code shall be considered a reenactment of that previous ordinance.

1-01-020 Title – Citation – Reference. This code shall be known as the “Los Angeles County Metropolitan Transportation Authority Administrative Code” or the “MTA Administrative Code” and it shall be sufficient to refer to either title in any legal proceeding where it is cited. It shall be sufficient to designate any ordinance, adding to, amending, correcting or repealing all or any part of the code as an addition, amendment to, correction or repeal of the “MTA Administrative Code.”

1-01-030 Authority. This code is enacted pursuant to the ordinance adopting authority granted to the Southern California Rapid Transit District by Public Utilities Code Sections 30273 *et seq.*, and to the Los Angeles County Transportation Commission by Public Utilities Code Sections 130103 and 130105. Pursuant to Public Utilities Code Sections 130050.2, 130051.13 and 130051.14 the Los Angeles County Metropolitan Transportation Authority is the single

successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission with all of the powers and authority given by law to those two agencies.

1-01-040 Certain Ordinances Continued. The Los Angeles County Transportation Commission Ordinance No. 16, entitled “An Ordinance Establishing a Retail Transactions and Use Tax in the County of Los Angeles for Public Transit Purposes,” which was adopted by the electorate as Proposition A at the November 1980 general election, the Los Angeles County Transportation Commission Ordinance No. 16, entitled “An Ordinance Establishing an Additional Retail Transactions and Use Tax in the County of Los Angeles for Public Transit Purposes,” which was adopted by the electorate as Proposition C at the November 1990 general election, and the MTA ordinance entitled “The Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998,” which was adopted by the electorate as Proposition A at the November 1998 general election, are each included in this code as adopted by the electorate. For convenience, the section headings and numbering of these three ordinances have been revised to be consistent with the numbering and heading system in this code. Any provision of any of these ordinances may be cited using the numbering in this code. However, the inclusion of these ordinances within this code is not intended and should not be construed as a substantive change in any provision of any of these three ordinances. Their inclusion in this code is solely for the convenience of presenting all MTA ordinances in one code, and should not be considered a reenactment of the provisions of these ordinances. These three ordinances remain in full force and effect as adopted by the electorate and their interpretation and effect should continue in the same manner as if this code were not adopted.

1-01-050 Repeal of Other Ordinances. Except as provided in section 1-01-040, this administrative code is intended to include all ordinances applicable to the Los Angeles County Metropolitan Transportation Authority. Any ordinance of the Southern California Rapid Transit District, the Los Angeles County Transportation Commission or the Los Angeles County

Metropolitan Transportation Authority which is not included in this code, is repealed as of the effective date of this code.

Chapter 1-05

Interpretation

1-05-010 Severability. If any section, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The MTA Board of Directors hereby declares that it would have adopted this code, and each section, subsections, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall remain in full force and effect.

1-05-020 Provisions Not Affected By Headings. Title, chapter and section headings contained in the provisions of this code shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of any section hereof.

1-05-030 Construction of Terms – Tenses. Within this code, unless the text clearly provides otherwise, the present tense includes the past and the future tenses and the future tense includes the present.

1-05-040 Construction of Terms – Gender. Within this code, unless the text clearly provides otherwise, the masculine gender includes the feminine, and the feminine gender includes the masculine.

1-05-050 Construction of Terms – Number. Within this code, unless the text clearly provides otherwise, the singular includes the plural, and the plural includes the singular.

1-05-060 Construction of Terms – Shall and May. Within this code, the word “shall” is mandatory, and the word “may” is permissive.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE

Title 2

Administration

Chapter 2-01

Board of Directors

2-01-010 MTA Governing Board. The MTA is governed by a Board of Directors. The membership of the Board of Directors shall be as set forth in Public Utilities Code Section 130051. Unless the context otherwise dictates, the term Board of Directors when used in this Administrative Code, shall mean the Board of Directors governing the MTA.

2-01-020 Board of Directors Regular Meetings. The regular meetings of the Board of Directors shall be held the fourth Thursday of each month commencing at 9:30 a.m. at the MTA Headquarters Building, One Gateway Plaza, Los Angeles. If the regular meeting date falls on a holiday, or if for any other reason the Chair of the Board of Directors determines that the regular meeting in any month should be set for another time or date, the regular meeting shall be set at the date and time designated by the Chair.

2-01-030 Board of Directors Special Meetings. Special meetings of the Board of Directors may be called at any time in the manner provided by Government Code Section 54956.

2-01-040 Board of Directors Annual Meeting. The regular meeting of the Board of Directors held in June of each year shall be considered the annual meeting.

2-01-050 Adjourned Meetings. The Board of Directors may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment in accordance with Government Code Section 54955.

2-01-060 Board of Directors Quorum. A majority of the voting members of the Board of Directors shall constitute a quorum, and except for any decision for which more than a majority

vote is specifically required, any action of the Board of Directors shall require the affirmative vote of a majority of the voting members or the Board.

2-01-070 Committee of the Whole. At the time and place set for any meeting of the Board of Directors where an insufficient number of members are present to constitute a quorum, the members present may constitute themselves as a Committee of the Whole, and meet for the purpose of hearing reports from MTA staff or to discuss agenda matters or any other matter of interest to the members present, but no action as the Board of Directors may be taken on any matter. The Committee of the Whole shall automatically cease and become a meeting of the Board of Directors at any time sufficient members are present to constitute a quorum.

2-01-080 Board Committees. The Board of Directors shall have a minimum of five standing committees. The Chair of the Board of Directors may designate other standing and ad hoc committees subject to concurrence of the Board of Directors and shall make appointments to all committees. The Board of Directors may delegate to committees any responsibilities authorized by law including the power to approve contracts with a four-fifths vote.

2-01-090 Committee Quorum. A majority of the members of a committee shall constitute a quorum. Fifty percent of the members of a committee with an even number of members shall constitute a quorum for that committee. When a committee cannot establish a quorum, any other member of the Board of Directors who is present may be temporarily appointed by the chair of the committee to sit as a substitute member of that committee for that meeting. Any member of the Board of Directors who is present at any committee meeting may participate in the discussion of that committee.

2-01-100 Committee Action. All actions taken by a committee, other than actions requiring a four-fifths vote, shall require the affirmative vote of a majority of all appointed committee members. All actions by a committee, which require a four-fifths vote for approval shall require the affirmative vote of four-fifths of all appointed committee members. Any agenda item which does not receive a sufficient vote for approval as required by this section shall

be forwarded to the full Board of Directors for consideration without recommendation by the committee.

2-01-110 Ralph M. Brown Act. All meetings of the Board of Directors and of its standing and its ad hoc committees shall be conducted in accordance with the requirements of the Ralph M. Brown Act (Chapter 9, commencing with Section 54950, Part 1, Division 2, Title 5 of the Government Code).

2-01-120 Proceedings of the Board of Directors and Committees. The Board of Directors may adopt rules governing the proceedings of the Board of Directors and of its standing and ad hoc committees. Such rules may be suspended or modified from time to time by action of the Board of Directors. All proceedings of the Board of Directors and of its standing and ad hoc committees shall be governed by the law applicable thereto, such rules as are adopted by the Board of Directors and by Robert's Rules of Order Newly Revised. The General Counsel shall act as parliamentarian and, on request of the Chair, shall give parliamentary advice. To the extent there is inconsistency among the provisions governing such proceedings, the order of precedence shall be applicable law, the rules adopted by the Board of Directors, and Robert's Rules of Order. The failure to follow Board adopted procedures or Robert's Rules of Order shall not invalidate any action taken.

2-01-130 Limitations of Public Comment. The Board of Directors may adopt reasonable limitations for persons wishing to address the Board of Directors or a Board committee on an agenda item or as part of the general public comment. Limitations may be placed on the total number of speakers, the amount of time for each speaker, and the amount of time for all speakers on any particular matter. Reasonable deviations from the Board adopted limitations may be directed for a particular meeting or a particular matter at the discretion of the Chair of the Board of Directors or the Chair of a Board committee, unless otherwise directed by a vote of the Board or the committee.

2-01-140 Board Officers. The Officers of the Board of Directors shall be the Chair, the 1st Vice Chair and the 2nd Vice Chair, who shall all be members of the Board of Directors. There shall be an automatic City of Los Angeles/County/City Selection rotation in the filling of the Chair, the 1st Vice Chair and the 2nd Vice Chair. Unless the Board of Directors sets a different time period, each year the 1st Vice Chair shall automatically succeed to the position of Chair and the 2nd Vice Chair shall automatically succeed to the position of 1st Vice Chair. The election of the Board Officers shall be held each year at the annual meeting.

2-01-150 Duties of Board Officers. The Chair shall preside at all meetings of the Board of Directors and shall exercise and perform such other powers and duties as may be assigned from time to time by the Board or prescribed by ordinance. In any case where the execution of a document or the performance of an act is directed, the Chair, unless a resolution or ordinance otherwise provides, is empowered to execute such documents or perform such act. The 1st Vice Chair shall perform the duties of the Chair in the absence or inability of the Chair, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chair. The 2nd Vice Chair shall perform the duties of the 1st Vice Chair and Chair in the absence or inability of these officers and shall be governed by the powers and restrictions upon these offices.

2-01-160 Vacancies in Board Offices. In the event of a vacancy during the term of the Chair, the 1st Vice Chair or the 2nd Vice Chair, the Board shall elect a replacement to fill the vacated office. The Board shall select a replacement from the Board members representing the same constituency as the departing officer, i.e., City of Los Angeles, County of Los Angeles, City Selection Committee to serve the remainder of the term of the vacant office.

2-01-170 Removal of Board Officers. Any Officer of the Board of Directors may be removed from office at any time by an affirmative vote of at least eight members of the Board of Directors.

2-01-180 Appointments of MTA Representatives to Other Boards. The Chair is authorized to make the appointment to fill a position on the board of another agency, which is to

be filled by an MTA representative, unless the rules of that agency require appointment through a different procedure. Any person so appointed as the MTA representative shall serve at the pleasure of the current Chair unless the rules of the other agency do not allow for removal. Any action taken by the Chair under this section may be overruled at any time by a majority vote of the members of the Board of Directors.

2-01-190 Director Expense Reimbursement and Travel Policy.

A. Members of the Board of Directors may from time-to-time be required to travel on behalf of the MTA. The Board of Directors shall approve in advance all Board member travel, except that authority is hereby given for travel to American Public Transportation Association related functions, and to Washington D.C. and Sacramento for legislative purposes. All MTA related travel shall be governed by the provisions contained in this section and should conform to the travel policy applicable to MTA employees unless the Board of Directors adopts a different policy.

B. All Directors will be required to declare under penalty of perjury that the information contained in a request for expense reimbursement is true and correct to the best of the Director's knowledge.

C. Director expense claims with supporting documentation shall be submitted monthly to the Board Secretary. Allowable expenses related to MTA business up to \$250 per month will be reimbursed upon approval by the Board Secretary. Expenses over \$250 per month shall be reviewed by the Board Secretary and approved by the Board Chair or his or her designee. Disputed expense claims shall be referred to the Executive Management and Audit Committee. If that Committee does not resolve the dispute, the claim shall be referred to the Board of Directors for a final decision.

D. All Director expense reimbursement requests are subject to audit and review and shall be included in the Inspector General's quarterly report on MTA expenses.

E. Except as otherwise provided by action of the Board of Directors, travel expense reimbursement for MTA employees and for members of the Board of Directors shall be subject to the same limits as are set from time-to-time by the County of Los Angeles for County-related travel by its officials and employees.

F. Travel related to MTA business by a person appointed under section 2-01-180 to serve as the MTA appointee on the board of another agency shall be subject to the rules set forth in this section.

2-01-200 MTA Officers Appointed by and Reporting Directly to the Board of Directors. The Board of Directors, by majority vote, shall appoint as MTA officers who report directly to the Board of Directors a Chief Executive Officer, a Board Secretary, a General Counsel, an Inspector General, and an Ethics Officer.

Chapter 2-05

Chief Executive Officer

2-05-010 Appointment of a Chief Executive Officer. The Board of Directors shall appoint a Chief Executive Officer to serve as the executive manager of the MTA under the direction of the Board of Directors. The Chief Executive Officer shall be a full time officer of the MTA and shall be appointed for a term of four years.

2-05-020 Authority and Responsibilities of Chief Executive Officer. The Chief Executive Officer shall have the following authority and responsibilities:

A. To plan programs and develop policies for the operation of the MTA within the limits of the authority established from time-to-time by the Board of Directors;

B. To organize the staff of the MTA for the most effective performance of the MTA's programs, and to retain well-qualified persons to carry out these programs;

C. To provide leadership for all of the staff of the MTA;

D. To direct, coordinate and evaluate the work of all MTA organizational units;

E. To report to the Board of Directors at its regular and special meetings, and to the Chair of the Board of Directors between meetings, on the progress of programs being conducted, and to make recommendations to the Board of Directors with respect to Board actions that are necessary to further these programs;

F. To commit expenditures to the extent permitted by law on behalf of the MTA consistent within the authorized budget and expenditure authority and such other limitations as may be set from time-to-time by the Board of Directors;

G. To employ and discharge staff of the MTA as necessary to meet the objectives of the MTA consistent with the authorized budget and expenditure authority and such other limitations as may be set from time-to-time by the Board of Directors;

H. To represent the MTA to government officials, business and community leaders and representatives, and others as necessary to further the interests and mission of the MTA;

I. To award all contracts for construction based upon the lowest responsible and responsive bid submitted and to award and approve such other contracts under such authority as may be delegated to the Chief Executive Officer from time-to-time by the Board of Directors;

J. To perform such other responsibilities as may be delegated from time-to-time by action of the Board of Directors; and

K. To further delegate any authority granted the Chief Executive Officer unless specifically prohibited by law or by action of the Board of Directors.

2-05-030 Removal of Chief Executive Officer. The Chief Executive Officer shall serve at the pleasure of the Board of Directors, but may be removed during his or her four year term of office only as follows:

A. By a two-thirds vote of all members of the Board of Directors for any reason, or

B. By a majority vote of all members of the Board of Directors if the Chief

Executive Officer violates a federal or state law or regulation, or an ordinance, policy or practice

of the MTA relative to ethical obligations, including, but not limited to, the acceptance of gifts or contributions.

2-05-040 Pro Tempore or Acting Chief Executive Officer. On recommendation of the Chief Executive Officer, the Board of Directors may approve a list of executive staff members authorized to serve as Chief Executive Officer Pro Tempore during any absence or disability of the Chief Executive Officer.

Chapter 2-10

Board Secretary

2-10-010 Appointment of a Board Secretary. The Board of Directors shall appoint a Board Secretary who shall be a full time officer of the MTA.

2-10-020 Authority and Responsibilities of Board Secretary. The Board Secretary shall have the following authority and responsibilities:

A. To give notice of all meetings of the Board of Directors and Board Committees as required by law, to keep the official minutes of all such meetings, to retain the tapes of all such meetings for a period of at least five years, and to maintain custody of the seal of the MTA; and

B. To serve as agent for service of process for the MTA. Claims for money or damages against the MTA, and for wage garnishments of MTA employees, shall be referred to the Board Secretary. The Board Secretary is authorized to perform all functions of the Board of Directors prescribed by Part 3 of Division 3.6 of Title 1 of the Government Code with respect to such claims other than the allowance, compromise or settlement of such claims. The Board Secretary may delegate or refer claims not involving lawsuits to the appropriate MTA department. Claims involving lawsuits shall be referred to MTA Risk Management or the General Counsel, as appropriate.

2-10-030 Removal of Board Secretary. The Board Secretary serves at the pleasure of the Board of Directors and may be removed for any reason by a majority vote of the members of the Board of Directors.

Chapter 2-15

General Counsel

2-15-010 Appointment of a General Counsel. The Board of Directors shall appoint a General Counsel who shall be a full time officer of the MTA. The General Counsel may be an employee of the MTA or the Board of Directors may contract with another public agency to have the law office of that public agency serve as General Counsel for the MTA.

2-15-020 Authority and Responsibilities of General Counsel. The General Counsel shall have the following authority and responsibilities:

- A. To manage the legal affairs of the MTA;
- B. To provide or arrange for the provision of legal representation to the MTA and to its officers and employees, in all matters where the MTA is a party or where the actions of MTA officers and employees within the course and scope of their MTA employment or official duties are at issue;
- C. To provide legal advice to the Board of Directors, its individual members, and to MTA officers and employees on all matters pertaining to the operations and business of the MTA; and
- D. To retain private counsel to assist in meeting the responsibilities set forth above, for matters which are highly complex or require special expertise, or where the General Counsel staff is not otherwise able to provide the most effective representation and advice. For any matter where the General Counsel has retained private counsel, that counsel shall report to and be under the direction of the General Counsel unless the General Counsel has a conflict of interest which prevents such oversight.

2-15-030 Removal of General Counsel. The General Counsel serves at the pleasure of the Board of Directors and may be removed for any reason by a majority vote of the members of the Board of Directors.

Chapter 2-20

Inspector General

2-20-010 Appointment of an Inspector General. The Board of Directors shall appoint an Inspector General who shall be a full time officer of the MTA and who shall be appointed for a term of four years.

2-20-020 Authority and Responsibilities of Inspector General. The Inspector General shall direct an independent and objective unit reporting directly to the Board of Directors and shall have the following authority and responsibilities:

A. To conduct and supervise audits, reviews and analyses, independent of those internal audits directed by the Chief Executive Officer, relating to the programs, operations and contracts of the MTA;

B. To receive and investigate complaints from any source and proactively conduct investigations concerning alleged abuse, fraud or waste of MTA resources;

C. To provide leadership and coordination in recommending policies or remedial actions to correct deficiencies and promote economy, efficiency and effectiveness of MTA programs and operations;

D. To provide the Board of Directors and management with independent analyses, evaluations and appraisals of the MTA's performance effectiveness, the accuracy of its information systems, the economic and efficient utilization of its resources, and the adequacy of its internal controls;

E. To report quarterly to the Board of Directors on MTA expenditures for travel, meals and refreshments, private club dues, memberships fees and other charges and expenditures as specified by the Board of Directors and as required by Public Utilities Code Section 130051.28 (b);

F. To keep the Board of Directors and MTA management informed of issues and deficiencies relating to compliance with applicable policies, procedures, federal and state laws, regulations and grants, and the need for and the status of any appropriate corrective action;

G. To prepare and update as necessary, a pre-qualification questionnaire to be completed by business entities seeking to do business with the MTA as required by Public Utilities Code Section 130051.21;

H. To coordinate as necessary on criminal matters with law enforcement agencies;

I. To comply with the standards set forth in the Government Auditing Standards promulgated by the Controller General of the United States; and

J. To report expeditiously to the District Attorney, the California Attorney General, the United States Attorney or other appropriate prosecutorial and investigative agencies whenever the Inspector General has reasonable grounds to believe there has been a violation of criminal law.

2-20-030 Further Authority of Inspector General. In addition to the authority necessary to carry out those responsibilities set forth in section 2-20-020, the Inspector General shall have the following specific authority:

A. To have full, free and unrestricted access to all MTA records, reports, audits, reviews, plans, projections, documents, files, contracts, memoranda, correspondence, data, information and other materials, whether maintained in a written format or contained on audio, video, electronic tape or disk, or in some other format;

B. To subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of such books, papers, records and documents as may be deemed relevant to any inquiry or investigation undertaken, as authorized in section 2-20-050.

C. To select, appoint, and employ, in accordance with applicable MTA Human Resources policies, such officers and employees as are required to carry out the functions, powers and duties of the Inspector General;

D. To enter into contracts and other arrangements for audits, investigations, studies, analyses and other services with public agencies and with private persons to carry out the duties and responsibilities of the Inspector General, in accordance with applicable procurement ordinances and procedures and within the budget approved by the Board of Directors;

E. To have direct and prompt access to any member of the Board of Directors, MTA officer, employee or contractor as may be necessary to carry out the duties and responsibilities of the Inspector General; and

F. To make available to appropriate law enforcement officials information and evidence which relates to criminal acts that may be obtained by the Inspector General in carrying out his or her duties and responsibilities.

2-20-040 Confidentiality of Inspector General Investigatory Files. All information compiled by the Inspector General as part of an investigation is confidential and shall be considered an investigatory file under Government Code Section 6254, subdivision (f), and shall be subject to release only as set forth therein.

2-20-050 Subpoena Authority.

A. The Inspector General has the power to examine witnesses under oath, to compel the attendance of witnesses, and to compel the production of evidence by witnesses, within the course of an investigation authorized by this Chapter.

B. The Inspector General may issue a subpoena to compel the attendance of a witness to give testimony, or to compel the attendance of a witness to produce evidence when the subpoena is supported by affidavit from a member of the Office of Inspector General, which states the name and address of the witness, the exact things to be produced, and the materiality of the testimony or tangible evidence to the issues involved. The Inspector General is authorized to administer oaths to witnesses.

C. Subpoenas shall be issued in the name of the MTA, and they shall be attested by the Board Secretary. Subpoenas shall be served in the manner provided by law for the service of

a summons. Witnesses shall be entitled to five dollars (\$5.00) per hour, to a maximum of thirty-five dollars (\$35.00) per day, plus twenty cents (\$0.20) per mile for each mile traveled round trip between the residence of the witness to the place for the witness's appearance as set forth in the subpoena.

D. If a witness disobeys a subpoena, the Inspector General shall apply to the court with jurisdiction over such matters, to compel the attendance of the witness. The Inspector General shall seek the penalties imposed by law upon the disobedience of a compelled subpoena.

E. Nothing in this ordinance shall limit or otherwise affect the power of the Board of Directors to compel the attendance of a witness to give testimony, or to compel the attendance of a witness to produce evidence.

2-20-060 Complaints by Employees, Disclosure of Identity, Reprisal.

A. The Inspector General may receive and investigate complaints or information from any sources, including any employees of the MTA or MTA contractors, concerning the possible existence of activity constituting a violation of law, rules or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety.

B. The Inspector General shall not disclose the identity of an employee from whom a complaint or information has been received, unless the employee has consented to such disclosure or such disclosure is unavoidable during the course of the investigation.

C. Any employee who makes a complaint or discloses information to the Inspector General shall not be subject to any reprisal or threat of reprisal for having made such a complaint or for having disclosed such information, unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

2-20-070 Removal of the Inspector General. The Inspector General shall serve at the pleasure of the Board of Directors, but may be removed during his or her four year term of office only as follows:

- A. By a two-thirds vote of all members of the Board of Directors for any reason, or
- B. By a majority vote of all members of the Board of Directors if the Inspector General violates a federal or state law or regulation, or an ordinance, policy or practice of the MTA relative to ethical obligations, including, but not limited to, the acceptance of gifts or contributions.

Chapter 2-25

Ethics Officer

2-25-010 Appointment of an Ethics Officer. The Board of Directors shall appoint an Ethics Officer who shall be a full time officer of the MTA.

2-25-020 Authority and Responsibilities of the Ethics Officer. The Ethics Officer shall have the following authority and responsibilities:

- A. To provide information to members of the Board of Directors to assist them in complying with ethics related requirements. When in doubt as to the applicability of any provision of a code of conduct [MTA Administrative Code, Title 5] to any particular situation, a Board Member may contact the Ethics Officer or the General Counsel for advice. Any such contacts or advice will be considered a confidential communication and shall be entitled to all the applicable privileges;
- B. To serve as the filing officer for the Statement of Economic Interest Disclosures by MTA officers and employees;
- C. To update the MTA Conflict of Interest Code and submit the updated Code biennially to the County of Los Angeles for approval by the Board of Supervisors as required by state law;
- D. To serve as the MTA filing officer for lobbyist registration and reporting and to manage the lobbyist reporting administration pursuant to the chapter 5-25;

E. To provide ethics related education and advice to MTA staff, contractors, consultants, and members of the Board of Directors, and to otherwise promote high standards of ethics within the MTA;

F. To develop informational materials which are consistent with the codes of conduct in Title 5 of this Administrative Code and which describe the requirements of those codes in a readily understandable format, and to make such informational materials available to MTA officers and employees and persons doing business with the MTA;

G. To serve as the “Reconsideration Officer” to adjudicate an appeal from a determination that a contractor or bidder has failed to make good faith efforts to achieve the disadvantaged business enterprise goal; and

H. To retain and utilize such staff and other resources as are reasonably necessary to carry out the responsibilities set forth in this section, that the Board of Directors may assign or authorizes from time-to-time, and as prescribed by the rules, laws, or procedures applicable to the MTA.

2-25-030 Removal of Ethics Officer. The Ethics Officer serves at the pleasure of the Board of Directors and may be removed for any reason by a majority vote of the members of the Board of Directors.

Chapter 2-30

Public Transportation Services Corporation

2-30-010 Organization and Establishment. The Public Transportation Services Corporation, also known as the PTSC, was established by the MTA in December 1996, as a nonprofit public benefit corporation to perform public transportation functions in coordination with and support of the MTA.

2-30-020 Authority and Responsibilities of PTSC. The authority and responsibilities of the PTSC are as set forth in its articles of incorporation and bylaws and are limited to those

assigned by the MTA as necessary to further public transportation services and projects with the County of Los Angeles. The principal specific responsibilities of the PTSC are:

- A. To provide the MTA with a mechanism for achieving financial savings in personnel and insurance costs;
- B. To provide a means of achieving insurance premium tax savings through the creation of a joint powers authority with the MTA;
- C. To provide a mechanism through which former Los Angeles County Transportation Commission employees and certain other employees providing services to the MTA can obtain retirement benefits through the Public Employees Retirement System;
- D. To provide a mechanism through which employment tax savings can be achieved through non-election of Social Security Coverage; and
- E. To conduct other essential and helpful regional public transportation activities, including planning, programming, administrative, operational management, construction and security functions as may be required in furtherance of the mission and purpose of the MTA.

2-30-030 Relationship of PTSC and MTA. As a corporation the PTSC has legal status distinct from the MTA, but by contract the PTSC functions solely as an organizational unit of the MTA. When serving as an organizational unit of the MTA, the PTSC is subject to all governmental privileges and immunities enjoyed by the MTA. Except with regard to retirement benefits and employment taxes, the employees of the PTSC are subject to all the privileges, immunities and responsibilities that would apply if they were employed by the MTA. Unless the text otherwise provides, any reference in any rule, policy, resolution or ordinance to MTA employees shall be considered to also refer to employees of the PTSC.

Chapter 2-35

Tort Claims

2-35-010 Applicability. Pursuant to Government Code Section 935, all claims against the Los Angeles County Metropolitan Transportation Authority for money or damages which are

excepted by Section 905 of the Government Code from the provisions of Chapters 1 and 2 of Part 3 of Division 3.6 of Title 1 of the Government Code, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedures prescribed in this chapter.

2-35-020 Claim Prerequisites. No suit for money or damages may be brought against the MTA on a cause of action specified in section 2-35-010 unless a written claim therefore has first been filed and acted upon in conformity with this chapter and Government Code Sections 945.6 and 946.

2-35-030 Claims - Time Limitation. The claim for any cause of action specified in section 2-35-010 shall be presented in the manner provided in section 2-35-050 not later than one year after the accrual of the cause of action; except that a claim on a cause of action for death or for injury to person or to personal property or growing crops shall be presented not later than six months after the accrual of the cause of action.

2-35-040 Claims - Late Filing. The late filing of claims governed by this chapter will be subject to the procedures set forth in those provisions of the Government Code referred to in subdivision (e) of Government Code Section 935.

2-35-050 Claims - Presentation and Contents. A signed, written claim shall be presented to the MTA by mailing or delivering it to the Board Secretary by the claimant or by a person acting on the claimant's behalf. The claim shall conform to the requirements of Government Code Section 910 or of a form provided by the MTA.

2-35-060 Claims - Statutory Procedures for Consideration and Action Adopted. Unless otherwise provided in this chapter, the procedure for consideration and action upon all claims filed pursuant to this chapter shall be the same as the procedure provided and required by Chapter 2 of Part 3 of Division 3.6 of Title 1 (commencing with Section 910) of the Government Code, which Chapter is hereby adopted as setting forth the requirements for claims filed pursuant to this chapter.

Chapter 2-40

Settlement of Claims

2-40-010 Chief Executive Officer Settlement Authority. The Chief Executive Officer is delegated authority to finally settle any claim or lawsuit brought against the MTA for monetary damages where the present value of the settlement does not exceed \$50,000 and the settlement of any workers compensation claim where the value of the settlement does not exceed \$200,000. The Chief Executive Officer may further delegate all or a portion of such authority to other MTA officers or employees, but any such delegation must be made in writing.

2-40-020 Public Liability/Property Damage Claims Committee. There shall be a Public Liability/Property Damage Claims Committee, or PL/PD Claims Committee, composed of the following persons or their designees: the General Counsel, the Chief Financial Officer, the administrative head of the unit responsible for risk management and the MTA's third-party claims administrator, if any. Except as set forth below, the PL/PD Claims Committee shall review and approve all settlements of claims, including claims in litigation, which seek a monetary recovery from the MTA exceeding \$50,000 for damages resulting from bus or rail accidents or other negligent actions of MTA employees or agents acting within the course and scope of their employment or agency, employment disputes, and construction contract and other contract disputes. The PL/PD Claims Committee is delegated authority to finally settle any claim brought before it pursuant to this section where the present value of the settlement does not exceed \$200,000. A claim settlement with a value exceeding \$200,000 will be reviewed and approved by the PL/PD Claims Committee, but after approval by that Committee must be presented to the Board of Directors for final approval.

2-40-030 Settlements Requiring Special Consideration. Notwithstanding section 2-40-020, if the General Counsel determines that the consideration of a proposed settlement, regardless of its value, is of particular urgency or involves policy or other considerations not necessarily within the expertise of the members of the PL/PD Claims Committee, the matter may

be brought directly to the Board of Directors for consideration without first having been presented to the Claims Committee.

2-40-040 Payment of Approved Settlements. Upon the presentation of written documentation of the approval of a claim settlement pursuant to the procedures set forth in this chapter, the Chief Financial Officer or his or her designee is authorized to draw a warrant on the MTA treasury in the amount of the settlement to liquidate the claim and, if applicable, the appropriate authorization for expenditure shall be increased by an equal amount.

Chapter 2-45

Transit Operator Jurisdictional Disputes

2-45-010 Historical Background and Legislative Intent. This chapter is a reenactment of Los Angeles County Transportation Commission Ordinance 10, adopted as required by Article 7 of Chapter 4 of Division 12 (commencing with Section 130370) of the Public Utilities Code, as the procedure for the resolution of transit service disputes between operators within the County of Los Angeles. In adopting this chapter, it is not the intent of the Board of Directors to make significant substantive changes in Ordinance 10 but only to update Ordinance 10 to recognize that the MTA is the successor agency to the Los Angeles County Transportation Commission and to make other clarifying, but essentially non-substantive, revisions.

2-45-020 Notice to Affected Operator. A transit operator who proposes a change in its transit service which may adversely affect another transit operator in the county shall notify the affected other operator in writing, with a copy to the Chief Executive Officer of the MTA, unless the affected other operator has indicated that it has no objection to the proposed change in service. If notice is given, there shall be no action taken to alter the service until either:

A. The affected operator indicates in writing that it has no objection. The affected operator shall have up to twenty (20) working days from receipt of the notice to respond. Failure to respond within that period shall be deemed to be notice that the affected operator has no objection to the proposed action; or

B. The matter is resolved through the procedures set forth in this chapter.

2-45-030 Meeting of Operators. The affected operator may request in writing a meeting with the operator proposing the action to resolve the dispute. The meeting should normally take place within one (1) week of the request. The MTA Chief Executive Officer shall be notified in writing of the date, time, and place of such a meeting. The operators shall act in good faith in an effort to reach an agreement. If the operators reach a mutually satisfactory agreement, the Chief Executive Officer shall be notified in writing of the nature and conditions of the agreement. Any party to the dispute may refer the dispute to the MTA at any time after the meeting described in this section. Any such referral shall be in writing and shall state the nature of the dispute.

2-45-040 Mediation by MTA Chief Executive Officer. Upon receipt of notification from one or more parties to the dispute that agreement cannot be reached, the Chief Executive Officer, or a staff member he or she may designate, shall make an effort to mediate the dispute and bring about an agreement. If an agreement is not reached within ten (10) working days from receipt of the notification, the matter shall be referred to the Board of Directors.

2-45-050 Assignment to a Dispute Resolution Committee. Upon referral of the dispute to the Board of Directors, the Chair shall refer the matter to a Dispute Resolution Committee, which shall consist of no more than five members of the Board of Directors, appointed by the Chair. In lieu of specifically naming members to serve on a Dispute Resolution Committee, the Chairman designates a standing committee of the Board of Directors to serve as the Dispute Resolution Committee and to preside over a hearing on the dispute. When the Dispute Resolution Committee has been designated, the Chief Executive Officer shall formally notify all parties to the dispute that the MTA is assuming jurisdiction of the dispute and that the Dispute Resolution Committee will hold a hearing, which shall be open to the public, at a specified time and place. Said hearing shall be conducted according to the following rules of procedure:

A. The parties shall, at least five (5) days prior to the hearing date, submit to the Dispute Resolution Committee an original and five copies, with copies to the opposing party, of

the points and authorities, affidavits, declarations, exhibits and other evidence intended to be used at the hearing. If affidavits or declarations under penalty of perjury are to be used, the affiant or declarant must be present and available at the hearing for questioning by the opposing party or by the Dispute Resolution Committee.

B. Arguments at the hearing will normally be limited to thirty (30) minutes by each party. Each party will have the right to submit additional written arguments within one (1) week after the hearing. Service of any such additional written argument shall be simultaneously served on the opposing party.

C. The Chief Executive Officer, if directed by the Dispute Resolution Committee, shall provide the Committee, with an analysis of the dispute and a recommendation for appropriate Committee action.

D. Within a reasonable time after the right to submit additional arguments had expired, the Dispute Resolution Committee shall prepare and forward to the Board of Directors for appropriate action its Proposed Decision and Order.

2-45-060 Action By Board of Directors. Upon receipt of the Proposed Decision and Order the Board of Directors may take any one of the following actions:

A. Approve and adopt the Proposed Decision and Order;

B. Refer the matter back to the Dispute Resolution Committee for further proceedings; or

C. Require a transcript of the testimony and other evidence relevant to the decision of Dispute Resolution Committee and take such action as in its opinion is indicated by the evidence. In such case the Board of Directors' decision may cover all phases of the matter, including the deletion or addition of any condition; or

D. Set the matter for a *de novo* hearing before the full Board of Directors. The decision of the Board of Directors at any such *de novo* hearing shall be based upon the

arguments and evidence that was before the Dispute Resolution Commission and shall such additional argument and evidence which the Board, in its sole discretion, agrees to receive.

E. The Board of Directors shall serve notice of any action taken on all parties.

F. Any action of the Board of Directors under paragraphs A., C. or D., which decides the dispute before the Board shall be final and conclusive.

Chapter 2-50

Public Hearings

2-50-010 Public Hearing Required.

A. The MTA shall hold a public hearing subject to the procedures set forth in section 2-50-020 before doing any of the following:

1. Adopting a change which increases the transit fares charged the general public;
2. Revising the service on a bus line which reduces the transit route miles by at least twenty-five (25) per cent;
3. Revising the service on a bus line which reduces the transit revenue vehicle miles by at least twenty-five (25) per cent; or
4. Implementing a new bus service route;

B. Experimental or emergency service changes, which are describe in paragraphs A.2., A.3. or A.4., may be instituted for 180 days or less without a public hearing, provided that a public hearing must be held during that time period if the experimental or emergency service is to continue for more than 180 days.

C. If there are a number of changes on a route in a fiscal year which add up to the percentages set forth in paragraphs A.2. or A.3. of this section, a hearing must be held prior to the change which causes the percentage to be exceeded.

D. Nothing in this section is intended to require a public hearing for standard seasonal variations in transit service unless the number, timing or type of service changes meet the criteria set forth in paragraphs A.2. or A.3. of this section.

E. Notwithstanding any other provision of this section, it shall not be considered a service change for which a public hearing is required if reduced or discontinued service is replaced by another type of service or service from a different provider without substantial interruption and at a level, which when compared to the previous service, does not constitute a reduction exceeding the percentages set forth in paragraphs A.2. or A.3. of this section.

2-50-020 Public Hearing Procedures. Any public hearing required by section 2-50-010 shall be conducted as set forth in this section.

A. Notice of the hearing shall be published in at least one newspaper of general circulation, at least thirty (30) days prior to the date of the hearing. Consideration should also be given to publication in neighborhood and ethnic newspapers as appropriate to provide notice to the members of the public most likely to be impacted by the proposed action.

B. Notice of the public hearing shall also be announced by brochures available on transit vehicles and at customer service centers.

C. In order to ensure that the views and comments expressed by the public are taken into consideration, MTA staff shall prepare a written response to the issues raised at the public hearing. That response should also include a general assessment of the social, economic and environmental impacts of the proposed change, including any impact on energy conservation.

D. The public hearing related to a recommendation to increase transit fares charged the general public shall be held before the Board of Directors and any action taken to increase the fares charged the general public must be approved by a two-thirds vote of the members of the Board of Directors. The Board of Directors may delegate to another body or a hearing officer appointed by the Chief Executive Officer the authority to hold the public hearing related to a reduction in bus service.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE

Title 3

Finance

Chapter 3-05

**An Ordinance Establishing A Retail Transactions
And Use Tax in the County of Los Angeles
For Public Transit Purposes**

(Preliminary Note: The ordinance set forth in Chapter 3-05 was originally enacted as Los Angeles County Transportation Commission Ordinance No. 16 and was adopted by a vote of the electorate as Proposition A in November 1980. It is incorporated here as enacted in 1980, except that, for convenience and consistency, its section headings and numbering have been revised to conform to the style of this Code. While the provisions of this ordinance may be cited by the section headings and numbering used herein, the official ordinance remains that enacted by the electorate in 1980. The inclusion of this ordinance in this Code is not a reenactment or an amendment of the original ordinance, and its inclusion in this Code does not in any way amend its provisions or alter its application.)

A retail Transactions and Use Tax is hereby imposed in the County of Los Angeles as follows:

3-05-010 Definitions. The following words, whenever used in this Ordinance, shall have the meanings set forth below:

- A. “Commission” means the Los Angeles County Transportation Commission.
- B. “County” means the incorporated and unincorporated territory of the County of Los Angeles.
- C. “Transaction” or “Transactions” have the same meaning, respectively, as the words “Sale” or “Sales”; and the word “Transactor” has the same meaning as “Seller”, as “Sale” or “Sales” and “Seller” are used in Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

3-05-020 Imposition of Retail Transactions Tax. There is hereby imposed a tax for the privilege of selling tangible personal property at retail upon every retailer in the County at a rate of one-half of 1% of the gross receipts of the retailer from the sale of all tangible personal property sold by him at retail in the County.

3-05-030 Imposition of Use Tax. There is hereby imposed a complementary tax upon the storage, use or other consumption in the County of tangible personal property purchased from any retailer for storage, use or other consumption in the County. Such tax shall be at a rate of one-half of 1% of the sales price of the property whose storage, use or other consumption is subject to the tax.

3-05-040 Application of Sales and Use Tax Provisions of Revenue and Taxation Code.

A. The provisions contained in Part 1 of Division 2 of the Revenue and Taxation code (Sales and Use Taxes, commencing with Section 6001), insofar as they relate to sales or use taxes and are not inconsistent with Part 1.6 of Division 2 of the Revenue and taxation Code (transactions and Use Taxes, commencing with Section 7251), shall apply and be part of this Ordinance, being incorporated by reference herein, except that:

1. The commission, as the taxing agency, shall be substituted for that of the State;
2. An additional transactor's permit shall not be required if a seller's permit has been or is issued to the transactor under Section 6067 of the Revenue and Taxation Code; and
3. The word "County" shall be substituted for the word "State" in the phrase, "Retailer engaged in business in this State" in Section 6203 of the Revenue and Taxation Code and in the definition of that phrase.

B. A retailer engaged in business in the County shall not be required to collect use tax from the purchase of tangible personal property unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property,

including, but not limited to soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, or subsidiary or person in the County under authority of the retailer.

C. All amendments subsequent to January 1, 1970, to the above cited Sales and Use Taxes provisions relating to sales or use taxes and not consistent with this Ordinance shall automatically become a part of this Ordinance; provided, however, that no such amendment shall operate as to affect the rate of tax imposed by the Commission.

3-05-050 Use of Revenues Received from Imposition of the Transactions and Use Tax.

The revenues received by the Commission from the imposition of the transactions and use tax shall be used for public transit purposes, as follows:

A. Definitions:

1. "System" or "Rail rapid transit system" means all land and other improvements and equipment necessary to provide an operable, exclusive right-of-way, or guideway, for rail transit.

2. "Local transit" means eligible transit, paratransit, and Transportation Systems Management improvements which benefit one jurisdiction.

B. Purpose of Tax. This tax is being imposed to improve and expand existing public transit Countywide, including reduction of transit fares, to construct and operate a rail rapid transit system hereinafter described, and to more effectively use State and Federal funds, benefit assessments, and fares.

C. Use of Revenues. Revenues will be allocated as follows:

1. For the first three (3) years from the operative date of this Ordinance:

a. Twenty-five (25) percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. To the Southern California Rapid Transit District ("District"), or any other existing or successor entity in the District receiving funds under the Mills-Alquist-Deddeh Act, such sums as are necessary to accomplish the following purposes;

- (1) Establishment of a basic cash fare of fifty (50) cents.
- (2) Establishment of an unlimited use transfer charge of ten (10) cents.
- (3) Establishment of a charge for a basic monthly transit pass of \$20.00.
- (4) Establishment of a charge for a monthly transit pass for the elderly, handicapped and students of \$4.00.
- (5) Establishment of a basic cash fare for the elderly, handicapped and students of twenty (20) cents.
- (6) Establishment of a comparable fare structure for express or premium bus service.

c. The remainder to the Commission for construction and operation of the System.

2. Thereafter:

a. Twenty-five (25) percent, calculated on an annual basis, to local jurisdictions for local transit, based on their relative percentage share of the population of the County of Los Angeles.

b. Thirty-five (35) percent, calculated on an annual basis, to the commission for construction and operation of the System.

c. The remainder shall be allocated to the Commission for public transit purposes.

3. Scope of Use. Revenues can be used for capital or operating expenses.

D. Commission Policy.

1. Relative to the Local Transit Component:

a. Allocation of funds to local jurisdictions shall be subject to the following conditions:

(1) Submission to the Commission of a description of intended use of the funds, in order to establish legal eligibility. Such use shall not duplicate or compete with existing transit service.

(2) The Commission may impose regulations to ensure the timely use of local transit funds.

(3) Recipients shall account annually to the Commission on the use of such funds.

b. Local jurisdictions are encouraged to use available funds for improved transit service.

2. Relative to the System Component:

a. The Commission will determine the System to be constructed and operated.

b. The System will be constructed as expeditiously as possible. In carrying out this policy, the Commission shall use the following guidelines:

(1) Emphasis shall be placed on the use of funds for construction of the System.

(2) Use of existing rights-of-way will be emphasized.

c. The System will be constructed and operated in substantial conformity with the map attached hereto as Exhibit "A". The areas proposed to be served are, at least, the following:

San Fernando Valley

West Los Angeles

South Central Los Angeles/Long Beach

South Bay/Harbor

Century Freeway Corridor

Santa Ana Free Corridor

San Gabriel Valley

3-05-060 Exclusion of Tax Imposed Under Bradley-Burns Uniform Local Sales and

Use Tax Law. The amount subject to tax under this Ordinance shall not include the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county, pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or the amount of any State-administered transactions or use tax.

3-05-050 Exemption from Retail Transactions Tax.

A. There are exempted from the tax imposed by this Ordinance the gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

B. There are exempted from the tax imposed under this Ordinance the gross receipts from the sale of tangible personal property to the operators of aircraft to be used or consumed principally outside the County in which the sale is made, and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of this State, the United States, or any foreign government.

C. Sales of property to be used outside the County which are shipped to a point outside the County pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point, are exempt from the tax imposed under this Ordinance.

D. For purposes of this Section, “delivery” of vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle code, the

aircraft license in compliance with Section 21411 of the Public Utilities Code and undocumented vessels registered under Article 2 (commencing with Section 680) of Chapter 5 of Division 3 of the Harbors and Navigation code shall be satisfied by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his principal place of residence.

E. “Delivery” of commercial vehicle shall be satisfied by registration to a place of business out of County, and a declaration under penalty of perjury signed by the buyer that the vehicle will be operated from that address.

F. The sale of tangible personal property is exempt from tax, if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this Ordinance. A lease of tangible personal property which is a continuing sale of such property is exempt from tax for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this Ordinance. For purposes of this Section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

3-05-070 Exemptions from Use Tax.

A. The storage, use or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to a transaction tax under any State administered transactions and use taxes ordinances, shall be exempt from the tax imposed under this Ordinance.

B. The storage, use or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property in such vessels for commercial taxes is exempt from the use tax.

C. In addition to the exemption provided in Section 6366 and 6366.1 of the Revenue and Taxation Code, the storage, use, or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, United States, or any foreign government, is exempt from the use tax.

D. The storage, use, or other consumption in the County of tangible personal property is exempt from the use tax imposed under this Ordinance if purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the Ordinance. The possession of, or the exercise of any right or power over, tangible personal property under a lease which is a continuing purchase of such property is exempt from tax for any period of time for which a lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this Ordinance. For the purposes of this Section, storage, use or other consumption, or possession, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

3-05-080 Place of Consummation of Retail Transaction. For the purpose of a retail transaction tax imposed by this Ordinance, all retail transactions are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State, or has more than one place of business, the place or places at which the retail sales are consummated for the

purpose of the transactions tax imposed by this Ordinance shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3-05-100 Deduction of Local Transactions Taxes on Sales of Motor Fuel.

A. The Controller shall deduct local transactions taxes on sales of motor vehicle fuel which are subject to tax and refund pursuant to Part 2 (commencing with Section 7301) of this division, unless the claimant establishes to the satisfaction of the Controller that the claimant has paid local sales tax reimbursement for a use tax measured by the sale price of the fuel to him.

B. If the claimant establishes to the satisfaction of the Controller that he has paid transactions tax reimbursement or Commission use tax measured by the sale price of the fuel to him, including the amount of the tax imposed by said Part 2, the Controller shall repay to the claimant the amount of transactions tax reimbursement or use tax paid with respect to the amount of the motor vehicle license tax refunded. If the buyer receives a refund under this Section, no refund shall be made to the seller.

3-05-110 Adoption and Enactment of Ordinance. This Ordinance is hereby adopted by the Commission and shall be enacted upon authorization of the electors voting in favor thereof at the special election called for November 4, 1980, to vote on the measure.

3-05-120 Operative Date. This Retail Transactions and Use Tax Ordinance shall be operative the first day of the first calendar quarter commencing not less than 180 days after the adoption of said Ordinance.

3-05-130 Effective Date. The effective date of this Ordinance shall be August 20, 1980.

Chapter 3-10

An Ordinance Establishing An Additional Retail Transactions And Use Tax in the County of Los Angeles For Public Transit Purposes

(Preliminary Note: The ordinance set forth in Chapter 3-10 was originally enacted as Los Angeles County Transportation Commission Ordinance No. 49 and was adopted by a vote of the electorate as Proposition C in November 1990. It is incorporated here as enacted in 1990, except that, for convenience and consistency, its section headings and numbering have been revised to conform to the style of this Code. While the provisions of this ordinance may be cited by the section headings and numbering used herein, the official ordinance remains that enacted by the electorate in 1990. The inclusion of this ordinance in this Code is not a reenactment or an amendment of the original ordinance, and its inclusion in this Code does not in any way amend its provisions or alter its application.)

A retail Transactions and Use Tax is hereby imposed in the County of Los Angeles as follows:

3-10-010 Imposition of Retail Transactions Tax. There is hereby imposed a tax for the privilege of selling tangible personal property at retail upon every retailer in the County at a rate of one-half of one percent of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the County. This tax is in addition to the tax authorized by Ordinance No. 16, on August 20, 1980 [MTA Administrative Code, Chapter 3-05].

3-02-020 Imposition of Use Tax. There is hereby imposed a complementary tax upon the storage, use or other consumption in the County of tangible personal property purchased from any retailer for storage, use or other consumption in the County. Such tax shall be at a rate of one-half of 1% of the sales price of the property whose storage, use or other consumption is subject to the tax. This tax is in addition to the tax authorized by Ordinance No. 16, on August 20, 1980 [MTA Administrative Code, Chapter 3-05].

3-10-030 Definitions. The following words, whenever used in this Ordinance, shall have the meanings as set forth below:

A. “Commission” means the Los Angeles County Transportation Commission or any successor entity.

B. “County” means the incorporated and unincorporated territory of the County of Los Angeles.

C. “Transaction” or “Transactions” have the same meaning, respectively, as the words “Sale” or “Sales”; and the word “Transactor” has the same meaning as “Seller”, as “Sale” or “Sales” and “Seller” are used in Part 1 (commencing with Section 6001) of Division 2 of the revenue and Taxation Code.

D. “Public Transit Purposes” are expenditures which maintain, improve and expand public transit, reduce congestion, and increase mobility, and include, but are not limited to, the following:

1. Transit and paratransit activities, including rail, bus and advanced technologies.
2. Fare Subsidies
3. Commuter Rail
4. Transit Centers
5. Park-and-Ride Lots
6. Public Information Services Technology and Systems
7. Freeway Bus Stations and Facilities
8. Rail and Bus Safety and Security
9. Maintenance of and Improvements to Streets and Highways used as public transit thoroughfares, including, but not limited to, the following:
 - a. Coordination and synchronization of signalization
 - b. Provisions for prompt service to assist motorists with disabled automobiles or trucks
 - c. Construction of high occupancy vehicle (HOV) lanes
 - d. Other activities which reduce congestion and improve air quality by providing transportation improvements to freeways, and state highways used

as public transit thoroughfares, including construction of transit ways including bus ways, carpool lanes, and operational and interchange improvements.

10. Transportation Systems Management and Transportation Demand Management

3-10-040 Use of Revenues Received from Imposition of the Transactions and Use Tax.

The revenues received by the Commission from the imposition of the transactions and use tax shall be used for public transit purposes, as follows:

A. Purpose of Tax. To improve transit service and operations, reduce traffic congestion, improve air quality, efficiently operate and improve the condition of the streets and freeways utilized by public transit, and reduce foreign fuel dependence. The purposes of this tax include:

1. Meeting operating expenses; purchasing or leasing supplies, equipment or materials; meeting financial reserve requirements; obtaining funds for capital projects necessary to maintain service within existing service areas;
2. Increasing funds for the existing public transit service programs;
3. Instituting or increasing passenger or commuter services on rail or highway rights of way;
4. The continued development of a regional transportation improvement program.

B. Use of Revenues. A Los Angeles County Anti-Gridlock Transit Improvement fund will be created to supplement current transportation funds and help meet the documented shortfall in funds needed to complete the Los Angeles County transportation system.

1. Forty percent of the revenue from the ½ cent sales and use tax will be used to improve and expand rail and bus transit County-wide, to provide fare subsidies, increase graffiti prevention and removal, and increase energy-efficient, low-polluting

public transit service. Funds from this revenue source will not be used for capital improvements for the Metro Rail Project between Union Station and Hollywood.

2. Five percent of the revenue from the ½ cent sales and use tax will be used to improve and expand rail and bus security.

3. Ten percent of the revenue from the ½ cent sales and use tax will be used to increase mobility and reduce congestion by providing additional funds for Commuter Rail and the construction of Transit Centers, Park-and-Ride Lots, and Freeway Bus Stops.

4. Twenty percent of the revenue from the ½ cent sales and use tax will be a Local Return Program to be used by cities and the County for public transit, paratransit, and related services including to improve and expand supplemental paratransit services to meet the requirements of the Federal Americans With Disabilities Act. At the option of each city and of the County funds can be used consistent with the County's Congestion Management Program to increase safety and improve road conditions by repairing and maintaining streets heavily used by public transit. Transportation system and demand management programs are also eligible.

Funds for the Local Return Program will be allocated to the cities and the County on a per capita basis. Local Return funds not expended within three years will be returned to the Commission for reallocation. Local Return funds may not be traded or sold to other jurisdictions.

5. Twenty-five percent of the revenue from the ½ cents sales and use tax will be used to provide essential County-wide transit-related improvements to freeways and state highways. To facilitate transit flow, the operation of major streets and freeways will be improved by providing preference and priority for transit. Traffic signals may be synchronized, and coordinated and "Smart Street" corridors may be created on those corridors served by public transit. Transportation Systems Management techniques

which assist transit service may also be funded. Transportation improvements on freeways and State highways may include transit ways and other improvements to facilitate and expedite flow of transit and rideshare vehicles, and carpools.

6. The non-Local Return funds will be allocated in formula and discretionary programs basis to be developed and approved by the LACTC within six months of voter approval of this Ordinance. In no event shall administrative costs exceed one and one-half (1 ½) percent of the funds generated by the tax.

3-10-050 Application of Sales and Use Tax Provisions of Revenue and Taxation Code.

A. The provisions contained in Part 1 of Division 2 of the Revenue and Taxation Code (Sales and Use Taxes, commencing with Section 6001), insofar as they relate to sales or use taxes and are not inconsistent with Part 1.6 of Division 2 of the revenue and Taxation Code (Transactions and Use Taxes), commencing with Section 7251), and all amendments thereto shall apply and be part of this Ordinance, being incorporated by reference herein, except that:

1. The Commission, as the taxing agency, shall be substituted for that of the State;

2. An additional transactor's permit shall not be required if a seller's permit has been or is issued to the transactor under Section 6067 of the revenue and Taxation Code; and

3. The word "County" shall be substituted for the word "State" in the phrase, "Retailer engaged in business in this State" in Section 6203 of the Revenue and Taxation Code and in the definition of that phrase.

B. A retailer engaged in business in the County shall not be required to collect use tax from the purchase of tangible personal property unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property; including, but not limited to soliciting or receiving the order, either directly or indirectly, at a

place of the retailer in the County or through any representative, agent, canvasser, solicitor, or subsidiary or person in the County under authority of the retailer.

3-10-060 Adoption of Revenue and Taxation Code Sections 7261 and 7262. Pursuant to the provisions of Revenue and Taxation Code Section 7262.2, the required provisions of Sections 7261 and 7262 of that Code as now in effect or as later amended are adopted by reference in this Ordinance.

3-10-070 Place of Consummation of Retail Transaction. For the purpose of a retail transaction tax imposed by this Ordinance, all retail transactions are consummated at the place of business of the retailer, unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-State destination or to a common carrier for delivery to an out-of-State destination. The gross receipts for such sales shall include delivery charges, when such charges are subject to the State sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State, or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of the transactions tax imposed by this Ordinance shall be determined under rules and regulations to be prescribed and adopted by the State Board of Equalization.

3-10-080 Appropriations Limit. A Commission appropriations limit is hereby established equal to the revenues collected and allocated during the 1990/91 fiscal year plus an amount equal to one and a half times the taxes that would be levied or allocated on a one-half of one percent transaction and use tax in the first full fiscal year following enactment and implementation of this Ordinance.

3-10-090 Division of Taxes. This Ordinance imposes a one half of one percent transactions and use tax. Another measure imposing a one half percent transactions and use tax entitled the Local Communities Safety Act – Los Angeles County Regional Justice Facilities Financing Agency is scheduled to be submitted to the electorate in the same election as this Ordinance. If both measures are approved by the electorate, the limits of Revenue and Taxation Code Section

7251.1 would be exceeded. In the event that both measures are approved by a majority of the electors voting on the measures and both measures are otherwise valid, the transactions and use tax is to be divided equally with one fourth percent going to the Los Angeles County Transportation Commission for the purposes set forth in this Ordinance and one fourth percent going to the Los Angeles County Regional Justice Facilities Financing Agency for the purposes set forth in its Ordinance provided that legislation is enacted to authorize such a division. However, if at some future time the statutory limit on sales tax is increased, then the full one half of one percent transactions and use tax shall be restored to each agency.

3-10-100 Adoption and Enactment of Ordinance. This Ordinance is hereby adopted by the Commission and shall be enacted upon authorization of the electors voting in favor thereof at the special election called for November 6, 1990, to vote on the measure.

3-10-110 Effective and Operative Dates. This ordinance shall take effect on the day it is adopted by the Los Angeles County Transportation Commission and pursuant to Public Utilities Code Section 130352 shall be operative on the first day of the first calendar quarter commencing not less than 180 days after adoption of the ordinance.

Chapter 3-15

The Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998

(Preliminary Note: The ordinance set forth Chapter 3-15 was originally enacted as the Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998 and was adopted by a vote of the electorate as Proposition A in November 1998. It is incorporated here as enacted in 1998, except that, for convenience and consistency, its section headings and numbering have been revised to conform to the style of this Code. While the provisions of this ordinance may be cited by the section headings and numbering used herein, the official ordinance remains that enacted by the electorate in 1998. The inclusion of this ordinance in this Code is not a reenactment or an amendment of the original ordinance, and its inclusion in this Code does not in any way amend its provisions or alter its application.)

3-15-010 Title. This Ordinance shall be known and may be cited as the Metropolitan Transportation Authority (MTA) Reform and Accountability Act of 1998 (“Act”).

3-15-020 Ballot Language. The Proposition for approving this Ordinance shall appear upon the ballot exactly as follows:

PROPOSITION _____, METROPOLITAN TRANSPORTATION AUTHORITY (MTA) REFORM AND ACCOUNTABILITY ACT OF 1998. Shall the ordinance be adopted to require an annual independent audit of Metropolitan Transportation Authority spending of transportation sales tax revenues, to establish an independent citizens' oversight committee to monitor such spending, and to prohibit the use of transportation sales tax revenues, to establish an independent citizens' oversight committee to monitor such spending, and to prohibit the use of transportation sales tax revenue for future subway construction?

3-15-030 Purpose and Intent. The people of the County of Los Angeles hereby declare their purpose and intent in enacting this Act to be as follows:

A. To restore the confidence of the citizens of Los Angeles County in the ability of their government to provide a safe, efficient and cost-effective public transportation system.

B. To provide accountability in the expenditure of transportation sales tax revenues through an annual independent audit, and through creation of an Independent Citizens' Advisory Oversight Committee to review transportation sales tax expenditures, hold public hearings and issue reports thereon.

C. To prohibit the use of any transportation sales tax revenues for planning, designing, constructing or operating any new subway.

3-15-040 Definitions.

A. "Commission" means the Los Angeles County Transportation Commission, as predecessor to the Metropolitan Transportation Authority.

B. "Effective Date" means the date on which this Act is approved by a majority of the electors voting on it at an election as provided by law.

C. "MOS-1: means that segment of the Metro Red Line known as Minimum Operable Segment-1, consisting of a 4.4-mile segment of the Metro Red Line including

passenger vehicles, fare collection equipment, automatic train control equipment, yards and shops required for the full construction of the Metro Red Line alignment and five stations located between Union Station and Alvarado Street.

D. “MOS-2” means that segment of the Metro Red Line known as Minimum Operable Segment-2, totaling 6.7 miles in length, consisting of a westward extension from the end of MOS-1 to Vermont Avenue, and thereafter splitting into a west branch which continues west under Wilshire Boulevard to Western Avenue, and a north branch which continues under Vermont Avenue to Hollywood Boulevard and Vine Street.

E. “MOS-3-North Hollywood” means only that portion of the segment of the Metro Red Line known as Minimum Operable Segment-3 which begins at the end of the north branch of MOS-2 in Hollywood (Hollywood Boulevard and Vine Street) and continues generally northward to Lankershim Boulevard and Chandler Boulevard.

F. “MTA” means the Los Angeles County Metropolitan Transportation Authority.

G. “New Subway” means any Subway (including any extension or operating segment thereof) other than MOS-1, MOS-2 and MOS-3-North Hollywood.

H. “Proposition A” means Ordinance No. 16 of the Commission adopted on August 20, 1980, and approved by the voters on November 4, 1980 [MTA Administrative Code, Chapter 3-05].

I. “Proposition C” means Ordinance No. 49 of the Commission adopted on August 8, 1990, and approved by the voters on November 6, 1990 [MTA Administrative Code, Chapter 3-10].

J. “Proposition A Sales Tax” means the ½ cent retail transactions and use tax imposed pursuant to Proposition A.

K. “Proposition C Sales Tax” means the ½ cent retail transactions and use tax imposed pursuant to Proposition C.

L. “Subway” means that part of any rail line which is in a tunnel below the grade level of the earth’s surface.

M. “Committee” shall mean the Independent Citizens’ Advisory and Oversight Committee established pursuant to this Act.

3-15-050 Independent Audit.

A. Within 45 days after the Effective Date, the MTA shall contract for an independent audit to be conducted by an independent auditing firm, such audit to be concluded not later than June 1, 1999, for the purpose of determining compliance by the MTA with the provisions of Proposition A, Proposition C and this Act relating to the receipt and expenditure of Proposition A Sales Tax revenues and Proposition C Sales Tax revenues. This audit shall cover the period from the respective effective dates of Proposition A and Proposition C through June 30, 1998.

B. Commencing with the 1998-99 fiscal year, the MTA shall contract for an annual independent audit to be conducted by an independent auditing firm, each such audit to be completed within six months after the end of the fiscal year being audited, for the purpose of determining compliance by the MTA with the provisions of Proposition A, Proposition C and this Act relating to the receipt and expenditure of Proposition A Sales Tax revenues and Proposition C Sales Tax revenues during such fiscal year.

C. Prior to entering into a contract with an auditing firm to perform any audit required under this section 3-15-050, the MTA shall solicit bids from at least three qualified firms and shall award the contract to the firm offering to perform the audit at the lowest price. Notwithstanding any other provision of law, the cost of performing and publishing the audit of Proposition A Sales Tax shall be paid from Proposition A Sales Tax revenues, and the cost of performing and publishing the audit of Proposition C Sales Tax shall be paid from Proposition C Sales Tax revenues.

3-15-060 Independent Citizens’ Advisory and Oversight Committee.

A. There is hereby established the Independent Citizens' Advisory and Oversight Committee of the MTA. The Committee shall meet at least twice each year to carry out the purposes of this Act.

B. The Committee shall be comprised of five persons, selected as follows: one member shall be appointed by the Chair of the Los Angeles County Board of Supervisors; one member shall be appointed by the Chair of the governing board of the MTA; one member shall be appointed by the Mayor of the City of Los Angeles; one member shall be appointed by the Mayor of the City of Long Beach; and one member shall be appointed by the Mayor of the City of Pasadena. The members of the Committee must be persons who live in Los Angeles County. No elected city, county, special district, state or federal public officeholder will be eligible to serve as a member of the Committee.

C. All meetings of the Committee shall be held within Los Angeles County. All meetings of the Committee shall be held in compliance with the provisions of the Ralph M. Brown Act (Section 54950 et seq. of the California Government Code).

D. Each member of the Committee shall serve for a term of two years, and until a successor is appointed. No member of the Committee shall be entitled to any compensation, except that the Committee may reimburse actual expenses of members arising out of the performance of their duties as Committee members.

E. The independent auditing firm referenced in section 3-15-050 shall present the results of each audit to the Committee which shall cause a summary of the audit to be published in local newspapers and the entire audit to be made available to every library located within Los Angeles County for public review. The Committee shall hold a public hearing on each audit and report the comments of the public to the MTA. Within 60 days of receipt of the report from the Committee, the MTA shall prepare a report containing its response to the audit and to the public comments thereon.

3-15-070 Prohibition on New Subways. Notwithstanding any other provision of law, Proposition A Sales Tax revenues and Proposition C Sales Tax revenues shall not be used to pay any cost of planning, design, construction or operation of any New Subway (including debt service on bonds, notes or other evidences of indebtedness issued for such purposes after March 30, 1998). Nothing in this section shall be construed to prohibit the use of such tax revenues on or after the Effective Date of this Act to pay debt service on bonds, notes, or other evidences of indebtedness issued prior to March 30, 1998, or on bonds, issued to refund such debt.

3-15-080 Construction of Prior Ordinances. Commencing on the Effective Date, the MTA shall, at least annually, comply with the revenue allocation percentages set forth in Section 5c of Proposition A [MTA Administrative Code section 3-05-050 C] and Section 4(b) of Proposition C [MTA Administrative Code section 3-10-040 B], such compliance to be determined as part of the annual audit described in section 3-15-080 of this Act. The MTA may, by resolution, adopt a compliance period shorter than an entire fiscal year, but may not adopt a longer compliance period.

3-15-090 Improvement of Railroad Rights-of-Way. Notwithstanding any other provision of law, Proposition C Sales Tax revenues required to be used to provide essential county-wide transit-related improvements to freeways and State highways may also be used to provide public mass transit improvements to railroad rights-of-way.

3-15-100 Effective Date of Act. This Act shall be enacted and take effect immediately on the Effective Date.

3-15-110 Construction of Act. This Act is intended to be construed liberally to effectuate its purpose of prohibiting the use of sales tax revenues to fund New subways.

3-15-120 Effect on Existing Ordinances. Proposition A and Proposition C shall remain in full force and effect, except as provided in this Act, and in the event of any conflict between the provisions of Proposition A or Proposition C, respectively, and this Act, the provisions of this Act shall control.

3-15-130 Severability Clause. If any provision of this Act, or part thereof, is for any reason held to be invalid, illegal or unconstitutional, the remainder of this act shall not be affected, but shall remain in full force and effect, and to such end the provisions of this Act are severable.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE

Title 4

Procurement

Chapter 4-05

Pre-Qualification of Bidders

4-05-010 Purpose. The purpose of this chapter is to establish rules and procedures for the contractor pre-qualification program of the MTA authorized by Public Utilities Code §130051.21.

4-05-020 Objective and Scope of Pre-Qualification Program. The objective of the pre-qualification program is to make a preliminary assessment of the integrity and responsibility of business entities seeking to do business with the MTA. A determination of pre-qualification allows the business entity which has been pre-qualified to proceed with the procurement process in seeking a contract with the MTA. The pre-qualification of a business entity does not preclude the MTA from making a further responsibility determination as a part of the procurement process. During any period for which pre-qualification has been denied, the business entity may not compete for or otherwise seek a contract with the MTA.

4-05-030 Definitions. The following terms, whenever used in this chapter, shall be construed as defined in this section:

A. “Business Entity” means a construction company, engineering firm, consultant, legal firm, product vendor, and any other business entity seeking a contract with the MTA for the furnishing of goods or services.

B. “Certificate of Pre-Qualification” refers to the written notification granting pre-qualification to a business entity which has applied to the MTA for such status.

C. “Contract Value Threshold” means in excess of one hundred thousand dollars (\$100,000) in total expenditures by the MTA under one contract and any amendments thereto.

D. “Executive Review Committee” or “ERC” means a panel of at least three MTA employees serving in management positions appointed by the Chief Executive Officer as a committee to adjudicate an appeal of a denial of pre-qualification made by the Pre-Qualification Manager. Executive Review Committee or ERC also means any retired Superior Court Judge appointed by the Chief Executive Officer in lieu of a panel of MTA employees as authorized by paragraph D. of section 4-05-040.

E. “Notice of Denial of Pre-Qualification” refers to the written notification issued to a business entity which has applied to the MTA for pre-qualification that the business entity has been denied pre-qualification.

F. “Pre-Qualification” refers to a determination made by the MTA that a business entity has demonstrated sufficient integrity and responsibility to be permitted to be considered for a contract with the MTA. It also includes any validation process whereby a previously pre-qualified business entity updates its pre-qualification file for a specific contracting opportunity.

G. “Pre-Qualification Manager” means the MTA employee who has been designated by the Chief Executive Officer as the administrative manager of the MTA contractor pre-qualification program.

4-05-040 Administrative Oversight of Pre-Qualification Program.

A. The Chief Executive Officer, in consultation with the Inspector General, is responsible for the administrative oversight of the pre-qualification program.

B. The Chief Executive Officer is authorized to prepare procedures consistent with this chapter as needed to implement the pre-qualification program.

C. The Chief Executive Officer shall assign responsibility for the day to day

administrative management of the pre-qualification program to an MTA management employee who will serve as Pre-Qualification Manager.

D. The Chief Executive Officer shall appoint a panel of at least three management level employees of the MTA to serve as the Executive Review Committee to adjudicate appeals by business entities from denials of pre-qualification. The Chief Executive Officer may appoint a separate ERC for each appeal or may appoint one ERC to serve for a specified period of time to hear appeals filed during that period. If the Chief Executive Officer determines for any reason that it would not be efficient to have a panel of MTA employees serve as the Executive Review Committee for any particular appeal, the Chief Executive Officer may appoint a retired Superior Court Judge to serve in lieu of the panel of MTA employees. Any reference in this chapter to an Executive Review Committee or to an ERC shall also be a reference to a Superior Court Judge appointed pursuant to this paragraph.

4-05-050 Pre-Qualification Questionnaire.

A. The MTA Inspector General, in consultation with the Pre-Qualification Manager, shall prepare pre-qualification questionnaires to be used in the MTA pre-qualification program. Different forms of the questionnaire, each tailored to the type of contract being sought, may be developed.

B. At a minimum, each pre-qualification questionnaire shall seek information from the business entity regarding the following:

1. The experience of the business entity;
2. The quality and timeliness of the past performance of the business entity when contracting with the MTA or other agencies for similar work;
3. The reliability and responsibility of the business entity;
4. The business entity's compliance with equal employment requirements;

5. The business entity's compliance with wage, hours, and other fair labor standards;

6. The subcontractors to be used by the business entity;

7. The integrity of the key personnel of the business entity; and

8. Any gifts given, or contributions made, by or on behalf of the business entity to members of the MTA Board of Directors or to MTA employees.

C. The questionnaire used in the pre-qualification program may seek information in addition to that described in paragraph B. However, in order to ensure that the pre-qualification program operates in as efficient a manner as possible consistent with the program objectives, information in addition to that required under paragraph B may be sought only if it is reasonably required to make a determination of integrity and responsibility relevant to the goods or services the business entity is likely to provide to the MTA if awarded a contract. The questionnaire used for the pre-qualification of a business entity whose services to the MTA will be as a subcontractor to another entity contracting directly with the MTA shall be in an abbreviated format which supports an expedited pre-qualification process, but which still provides the MTA with the information necessary to make a reasonable assessment regarding the integrity and responsibility of the business entity. Provided, however, any business entity may be required to complete any form of pre-qualification questionnaire if the MTA, in its sole discretion based upon the available information, determines that a more intensive than normal pre-qualification review is necessary for any particular business entity or any particular contract.

4-05-060 Completion of Pre-Qualification Questionnaire. Except as otherwise exempted by this chapter, each business entity seeking a contract with the MTA which, at the time of initial award, is reasonably expected to exceed the contract

value threshold shall complete a pre-qualification questionnaire prepared as set forth in section 4-05-050.

4-05-070 Exceptions to Pre-Qualification Program. For certain solicitations, because of the nature of the goods or services to be obtained, the nature of the business relationship between the MTA and the business entity, or because of exigent circumstances, there is insufficient advantage to the MTA to justify the expenditure of the resources necessary to conduct a pre-qualification. The types of procurements or types of business entities described in paragraphs A through J of this section are found to be procurements of this nature and pre-qualification is not required:

A. Media or advertising contracts, including artists hired on a one-time basis to provide pictorial representation of MTA property;

B. The purchase of goods from a department store or a home improvement store where:

1. The store make the same goods available to the general public; and
2. The terms and prices for the MTA are no less favorable than the terms and prices available to the general public;

C. The purchase of goods from a business entity if that business entity will:

1. Have no legal obligation to warrant the goods sold, other than to pass on the manufacturer's warranty; and
2. Have no obligation after the sale to provide any maintenance or repairs for the goods sold;

D. Licensing and multiple-user agreements with software companies for existing software;

E. Purchases of off-the-shelf computer software provided the seller does not enter into a contract for continuing maintenance or enhancements of the software program;

F. Real estate purchase contracts, leases, licenses or other similar kinds of agreements;

G. Goods or services for which there is only one known source if not obtaining such goods or services is not a reasonable option for the MTA;

H. Emergency expenditures in case of public calamity pursuant to Public Utilities Code §130234; and

I. Expenditures for immediate remedial measures pursuant to Public Utilities Code §130235.

J. A business entity whose relationship with the MTA will be as a subcontractor at the second tier or below. Nothing herein prevents the MTA from requiring any subcontractor at any level to obtain pre-qualification if the MTA, in its sole discretion based upon the available information, determines that pre-qualification of that subcontractor is in the best interest of the MTA.

4-05-080 Mandatory Denial of Pre-Qualification. A business entity shall be denied pre-qualification if the evidence supports a finding as to any of the following:

A. The business entity, or any of its officers or principal owners, are currently debarred by a federal, state or local public authority;

B. The business entity has knowingly submitted false information on the pre-qualification questionnaire or in response to any follow-up inquiries from the MTA; or

C. The business entity has declined to submit to the MTA information requested by the Pre-Qualification Manager as part of the pre-qualification process.

4-05-090 Permissive Denial of Pre-Qualification. The MTA may, in its sole discretion, deny pre-qualification to a business entity or any of its planned subcontractors, if the evidence supports a finding as to the business entity or as to a subcontractor, or their principals or officers, of any of the following:

- A. Commission of civil or criminal fraud in connection with obtaining, attempting to obtain, or performing a public contract, agreement or transaction;
- B. Violation of federal or state antitrust statutes, including, but not limited to, those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;
- C. Commission of embezzlement, theft, forgery, bribery, making false statements, submitting false information, attempting to commit a fraud against the MTA or other public entity, receiving stolen property, making false claims to any public entity, obstructing justice or fraudulently obtaining public funds;
- D. Violation of federal guidelines for disadvantaged business entity status including, but not limited to, a violation of 49 CFR part 26 *et seq.*, or misrepresenting minority or disadvantaged business entity status with regard to itself or one of its subcontractors;
- E. Conviction for non-compliance with the prevailing wage requirements of the California labor law, or similar laws of any other state;
- F. Violation of any law, regulation or agreement relating to a conflict of interest with respect to a government funded procurement;
- G. Falsification, concealment, withholding and/or destruction of records relating to a public agreement or transaction;
- H. Commission of any act or omission, or engaging in a pattern or practice, which tends to demonstrate that the business entity lacks the quality, fitness or capacity to perform a contract with the MTA, including, but not limited to, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing, or the lack of the financial resources necessary to perform contractual obligations;
- I. Indictment or conviction for an offense which indicates a lack of business integrity or business honesty;

- J. Willful failure to perform in accordance with the terms of one or more contracts;
- K. Violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction;
- L. Performance or conduct on one or more private or public agreements or transactions in a manner which negatively impacts or threatens the health or safety of the business entity's employees, the employees of any other entity involved with the transaction, the general public or any real property;
- M. Knowingly has entered into a business relationship with a business entity while that entity was debarred by the MTA;
- N. Violation of MTA policy regarding a drug-free workplace;
- O. Violation of any non-discrimination laws or provisions included in any public agreement or transaction;
- P. Violation of any labor laws, including, but not limited to, child labor violations, failure to pay wages, failure to pay into a trust account, failure to remit or pay withheld taxes to tax authorities or unemployment insurance tax delinquencies;
- Q. Violation of a licensing, sub-letting or subcontractor-listing law;
- R. Failure to comply with California corporate registration, federal, state and local licensing requirements;
- S. Violation of a material provision of any settlement of a denial of pre-qualification or validation action;
- T. A history of failure to perform, or of unsatisfactory performance of one or more contracts including, without limitation, default on contracts with the MTA or another public agency;

U. Has had its corporate status, business entity's license or any professional certification, suspended, revoked, or has otherwise been prohibited from doing business in the State of California in the past three years;

V. Has undisputed or finally adjudicated and unresolved tax liens with federal, state or local taxing authorities; or

W. Any other cause so serious or compelling in nature that it affects the present responsibility of the business entity, the quality of its work, and/or its fitness or capacity to perform on a contract with the MTA.

4-05-100 Investigations, Determinations and Referrals.

A. The Pre-Qualification Manager shall review the available information related to each business entity seeking pre-qualification and may conduct such further investigation as he or she deems necessary. MTA officials having information regarding a business entity they know to be seeking pre-qualification where such information is reasonably likely to bear on the pre-qualification determination shall promptly provide such information to the Pre-Qualification Manager for consideration.

B. Based upon all of the information obtained by the Pre-Qualification Manager, the Pre-Qualification Manager shall make a determination consistent with this chapter and any procedures adopted pursuant to section 4-05-040 as to whether a business entity seeking pre-qualification shall be granted pre-qualification.

C. If information obtained during the pre-qualification process is of a sufficiently serious nature to warrant further investigation and possible action beyond the denial of pre-qualification, the Pre-Qualification Manager shall refer the matter to the Inspector General, the General Counsel and/or other appropriate official for possible debarment or suspension under chapter 4-10.

D. The Office of the General Counsel shall advise and assist the Pre-Qualification Manager in reviewing for legal sufficiency any prospective denial of Pre-

qualification and the notice of denial, and for providing any necessary coordination with MTA staff regarding legal issues that may arise during the pre-qualification review process.

E. All actions of the Pre-Qualification Manager pursuant to this chapter shall be considered to be actions with the course and scope of the Pre-Qualifications Manager's employment with the MTA and shall be subject to the protections for public employees set forth in Division 3.6 of the Government Code.

4-05-110 Certificate of Pre-Qualification. Upon a finding that a business entity is approved for pre-qualification, the Pre-Qualification Manager shall promptly provide that business entity with a certificate of pre-qualification.

4-05-120 Notice of Denial of Pre-qualification.

A. If the Pre-Qualification Manager denies pre-qualification a notice shall be promptly given by letter to the business entity.

B. Such notice, or any other notice authorized or required by this chapter, shall be deemed sufficient notice if served personally or by mail by any of the means authorized by California Code of Civil Procedure §§ 1012 and 1013. Any attempt by a business entity to avoid service shall not prevent the denial of pre-qualification from becoming effective as of the date the MTA attempts notice as set forth in this paragraph.

4-05-130 Effect of Pre-Qualification Denial.

A. A denial of pre-qualification for a business entity shall constitute a denial of the right to obtain or compete for a contract with the MTA, including contracts below the contract value threshold, until such time as the business entity is granted pre-qualification. Whether a denial of pre-qualification will extend to every division or other organizational element of the business entity will depend upon the structure of the business entity. However, if the application for pre-qualification is not limited to specific divisions or organizational elements of the business entity, a denial of pre-qualification

shall apply to all affiliates, divisions, organizational elements.

B. A denial of pre-qualification to a particular business entity for a particular solicitation shall not necessarily result in the suspension or deferral of the solicitation schedule, regardless of whether an appeal from a denial of pre-qualification has been filed. Any suspension or deferral of the solicitation schedule will be within the sole discretion of the MTA's procurement management.

C. A denial of pre-qualification for a business entity then under contract with the MTA, where the denial of pre-qualification is based upon evidence which could support a cause for debarment under section 4-10-070, shall result in an immediate review of the status of that business entity's existing contracts with the MTA to determine whether action under chapter 4-10 is appropriate.

D. A denial of pre-qualification shall extend for an indefinite period of time unless the denial is overturned through an appeal under this chapter. A business entity subject to a denial of pre-qualification may again apply for pre-qualification after six months have elapsed from the date of notice of denial of pre-qualification, or at any time upon a showing of changed circumstances.

4-05-140 Appeal of Pre-Qualification Denial.

A. Any business entity that has been issued a notice of denial of pre-qualification may appeal that decision to the ERC. The appeal letter, together with all supporting documentation shall be submitted to the Pre-Qualification Manager within ten (10) working days of receipt of the notice of denial of pre-qualification.

B. If a business entity which has been served with a notice of denial of pre-qualification fails to file a timely written appeal as described in this section, the denial of pre-qualification shall become final.

4-05-150 Executive Review Committee. The ERC hears appeals of denials of pre-qualification. Each person serving as a member of the ERC pursuant to this chapter shall

be considered to be acting within the course and scope of employment with the MTA for such service and shall be subject to the protections for public employees set forth in Division 3.6 of the Government Code.

4-05-160 Hearing Procedures.

A. The ERC shall have the power to review and/or hold a hearing on any appeal received from a business entity that has been denied pre-qualification. The ERC may only affirm or reverse the denial decision of the Pre-Qualification Manager.

B. For a denial of pre-qualification for a reason set forth in section 4-05-080, the decision of the ERC shall be limited to a determination as to whether there is factual support for the finding of at least one of the mandatory causes for denial of pre-qualification. For a denial of pre-qualification under section 4-05-090 the decision of the ERC shall be based upon its independent judgment as to whether one or more of the permissive bases for denial of pre-qualification has been established and, if so, whether it constitutes sufficient reason for the MTA to decline to do business with the business entity.

C. The Business Entity may elect to waive its right to a hearing and rely solely on a written response. If the Business Entity elects in its appeal to waive a hearing, such a waiver must be clearly stated in its appeal. The ERC will set the dates for the submission of written materials and, if a hearing is requested, will set the time and date for the hearing.

D. In each appeal, the Pre-Qualification Manager shall present the reasons for denial of pre-qualification and the evidence supporting that determination. The business entity will then be provided an opportunity to submit relevant evidence challenging the determination of the Pre-Qualification Manager. If there is a hearing on the appeal, the hearing will be conducted in an informal manner, but may be recorded for the sole use of the ERC in preparation of its decision.

E. The ERC shall perform no independent collection of evidence and shall render a decision based solely on the evidence submitted by the Pre-Qualification Manager and the business entity. In conducting the hearing the ERC shall follow evidence rules similar to those described in section 4-10-170. The ERC may take judicial notice of common, uncontroverted facts.

F. The decision of the ERC is the final decision of the MTA. The business entity may seek judicial review of an ERC decision in Los Angeles County Superior Court. The appropriate party respondent in any such action shall be the MTA and not the individual members of the ERC, the Pre-Qualification Manager or any other MTA officer or employee.

G. If the ERC reverses the denial of pre-qualification, the Pre-Qualification Manager shall issue a pre-qualification certificate within fifteen (15) business days from the date of the reversal. If the ERC affirms the denial decision and has notified all interested parties, the Pre-Qualification Manager will take no further action.

H. An appeal from a decision of the ERC which upholds a denial of pre-qualification shall be filed with the time limits set forth in Code of Civil Procedure §§ 1094.5 and 1094.6.

I. Each notice of final denial of pre-qualification after an appeal to the ERC shall include the following statement:

THE MTA HAS REACHED A FINAL DECISION IN THE ADMINISTRATIVE MATTER PENDING BEFORE THE MTA. IF YOU CHOOSE TO SEEK JUDICIAL REVIEW OF MTA'S FINAL DECISION, SUCH ACTION MUST BE INITIATED IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE §§1094.5 AND 1094.6. IT IS YOUR SOLE RESPONSIBILITY TO TAKE WHATEVER ACTION AND TO OBTAIN

**WHATEVER ADVICE YOU DEEM APPROPRIATE IN RESPONSE TO THIS
NOTICE.**

Chapter 4-10

Debarment and Suspension

4-10-010 Statutory Authority. As a local public entity which is the single successor agency to the Southern California Rapid Transit District and the Los Angeles County Transportation Commission, the MTA possesses the authority to determine its organizational structure [Public Utilities Code Section 130051.11] and to exercise the powers and responsibilities necessary for the performance of its goals and objectives [Public Utilities Code Section 130051.12]. The determination of business entity responsibility is required before the MTA may contract for goods and services. [Public Utilities Code Sections 130051.21; 130232; and Federal Procurement Regulations (where applicable)]

4-10-020 Findings and Objectives.

A. The Board of Directors of the Los Angeles County Metropolitan Transportation Authority finds that in order to promote integrity in the public contracting processes and to protect the public interest it will contract only with responsible individuals and entities. Debarment and suspension are discretionary actions that, taken in accordance with this chapter, are among the appropriate means to effectuate this policy.

B. Toward this end, the MTA shall have, through this chapter, the discretion to exclude from contracting with the MTA a contractor who is debarred pursuant to the debarment procedure or suspended pursuant to the suspension procedure in this chapter or who appears on any suspended, excluded or debarment list by any local, state or federal government.

C. To protect the public interest the Board of Directors finds that procedures and processes are necessary to ensure that businesses found to be non-responsible be prevented from contracting with the MTA.

D. To promote integrity in the public contracting process the MTA is specifically authorized and required by statute to prequalify businesses seeking to do business with the MTA. The statute authorizing and directing prequalification of contractors does not preclude denial of

prequalification for an extended period or repeated prequalification denials. When a contractor is denied prequalification for an extended period, or repeatedly denied prequalification, defacto debarment may occur. To assure that contractors doing business with the MTA are provided proper safeguards and procedures and to avoid the occurrence of defacto debarments, a formal suspension and debarment procedure is necessary.

E. To ensure compliance with 49 Code of Federal Regulations, Part 26 in federally funded projects, the MTA has established a Disadvantaged Business Enterprise Program and qualifies businesses seeking status with the MTA as a Disadvantaged Business Entity.

F. As a grantee of federal funds the MTA is accountable for the use of the funds provided and must comply with the requirements and standards set forth by the Federal Government including the determination of contractor responsibility.

G. The serious nature of debarment and suspension requires such sanctions to be imposed only if in the public interest for the MTA's protection and not for the purpose of punishment. The MTA shall impose suspension and debarment to protect its interest only for the causes and in accordance with the procedures set forth in this chapter.

4-10-030 Definitions. The following terms, whenever used in this chapter, shall be construed as defined in this section.

A. "Affiliate". Entities and/or persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person or entity controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees or a business entity organized following the debarment, bankruptcy, dissolution, or reorganization of a contractor or entity which has the same or similar management, ownership, or principal employees as the, debarred, ineligible, or voluntarily excluded entity or person.

B. "Benefits" means money or any other thing of value provided by or realized

because of, a contract with the MTA. A thing of value includes insurance or guarantees of any kind.

C. “Civil Judgment” means a decision in a civil action at the trial or appellate level by any court of competent jurisdiction, whether entered by verdict, settlement, stipulation or otherwise creating a civil liability for the wrongful acts complained of.

D. “Consent Decree” means a settlement between the MTA and a contractor whereby the contractor promises to refrain from certain acts or omissions.

E. “Contract” means any agreement to provide goods to, or perform services for or on behalf of, the MTA.

F. “Contractor” includes persons, partnerships, corporations, joint ventures or other entities who contract directly or indirectly (e.g. through an affiliate) with, or is seeking to contract with, the MTA to provide goods to, or perform services for or on behalf of, the MTA. A contractor includes a contractor, subcontractor, vendor, affiliate or any person or entity who or which owns an interest of ten (10) percent or more or has a position of significance with a contractor, subcontractor or vendor.

G. “Contracting Officer” means the MTA’s administrative head of procurement or the person serving in any successor position or his or her designee.

H. “Covered Transaction” means any procurement program, activity, agreement or transaction with the MTA, regardless of type, amount or source of funding.

I. “Conviction” means a judgment or conviction of a criminal offense of a type which would give rise to debarment of the convicted party under the terms of this chapter by any court of competent jurisdiction at the trial or appellate level whether entered upon a verdict or a plea, and includes a conviction upon a plea of nolo contendere.

J. “Debarment” means an action taken by the MTA which results in a contractor, and any affiliate of the contractor, being prohibited from bidding upon, being awarded, and/or performing work on a covered transaction or related transactions with the MTA for a period of

up to five (5) years. A contractor who has been determined by the MTA to be subject to such a prohibition is "debarred."

K. "Debarring Official" means the Chief Executive Officer of the MTA who may delegate any of his or her functions under this chapter and authorize successive delegations. The Debarring Official is responsible for initiating recommended debarment actions and obtaining concurrence of the Office of the General Counsel.

L. "Ex Parte Communication" means any communication with a member of the Executive Review Panel, other than by Panel member's staff, which is direct, or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party.

M. "Executive Review Panel" means the three-member panel designated by the Debarring Official or the Suspending Official, as the case may be, to preside over contractor debarment or suspension hearings and make findings. Members of the panel shall not have been involved in the investigation of the grounds for debarment. The term "Executive Review Panel" shall also mean the retired judge appointed in lieu of the three member panel by the Debarring Official, as authorized by paragraph B. of section 4-10-120, or by the Suspending Official as authorized by paragraph A. of section 4-10-310.

N. "Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

O. "Ineligible" means excluded from MTA contracting (and subcontracting, if appropriate) pursuant to statutory, Executive Order, or regulatory authority (including the Federal Government).

P. "MTA" means the Los Angeles County Metropolitan Transportation Authority acting through its Board of Directors, or through any officer with powers delegated by the Board of Directors or authorized by law.

Q. “Notice” means the written communication served on a contractor, its bonding companies and affiliates in accordance with section 4-10-080, to initiate a debarment action. Notice shall be considered to have been received by the contractor, its bonding companies and affiliates five (5) days after being deposited in the US Mail, postage pre-paid, and addressed by the MTA to the contractor, its bonding companies and affiliates’ last known address based on information provided by the contractor, its bonding companies and/or affiliates.

R. “Participant” means any person who submits a bid or proposal for, enters into, or reasonably may be expected to enter into a covered transaction. This term also includes any person who is legally authorized to act on behalf of or to commit a participant in a covered transaction.

S. “Person” means any individual, corporation, partnership, association, member of a joint venture, unit of government or legal entity, however organized.

T. “Preponderance of the Evidence” means proof by information that, compared with that opposing it, tends to the conclusion that the fact at issue is more probably true than not.

U. “Principal” means officer, director, owner, partner, key employee or other person within a contractor with significant management or supervisory responsibilities; a person who has a critical influence on or substantive control over a covered transaction, whether or not employed by the participant or any affiliate of a participant, the operations of which are so intertwined with the participant that the separate corporate identities may be disregarded.

V. “Proposal” means any response to a solicitation, application, request for proposal, invitation to submit a proposal or similar communication by or on behalf of a contractor seeking to participate or receive a benefit, directly or indirectly, in or under a covered transaction.

W. “Related Transaction” means a transaction directly related to a covered transaction, which assists the participant in executing a covered transaction, regardless of the extent of the influence on or substantive control over the covered transaction by the person performing the related transaction. Related transactions include, but are not limited to,

transactions of the participant with any of the following persons:

1. Contractors (including direct subcontractors);
2. Principal investigators;
3. Loan officers;
4. Staff appraisers and inspectors;
5. Underwriters;
6. Bonding companies;
7. Appraisers and inspectors;
8. Real estate agents and brokers;
9. Management and marketing agents;
10. Accountants, consultants, investment bankers, architects, engineers,

attorneys and others in a business relationship with participants in connection with a covered transaction under an MTA procurement or agreement or activity;

11. Vendors of materials and equipment in connection with an MTA procurement, agreement or activity;

12. Closing agents;
13. Turnkey developers of projects;
14. Title companies;
15. Escrow agents;
16. Project owners; and
17. Employees or agents of any of the above.

X. “Respondent” means a person against whom a debarment action has been initiated.

Y. “Suspension” means action taken by the Suspending Official to disqualify a contractor temporarily from participating in covered transactions and/or related transactions with the MTA. A contractor so disqualified is “suspended.”

Z. “Suspending Official” means the administrative head of procurement for the MTA or his or her designee. The Suspending Official is responsible for suspending a contractor with the concurrence of the Office of the General Counsel.

AA. “Voluntary Exclusion or Voluntarily Excluded” means a status, assumed by a person, who is excluded from participating in covered transactions and related transactions with the MTA in accordance with the terms of a settlement with the MTA.

BB. “Warning Letter” means a written communication from the MTA to one or more persons concerning acts and omissions prohibited by this chapter.

4-10-040 Coverage. This chapter applies to:

A. Any contractor who has participated, is currently participating, or may reasonably be expected to participate, in a covered transaction, irrespective of the source of funding;

B. Any contractor who has participated, is currently participating, or may reasonably be expected to participate, in a related transaction, irrespective of the source of funding;

C. Any principal of the contractors described in paragraphs A. or B.; and

D. Any affiliate of the contractors described in paragraphs A., B. or C.

4-10-050 General.

A. The MTA, after consultation with the Office of the General Counsel, shall decide whether to proceed with the debarment of a contractor by seeking a Declaration and Order of the Superior Court that the contractor is an irresponsible contractor and debarred for a period up to five (5) years, or to proceed with administrative debarment as provided for in this chapter.

B. The causes of debarment set forth in section 4-10-070 are not intended to be an exhaustive list of the acts or omissions for which a person may be debarred; grounds other than those enumerated in this section may be a basis for debarment.

C. The MTA may debar a contractor for any of the causes set forth in section 4-10-070 using the procedures set forth in this chapter. The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the

contractor's acts or omissions and any mitigating factors shall be considered in making any debarment decision.

D. Debarment constitutes debarment of all divisions or other organizational elements of the contractor named in the debarment proceedings, unless the debarment decision is limited by its terms to specific affiliates, divisions, organizational elements and individuals. The Debarring Official may extend the debarment decision to include any affiliates of the contractor and persons if they are:

1. Specifically named, and
2. Given written notice of the proposed debarment and an opportunity to respond

E. The MTA Board of Directors hereby delegates the debarment of contractors to the Chief Executive Officer or his or her designee.

4-10-060 Investigation and Referral.

A. It is the responsibility of all MTA employees to report to the Debarring Official any information which would support a cause for debarment.

B. The Office of the Inspector General shall report to the Debarring Official the results of any investigation by the Inspector General which would support a cause for debarment, except for those investigations protected by rules of confidentiality.

C. The MTA shall utilize MTA personnel, or other appropriate resources, to conduct the inquiry into the cause for debarment and develop the documentation required by paragraph F. of this section.

D. Information concerning the existence of a cause for debarment from any source shall be promptly reported, and referred simultaneously to both the Debarring Official and the Office of the Inspector General for consideration. The Debarring Official shall be responsible for deciding whether or not to proceed with debarment. After consideration, the Debarring Official may issue a notice of proposed debarment, pursuant to section 4-10-080.

E. Nothing in this chapter is intended to limit the existing authority of the Inspector General to make criminal referrals to prosecutorial agencies.

F. MTA staff shall develop basic documentation that includes but, is not limited to:

1. The name of the specific respondent(s) against whom the action is being taken;

2. The reason(s) for proposing the debarment;

3. A short narrative stating the facts and/or describing other evidence supporting the reason(s) for the need to debar;

4. The recommended time period for the debarment;

5. Copies of any relevant supporting documentation identified under this section.

G. The Office of the General Counsel is responsible for reviewing the documentation and notices for legal sufficiency.

H. If as a result of an inquiry into the existence of a cause for debarment it is the opinion of the Inspector General and/or the General Counsel that a criminal referral should be made to one or more prosecutorial agencies, they shall cooperate and coordinate in the referral.

4-10-070 Debarment of Contractors.

A. The MTA may debar a contractor if the MTA finds, in its discretion, that the contractor is responsible for any of the following:

1. Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public agreement or transaction;

2. Violation of federal or state antitrust statutes, including those prescribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

3. Commission of embezzlement, theft, forgery, bribery, making false statements, submitting false information, attempting to commit a fraud against the MTA,

receiving stolen property, making false claims to any public entity, obstructing justice, fraudulently obtaining public funds;

4. Performance or conduct on one or more private or public agreements or transactions that caused or may have caused a threat to the health or safety of the contractor's employees, any other persons involved with the transaction, the general public or property;

5. Debarment by any other governmental agency;

6. Violation of federal guidelines for disadvantaged business entity status on federally funded projects including, but not limited to, violation of 49 Code of Federal Regulations, part 26, *et seq.*, and misrepresenting minority or disadvantaged business entity status;

7. Noncompliance with the prevailing wage requirements of the labor law, including any pending violations by the contractor, or any affiliate of the contractor;

8. Violation of any MTA requirements for providing a drug-free workplace;

9. Violation of any nondiscrimination provisions included in any public agreement or transaction;

10. Any other significant labor law violations, including, but not limited to, child labor violations, failure to pay wages, or unemployment insurance tax delinquencies;

11. A violation of a statutory or regulatory provision or requirement applicable to a public or private agreement or transaction, including, but not limited to, any violation of Chapter 5-20 [MTA Contractor Code of Conduct];

12. Violation of any licensing, subletting or sublisting laws;

13. Falsification, concealment, withholding and/or destruction of records;

14. Violation of settlement agreements and/or consent decrees which impose obligations on the contractor to perform certain activities and/or to refrain from certain

acts;

15. Violation of any law, regulation or agreement relating to conflict of interest with respect to government funded procurement;

16. Knowingly or negligently doing business with a debarred, suspended, ineligible, or voluntarily excluded contractor in connection with a covered transaction or a related transaction;

17. Violation of a material provision of any settlement of a debarment action;

18. Commission of an act or offense which indicates a lack of business integrity or business honesty;

19. Willful failure to perform in accordance with the terms of one or more contracts;

20. A history of failure to perform, or of unsatisfactory performance of one or more contracts including, without limitation, default on contracts with the MTA or any other public agency;

21. Commission of any act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform a contract with the MTA or any other public entity, or engagement in a pattern or practice which negatively reflects on same including, but not limited to, deficiencies in on-going contracts, false certifications or statements, fraud in performance or billing or lack of financial or technical resources;

22. Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.

4-10-080 Notice of Proposed Debarment.

A. A debarment proceeding shall be initiated by notice to the contractor, its bonding companies and affiliates, at least ninety (90) days prior to the date of the debarment hearing advising:

1. That debarment is being considered;

2. Of the specific debarment action proposed;
3. Of the reasons for the proposed debarment in terms sufficient to put the contractor, its bonding companies and affiliates on notice of the conduct or transaction(s) upon which it is based;
4. Of the cause(s) relied upon under section 4-10-070 for proposing debarment;
5. Of the provisions of sections 4-10-080 and 4-10-090, and any other procedures, if applicable, governing debarment decision making;
6. That the contractor, its bonding companies and/or affiliates must submit a written response within thirty (30) days of the receipt of the Notice of Proposed Debarment and the consequence of not providing a response;
7. Of the date, time and place of the debarment hearing;
8. Of the potential effect of a debarment;
9. Of the right to a hearing before the Executive Review Panel;
10. That the contractor, its bonding companies and/or affiliates, may appear at the debarment hearing to challenge the debarment action and that failure to appear may result in a waiver of the contractor's, its bonding companies' and/or affiliates' defenses to the debarment action, and be taken as an admission by the party failing to appear that the basis for the debarment is accurate, except to the extent the contractor, its bonding companies and/or affiliates challenge the debarment action solely by means of a written submission; and
11. That the MTA may submit a reply to the written response of the contractor, its bonding companies and/or affiliates within (30) days following receipt of the response made by or on behalf of the contractor, its bonding companies and/or affiliates.

B. The notice to the contractor, its bonding companies and affiliates shall be signed

by the Debarring Official and transmitted by certified mail, return receipt requested to the last known address provided the MTA by the contractor, its bonding companies and affiliates.

C. The Office of the General Counsel will be consulted on all proposed debarment actions prior to the notice being sent to the respondent.

D. Notice to the contractor, its bonding companies and affiliates shall be deemed sufficient if it is served by any of the means, authorized by Code of Civil Procedure Section 1013, or as otherwise specified in sections 4-10-080 and 4-10-100.

E. Any attempt by the contractor, its bonding companies and/or affiliates to affirmatively avoid service by way of example, and not limitation, refusing to pick-up a certified letter, shall be deemed ineffective and shall not prevent the debarment proceeding from going forward.

4-10-090 Documents Submitted to the Executive Review Panel.

A. Respondent's Response.

1. The Respondent shall submit to the Executive Review Panel and serve in accordance with section 4-10-100, a response to the Notice of Proposed Debarment within thirty (30) days of receipt of the Debarring Official's notice which response shall:

- a. State whether the Respondent will appear at the hearing;
- b. Respond to the allegations of the MTA. Allegations by the MTA

contained in the notice to the Respondent may be deemed admitted by the Executive Review Panel when not specifically denied in the Respondent's response.

- c. Be certified under oath and pursuant to the laws of the State of California by the Respondent, or an officer or director of Respondent that the contents of the Response are true and correct.

2. The response may set forth any affirmative defenses and any evidentiary support therefore, to the allegations by the MTA. Where a Respondent intends to rely on

any affirmative defense, it must be set forth in the response.

3. If the Respondent intends to waive its right to a hearing and rely solely on the response in support of its position, the response must clearly state such intention. Failure to clearly state such intention may be deemed a waiver of the Respondent's defenses to the debarment action if the Respondent does not appear at the hearing.

4. In the event that the Respondent fails to file a written response within thirty (30) days of receipt of the Debarring Official's notice in accordance with this section, the allegations of the MTA may be deemed admitted, the Executive Review Panel may enter an order of default and transmit it to the Debarring Official. The Debarring Official's decision shall thereafter issue, with service on the parties.

B. Reply by the MTA. The MTA may submit to the Executive Review Panel and serve in accordance with section 4-10-100, a reply to the Respondent's response not later than thirty (30) days after receiving the Respondent's response.

C. Stipulations. The parties are encouraged to meet and resolve as many matters as possible by stipulated agreement prior to the hearing. The parties may stipulate as to any relevant matters of fact or law. Stipulations may be received in evidence at the hearing, and when received shall be binding on the parties with respect to the matter stipulated.

D. Document and Submission Requirements.

1. An original and one copy of all documents to be presented to the Executive Review Panel and a list of all witnesses to be called at the debarment hearing shall be served on the Executive Review Panel no later than ten (10) days before the scheduled hearing, and copies of all documents served on the Executive Review Panel shall be served simultaneously on the opposing party at the specific location designated on the notice of debarment.

2. All documents required or permitted under this chapter, in addition to being served on Executive Review Panel in accordance with this section, shall be served

upon:

- a. The Office of the MTA General Counsel;
- b. The Respondent or Respondent's representative;

3. Documents served in accordance with this section and section 4-10-100

shall state clearly the party's name and the title of the document. All documents should be typewritten or printed in clear, legible form.

4-10-100 Service.

A. Service of documents on the Respondent, including the notice, shall be made by any reasonable means, including by first class mail, fax, e-mail or delivery to:

1. The Respondent to be served or that Respondent's designated representative or agent, at the last known address;
2. The Respondent's last known place of business; or
3. A principal of the Respondent.

B. Proof of service shall not be required unless the fact of service is denied under oath and put in issue by appropriate objection on the part of the Respondent allegedly served. In such cases, service may be established by written receipt signed or on behalf of the Respondent to be served, or may be established prima facie by any responsible means, including, but not limited to affidavit or certificate of service of mailing.

C. Service of documents on bonding companies and affiliates shall follow the procedures set forth in paragraphs A. and B.

4-10-110 Time Computation. Any period of time prescribed or allowed by this chapter shall include in its computation of the prescribed period, Saturdays, Sundays and national holidays, except that when the last day of the period is Saturday, Sunday, national holiday or other day that the MTA is closed, the period shall run until the end of the next following business day.

4-10-120 Executive Review Panel Powers and Responsibilities.

A. Debarment proceedings shall be presided over by the Executive Review Panel, as defined in paragraph M. of section 4-10-040. The Debarring Official shall appoint the three members of the Executive Review Panel.

B. The Debarring Official, in his or her sole discretion and after consultation with the Office of the General Counsel, may appoint counsel to advise the Executive Review Panel during the debarment hearing.

C. If the Debarring Official determines in his or her sole discretion that the debarment proceeding will be unusually complex or is expected to be of extended duration, or for any other reason, he or she may appoint a retired judge to conduct the hearing. Any retired judge so appointed shall have all of the powers and duties otherwise reserved to the Executive Review Panel.

D. To ensure that the proceedings before the Executive Review Panel are not only fair and impartial, but are conducted expeditiously, it shall have the power to :

1. Regulate the course of the hearing and the conduct of the parties and their counsel;
2. Consider and rule upon all evidentiary and procedural matters pertaining to the hearing, including, but not limited to, setting page limits on documents that may be submitted;
3. Receive evidence and rule on offers of proof; and
4. Take any other action necessary to protect each party's rights, to avoid delay in the disposition of the debarment proceeding and to maintain order.

E. Further Powers of the Executive Review Panel.

1. The Executive Review Panel shall conduct a fair and impartial hearing and, to that end, shall, in addition to the powers set forth in paragraph D., have the power to:

- a. Schedule the debarment hearing date, time and place;
- b. Postpone the debarment hearing date;
- c. Hold conferences to facilitate the settlement or simplification of the issues by consent of the parties or at the request of a party;
- d. Make findings of fact and take notice of any material fact not appearing in evidence in the record which would properly be a matter of judicial notice;
- e. Administer oaths and affirmations;
- f. Issue a decision imposing debarment of the Respondent with respect to future MTA transactions, or imposing no sanction;
- g. Recommend to the MTA staff, if so requested, a course of action to remedy Respondent's past actions which gave rise to the debarment action; and
- h. Recommend to the Debarring Official that a contractor should or should not be debarred.

F. **Prohibition Against Ex-parte Communications.** Ex-parte communications are prohibited unless:

1. The purpose and content of the communication have been disclosed in advance or simultaneously to all parties involved; or
2. The communication is a request for information to the Executive Review Panel's staff concerning the status of the debarment action.

4-10-130 Debarment Hearing Procedure.

A. **Right to Hearing.**

1. All Respondents subject to debarment pursuant to this chapter shall be entitled to a hearing at the date, time and place set forth in the notice.
2. The Respondent may elect to waive its right to a hearing and rely solely on a written response. If the Respondent elects to waive its right to a hearing, such waiver

must be clearly stated in the Respondent's response. However, if the Respondent fails to file a written response as required under section 4-10-090, the allegations of the MTA shall be deemed admitted, and an order of default shall be entered pursuant to section 4-10-090 A. 4.

3. The Executive Review Panel shall perform no independent collection of evidence and shall render a decision based on the evidence as submitted by the parties, although the Executive Review Panel may take judicial notice of common, uncontested facts.

B. Conduct of Hearing.

1. The hearing shall be informal in nature and members of the Executive Review Panel may ask questions at any time.

2. The hearing shall proceed with all reasonable speed. The Executive Review Panel may order the hearing be recessed for good cause, stated on the record. The Executive Review Panel may, for convenience of the parties, or in the interest of justice, order that the hearing be continued or extended to a later date.

C. Representation of the Parties.

1. The MTA may be represented by a member of the staff of the Office of the General Counsel and/or by an attorney assigned by the Office of the General Counsel, as may be appropriate in a particular case.

2. The Respondent may be represented at the hearing as follows:

a. Individuals may appear on their own behalf;

b. A member of a partnership or joint venture may appear on behalf of the partnership or joint venture;

c. A bona fide officer may appear on behalf of a corporation or association upon a showing of adequate authorization;

d. An attorney who submits a notice of appearance and representation

with the Executive Review Panel may represent the Respondent; or

e. An individual not included within subparagraphs a. through d., above, may represent the respondent upon an adequate showing, as determined by the Executive Review Panel, that the individual possesses the legal, technical or other qualifications necessary to advise and assist in the presentation of the Respondent's case.

D. All testimony provided at the hearing shall be under oath.

E. At the request of either the Respondent or the MTA, the proceedings shall be transcribed by an authorized court reporter. The cost of the transcript of the proceedings shall be paid by the party requesting the transcript, or in the event both parties request the transcript, the cost shall be divided evenly between them.

4-10-140 Standard of Proof. The cause for debarment must be established by a preponderance of the evidence.

4-10-150 Burden of Proof.

A. The MTA has the burden of proof to establish the cause for debarment. The Respondent has the burden of proof to establish mitigating circumstances.

B. Where the proposed debarment is based upon a conviction, civil judgment, or a debarment by another governmental agency and the MTA submits evidence as to the existence of such, the MTA shall be deemed to have met its burden of proof to establish cause for debarment.

4-10-160 Closing of the Hearing Record.

A. The closing of the hearing record may be postponed by the Executive Review Panel, in its discretion, in order to permit the admission of other evidence into the record. In the event further evidence is admitted, each party shall be given an opportunity within a reasonable time to respond to such evidence.

B. Once the Executive Review Panel deems the hearing to be concluded there shall be no further proceedings before it or evidence accepted by it on the cause for debarment unless

a request is made in writing within three (3) days following the conclusion of the hearing, and good cause shown.

4-10-170 Rules of Evidence.

A. Every party shall have the right to present its case or defense by oral or documentary evidence and to submit rebuttal evidence. The Executive Review Panel may, within its discretion, permit cross-examination of witnesses on request. The Executive Review Panel may exclude irrelevant, immaterial or unduly repetitious evidence.

B. The debarment hearing need not be conducted according to technical rules relating to evidence and witnesses except as hereinafter provided. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law statutory rule which might make improper the admission of the evidence over objection in civil actions.

C. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but, over timely objection, shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration.

D. The rules of privilege as set forth in the Code of Civil Procedure shall apply.

E. The Executive Review Panel has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.

F. The Executive Review Panel shall not have the power or authority to compel any witness or party to give evidence in contravention of any evidentiary privilege recognized under applicable law, including, but not limited to, the Fifth Amendment privilege against self-incrimination under the Constitution of the United States of America and the attorney-client privilege.

4-10-180 Scope of Debarment.

A. Debarment of a contractor and its affiliates under this chapter constitutes debarment of all its specifically identified principals, individuals, divisions and other organizational elements from all covered transactions and related transactions with the MTA, unless the debarment decision is limited by its terms to one or more principals, individuals, divisions or other organization elements or to specific types of transactions.

B. As may be appropriate, the debarment action may include any affiliate of the participant that is specifically named and given notice of the proposed debarment and an opportunity to respond.

C. The debarment of a contractor and its affiliates under this chapter may include the debarment of any other business that is, has been or will be controlled or owned by the contractor and its affiliates or by any entity owned or controlled by a person or persons who own a controlling interest in a contractor and its affiliates then or at the time the debarment was imposed.

4-10-190 Period of Debarment. Debarments shall be for a period commensurate with the seriousness of the Respondent's conduct, up to a maximum of five (5) years.

4-10-200 Debarment Decision.

A. The debarment decision shall be made within forty-five (45) days after conclusion of the hearing, unless the Executive Review Panel extends this period for good cause.

B. In debarment actions where respondent(s) fail(s) to provide any submission in opposition by the time provided in paragraph A. of section 4-10-090, the Executive Review Panel may, in its discretion, decide against the Respondent, and notice shall be provided by the Debarring Official;

C. Written findings of fact shall be prepared if requested by the parties. The Executive Review Panel shall base its decision on the facts as found, together with any information and argument submitted by the parties and any other information in the administrative record.

D. If the Executive Review Panel decides to impose debarment, it shall forward its recommendation to the Debarring Official.

E. The Debarring Official shall review the recommendation of the Executive Review Panel and either affirm or modify the recommendation.

F. The Debarring Official shall, within forty-five (45) days of the close of the hearing, provide notice to the Respondent which notice shall include, but not be limited to, the following:

1. Reference to the notice of proposed debarment;
2. Whether the cause for debarment has been established; and
3. If the cause for debarment has been established:
 - a. Specifying the reasons for debarment;
 - b. Stating the period of debarment, including effective dates;
 - c. Advising of the scope of the debarment; and
 - d. Stating the time period in which the Respondent may submit an appeal.

G. The notice to the Respondent shall be in writing, signed by the Debarring Official, and transmitted by certified mail, return receipt requested. The Office of the General Counsel will be consulted on all debarment actions prior to the notice being sent to the Respondent.

4-10-210 Appeal of Final Determination.

A. Any party may request review of the debarment decision by filing a written appeal with the Debarring Official within twenty-one (21) days of receipt of the final debarment decision. The appeal shall specifically identify the issues and the bases upon which appeal is based and shall be served in accordance with section 4-10-010.

B. Any party to the debarment hearing opposing the appeal may submit a response opposing review. The response must be submitted to the Debarring Official and served in accordance with section 4-10-010 within fourteen (14) days of the receipt of the appeal.

C. Each complete and timely filed appeal shall be reviewed by the Debarring Official whose determination shall result in one of the following findings:

1. Affirming the decision of the Executive Review Panel;
2. Overturning the decision of the Executive Review Panel;
3. Directing a modification of the decision, including, but not limited to, the scope of duration of any debarment; or
4. Referring the matter back to the Executive Review Panel for additional investigation or findings.

D. The Debarring Official shall issue a determination within thirty (30) days of submission of the appeal, unless notice is given to the Executive Review Panel and the parties extending the period for submitting a determination. The Debarring Official's review shall be limited to the factual record produced before the Executive Review Panel. The determination of the Debarring Official need not be a formal written determination; rather a letter, served upon all parties in accordance with section 4-10-010, setting forth the determination of the appeal.

E. The submission of an appeal shall have no effect on the decision of the Executive Review Panel, unless and until the Debarring Official issues a determination modifying the Executive Review Panel's determination.

4-10-220 Review of Debarment Period.

A. After the period for appeal has lapsed, a debarred Respondent may request that the Debarring Official withdraw or modify the terms of the debarment, if any of the following circumstances arise:

1. Newly discovered material evidence;
2. Reversal of a conviction or civil judgment upon which a debarment was based;
3. A meaningful change in ownership or management;
4. Elimination of other causes for which the debarment was imposed; or

5. Any other reason that is in the best interests of the MTA.

B. A request for review shall be in writing, supported by documentary evidence and served in accordance with section 4-10-010.

4-10-230 The Parties Excluded From Procurement Programs List.

A. The MTA shall maintain a Parties Excluded From Procurement Programs List. Such list shall contain the names of all contractors currently suspended or debarred by the MTA.

B. The MTA shall periodically, but in no case less than twice annually, forward to the appropriate agency with the state and federal governments the then current Parties Excluded From Procurement Programs List.

4-10-240 Effect of Suspension or Debarment.

A. Contractors on the Parties Excluded From Procurement Programs List are excluded from covered transactions and related transactions as either participants or principals, and the MTA shall not solicit or accept offers from, award contracts to, or consent to subcontracts with any such contractors. Contractors on the Parties Excluded From Procurement Programs List are also excluded from conducting business with the MTA as agents, or affiliates of other persons.

B. Contractors included on the Parties Excluded From Procurement Programs List as having been declared ineligible from receiving contracts from the MTA, and if applicable, subcontracts, are ineligible under the conditions and for the period set forth in the Parties Excluded From Procurement Programs List. The MTA shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

C. Contractors included on the Parties Excluded From Procurement Programs List are excluded from acting as individual sureties to any person, contractor, principal or participant.

D. Each time bids or proposals are received for any procurement, the Contracting Officer shall review the list of Parties Excluded from Procurement Programs. Any bid or

proposal received from any contractor included on the Parties Excluded From Procurement Programs shall be rejected.

E. Proposals, quotations, or offers received from any contractor included on the Parties Excluded From Procurement Programs List shall not be evaluated for award nor shall discussions be conducted with any such contractor during a period of ineligibility. If the period of ineligibility expires or is terminated prior to award, the Contracting Officer may, but is not required to, consider such bids, proposals or offers.

F. Immediately prior to award, the Contracting Officer shall again review the Parties Excluded from Procurement Programs List to ensure that no award is made to a contractor on such List.

G. Contractors included on the Parties Excluded From Procurement Programs List who participate in MTA transactions during the period of their debarment or suspension will not be paid for goods and services provided and their contracts shall be deemed void.

4-10-250 Imputed Conduct.

A. Conduct of the type described in section 4-10-070 by an officer, director, shareholder, partner, employee, principal, affiliate or other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance or duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of the benefits derived from the conduct shall constitute evidence of such knowledge, approval or acquiescence.

B. Conduct of the type described in section 4-10-070 by a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

C. Conduct of the type described in section 4-10-070 by one contractor participating in a joint venture or similar arrangement may be imputed to the other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the

knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval or acquiescence.

4-10-260 Continuation of Current Contracts.

A. Notwithstanding the debarment, suspension or proposed debarment or suspension, the MTA may continue contracts or subcontracts in existence at the time the person was debarred, suspended or proposed for suspension or debarment unless the Chief Executive Officer or his or her designee, directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by MTA contracting and technical personnel and by the Office of the General Counsel to ensure the propriety of the proposed action.

B. The MTA shall not award options to contracts or in any way extend the duration of current contracts, or consent to additional subcontracts, with contractors proposed for suspension or debarment or included on the Parties Excluded From Procurement Programs List unless specifically approved in writing by the Chief Executive Officer for good cause shown.

4-10-270 Restrictions on Subcontracting. When a person debarred, suspended or proposed for suspension or debarment is proposed as a subcontractor for any subcontract subject to MTA consent, contracting officers shall not consent to any such subcontracts.

4-10-280 Actions Other Than Debarment. In the event that it is determined that the Respondent's acts or omissions are insufficient to warrant debarment, one or more of the following actions may be taken:

A. Voluntary Exclusion.

1. The MTA and a contractor may agree to a voluntary exclusion of the contractor and any of its principals and/or affiliates from MTA activities and transactions for a period of up to five (5) years.

2. Contractors and any of its principals and/or affiliates who are voluntarily excluded from participation in MTA transactions shall be placed on the Parties Excluded From Procurement Programs List.

3. Contractors and any of its principals and/or affiliates who participate in MTA transactions during the period of their voluntary exclusion will not be paid for goods and services provided, and may be considered for debarment.

B. Consent Decree. Contractors and any of its principals and/or affiliates found to be in violation of one or more provisions of this chapter may enter into a settlement in the form of a consent decree with the MTA. The consent decree will specifically provide that the person will refrain from the act(s) or omission(s) that had been found to be in violation of this chapter. A consent decree may be entered into alone or in conjunction with one or more of the procedures described in this section.

C. Warning Letter. Where there appears to be an act or omission in violation of this chapter, a warning letter may be issued to the contractor and any of its principals and/or affiliates. In all subsequent transactions between the contractor and any of its principals and/or affiliates and the MTA, the warning letter will be considered notice concerning such acts or omissions and may be evidence in a subsequent debarment proceeding.

4-10-290 Suspension of Contractors.

A. The Suspending Official may, to protect the public interest, suspend a contractor or contractor's affiliate suspected, upon sufficient evidence, of committing of any act described in section 4-10-070, or subject to an indictment for any of the causes set forth in section 4-10-070.

B. The MTA may modify or terminate the suspension at any time. The MTA reserves the discretion to lift a suspension on the basis that it finds insufficient grounds to proceed with debarment.

C. Suspension is a serious action to be imposed on the basis of sufficient evidence, pending completion of an investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the interest of the MTA.

D. Suspension constitutes suspension of all divisions or other organizational

elements of the contractor, unless the suspension decision is limited by its terms to specific divisions or organizational elements. The Suspending Official may extend the suspension decision to include any affiliates of the contractor if they are:

1. Specifically named;
2. Given written notice of the suspension and an opportunity to respond.

4-10-300 Notice of Suspension. When a contractor is suspended, it and its bonding companies shall be immediately notified of the suspension by certified mail, return receipt requested. The Notice of Suspension shall include the following information:

A. That the contractor has been suspended and that the suspension is based upon an indictment or other sufficient evidence that the contractor has committed an act described in section 4-10-070;

B. A description of the actions of the contractor giving rise to the suspension sufficient to place the contractor on notice without disclosing the MTA's evidence;

C. That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

D. The effect of the suspension;

E. That, within 30 days after receipt of the Notice of Suspension, the contractor may submit, in writing, information and argument in opposition to the suspension; and

F. Except for suspensions based upon an indictment, that additional proceedings shall be conducted if the contractor disputes any material facts supporting the suspension.

4-10-310 Suspension Procedures.

A. Following the imposition of suspension, the contractor may, within 30 days, submit written information and argument to the Suspending Official in opposition to the suspension. If it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension, the Suspending Official shall:

1. Constitute the Executive Review Panel or, in lieu thereof, appoint a retired

judge who will exercise all of the powers of an Executive Review Panel; and

2. Notify the contractor as to the date certain of the hearing on the facts supporting the suspension.

B. The suspended contractor shall, no later than ten (10) days before the hearing before the Executive Review Panel, provide a written list of proposed witnesses to be presented at the hearing and a description of each writing to be submitted for consideration by the Executive Review Panel. Failure by the suspended contractor to provide the required information within the time required by this paragraph shall be sufficient cause for continuance of the hearing.

C. The suspended contractor and/or its attorney or other authorized representative shall be given an opportunity to appear at the suspension hearing and to submit documentary evidence, present witnesses, and offer rebuttal evidence at the hearing. All testimony provided at the hearing shall be under oath. Failure to dispute all the bases for the suspension either in writing or at the time of the hearing shall be deemed an admission that each undenied basis for suspension is true.

D. At the request of either the suspended contractor or the MTA the proceedings shall be transcribed by an authorized court reporter. The cost of the transcript of the proceedings shall be paid by the party requesting the transcript, or in the event both parties request the transcript, the cost shall be divided evenly between them.

E. The cause for suspension must be established by a preponderance of the evidence. Where the proposed suspension is based upon a conviction or civil judgment, the standard shall be deemed to have been met.

F. Once the Executive Review Panel or retired judge deems the hearing to be concluded there shall be no further proceedings before it or evidence accepted by it relating to the suspension.

4-10-320 Suspension Decision.

A. Within ten (10) days of the conclusion of the suspension hearing, the Executive Review Panel shall submit to the Suspending Official recommendations whether the suspension shall be upheld, modified or terminated.

B. The Suspending Official shall review the findings of the Executive Review Panel and may uphold or modify the recommendation.

C. The notice to the suspended contractor and any affiliates and bonding companies shall be in writing, signed by the Suspending Official, and transmitted by certified mail, return receipt requested. The Office of the General Counsel will be consulted on all suspension actions prior to any notices being sent to the respondent.

4-10-330 Period of Suspension.

A. Suspension shall be for a temporary period pending the completion of the MTA's investigation and any ensuing legal proceedings, unless sooner terminated by the Suspending Official.

B. If the MTA does not initiate debarment proceedings within twelve (12) months after the date of the suspension notice, the suspension will terminate automatically unless there are pending legal proceedings. However, once debarment proceedings have been initiated, the suspension may continue indefinitely pending resolution of the debarment proceeding.

4-10-340 Scope of Suspension. The scope of suspension shall be the same as that for debarment.

4-10-350 Preemption. In the event any contract is subject to federal and/or state laws that are inconsistent with the terms of this chapter, such laws shall control.

4-10-360 Severability. If any section, subsection, subpart or provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this chapter and the application of such to other persons or circumstances shall not be affected thereby.

4-10-370 Judicial Review.

A. Judicial review of any final decision reached by the MTA under this chapter shall be conducted by the Superior Court of the County of Los Angeles, Central District, pursuant to an administrative writ of mandate as described under Code of Civil Procedure Section 1094.5, but only if the petition for writ of mandate is filed within the time limits set forth in Code of Civil Procedure Section 1094.6.

B. In every final decision reached under this chapter, notice of such final decision shall only be given directly to the Respondent and its bonding companies and such notice shall explain that Code of Civil Procedure Section 1094.6 governs the time period within which judicial review of any such final decision must be sought. Final notice to the applicant or party and its bonding companies shall include the following statement:

THE MTA HAS REACHED A FINAL DECISION IN THE ADMINISTRATIVE MATTER PENDING BEFORE THE MTA. IF YOU CHOOSE TO SEEK JUDICIAL REVIEW OF MTA'S FINAL DECISION IN THIS MATTER, SUCH ACTION SHALL BE INITIATED UNDER CODE OF CIVIL PROCEDURE SECTION 1094.5 AND TIME LIMITS FOR FILING SUCH AN ACTION ARE SET FORTH IN CODE OF CIVIL PROCEDURE SECTION 1094.6. IT IS YOUR SOLE RESPONSIBILITY TO TAKE WHATEVER ACTION YOU DEEM APPROPRIATE IN RESPONSE TO THIS NOTICE.

Chapter 4-15

Construction Change Orders

4-15-010 Purpose and Coverage. The purpose of this Chapter is to adopt a change order procedure as required by Public Utilities Code §130243. The MTA construes the term “change order” as used in §130243 as referring only to a modification of the work to be performed under a contract for construction of a public works project, where the modification of work will result in an increase in the cost to the MTA over the then current base contract amount as modified by any already approved change orders. It is the intent of the MTA that any other contract modification, regardless of how that modification is described or denominated, is not a “change order” as that term is used in Public Utilities Code §130243, and is not subject to this chapter.

4-15-020 Identification of Changes. Whenever any party proposes a change to a construction contract which will involve the expenditure of MTA funds above the amounts contemplated by the existing contract, the MTA contract administrator shall consult with the MTA General Counsel, and technical experts if necessary, to determine whether the proposed change includes work within the scope of the statement of work in the base construction contract as modified by already approved change orders. If it is determined that the proposed change includes work within the scope of the statement of work in the base construction contract as modified by already approved change orders, the requested change order shall be denied. If it is determined that the proposed change includes work which is not covered by the statement of work in the base construction contract as modified by already approved change orders, the change order shall be priced as set forth in this chapter.

4-15-030 Establishing the Price for a Construction Change Order. When a change to a construction contract is identified, as set forth in section 4-15-020, the value for the change shall be established as follows:

A. If the contract was awarded as a design-build contract, the MTA will submit to the contractor a change notice describing the scope of the proposed change.

1. If the MTA determines that the cost to complete the work described in the change notice can be determined based upon an evaluation of the scope of the work set forth in the change notice and without the need for detailed plans and specification, the total price for the proposed change, including both design and construction, will be included in a single change order. The actual price to be paid for the change order work will be determined in accordance with paragraphs C, D, E and F.

2. If the cost to complete the work described in the change notice cannot reasonably be determined without detailed plans and specifications, the price for the design of the proposed work and the price to fully complete the work as set forth in the design will each be set forth in separate change orders. The actual price to be paid for each change order will be determined in accordance with paragraphs C, D, E and F.

B. If the contract was awarded as a design-bid-build contract the MTA shall submit to the contractor a change notice describing the scope of the proposed change which shall include plans and specifications describing the specific work to be done under the proposed change order in sufficient detail to reasonably permit the contractor to evaluate the cost of the additional work and to complete it if approved. The actual price to be paid for the change order will be determined in accordance with paragraphs C, D, E and F.

C. Regardless of whether a proposed change is to be added to the contract under a single change order as described in paragraphs A.1 or B., or two change orders as described in paragraph A.2., the MTA and the contractor will separately determine the appropriate value of each proposed change. The MTA independent estimate of the value of the proposed change shall be made by its estimating unit, which shall be organizationally independent of the MTA administrative head of construction. The MTA independent estimate shall be a determination of the estimated cost to the contractor to complete any necessary design work and the actual construction work for the proposed change, plus any contractor markup allowed by the base construction contract. The cost of design and cost of construction may be determined through

separate change orders as described in paragraph A.2. If separate change orders are issued, the change order for the construction work shall not be issued until sufficient design work has been completed to enable a reasonable estimate of the cost of the construction work. To the extent federal cost principles are applicable to the change order, the separate cost elements that comprise the estimate shall be consistent with federal cost principles. The MTA independent estimate of the value of the proposed change shall be audited for accuracy, completeness and consistency with federal cost principles, if applicable, by the MTA management audit services unit if the amount of the independent estimate exceeds \$100,000. The MTA independent estimate of the value of the proposed change shall be provided to the MTA contract administrator, but shall be kept confidential and not provided to the contractor.

D. The contractor shall submit to the MTA contract administrator the contractor's proposed price to perform all of the work under the proposed change. The contractor's price shall include a submittal of certified cost and pricing data in the form of the separate cost elements, including profit, which make up the contractor's proposed price. The contractor's proposed price may be for the cost of construction as described in paragraph B for a design-bid-build contract, or, in the case of a design-build contract, may be for the cost of design, the cost of construction, or the cost of both, depending upon whether the MTA selects, at its sole discretion, to issue one change order for both design and construction as described in paragraph A.1., or separate change orders for design and construction, respectively, as described in paragraph A.2. The MTA contract administrator shall conduct an analysis which compares the separate cost elements in the contractor's proposal with the separate cost elements in the MTA independent estimate. If the contract administrator finds that the contractor's and the MTA's separate cost elements are reasonably consistent and that the contractor's total price for the change does not exceed by more than five percent the MTA independent estimate determined pursuant to paragraph C., the change order(s) shall be issued, or recommended to the Board of Directors if beyond the approval authority of MTA staff, at the price proposed by the contractor.

E. If the contract administrator finds that the contractor's separate cost elements are not reasonably consistent with those in the MTA independent estimate, or that the contractor's proposed price for the change exceeds by more than five percent the MTA independent estimate determined pursuant to paragraph C., the contractor shall be offered the opportunity to execute a change order to do the work in the proposed change for a price equal to, and consistent with the cost elements in, the MTA independent estimate. If the contractor rejects this offer and demands a higher price for the change, the contractor shall submit to the MTA such additional cost and pricing data to support the contractor's price as is reasonably required by the contract administrator to support the contractor's price. Any such additional cost and pricing data submitted by the contractor must be certified by the contractor as current, complete and accurate. If the contractor's proposed price exceeds \$100,000, the MTA's management audit services unit shall conduct an audit of the cost and pricing data required by the contract administrator and submitted by the contractor. If upon review and audit, if required, of the contractor's certified cost and pricing data, the MTA determines that the contractor's proposed value for the change is reasonable, the change order shall be issued, or recommended to the Board of Directors if beyond the approval authority of MTA staff, at the value proposed by the contractor.

F. If after the completion of the procedures set forth above, the MTA and the contractor are not able to agree on the price for the change, the price shall be determined through further negotiations or, if necessary, through legal action or any alternative dispute resolution process which the parties have agreed to utilize. In order to allow continuation of work under the construction contract during any period where a dispute as to the value of the change is being resolved, the MTA may issue a unilateral change order in the amount of the MTA independent estimate of the value of the proposed change as determined pursuant to paragraph C.

G. Nothing in this chapter shall prevent the MTA from using any alternative method allowed by law for pricing a proposed change order, if the MTA, in its sole discretion, determines that such alternative method is in the best interest of the MTA, will produce a price

which reasonably reflects the actual value of the work, and the method of valuation set forth in this chapter is impractical under the circumstances.

4-15-040 Administrative Policies. The CEO may develop administrative policies not inconsistent with this chapter, governing the change order review and approval process, which may include, but are not limited to, policies establishing reasonable time deadlines for the completion of the administrative steps set forth in this chapter.

LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY
ADMINISTRATIVE CODE

Title 5

Ethics

Chapter 5-05

General Provisions and Definitions

5-05-010 Codes of Conduct. This title sets forth the codes of conduct for MTA officers and employees and for those doing business with the MTA. The Ethics Officer is authorized to prepare and publish informational materials describing the requirements of this title in a readily understandable format and to make copies of such informational materials available to all affected and interested persons.

5-05-020 Waiver. Any provision of this title not mandated by statute may be waived by the Board of Directors if it finds, based upon the facts applicable in a particular instance, that such a waiver is in the best interest of the MTA.

5-05-030 Definitions. The terms used in this title shall be construed as defined in this chapter.

5-05-040 Activity Expense. "Activity Expense" means any expense incurred or payment made by a lobbyist, lobbying firm, or lobbyist employer, or arranged by a lobbyist, lobbying firm, or lobbyist employer, that benefits in whole or in part any MTA official, or a member of the immediate family of an MTA official. Activity expenses include, but are not limited to, contributions made to office holder accounts and to committees controlled by an MTA official and gifts.

5-05-050 Administrative Testimony. "Administrative testimony" means influencing or attempting to influence MTA action undertaken by any person or entity who does not seek to enter into a contract or other arrangement with the MTA by acting as counsel in, appearing as a

witness in, or providing written submissions, including answers to inquiries, which become a part of the record of any proceeding of the MTA that is conducted as an open public hearing for which public notice is given.

5-05-060 Board Member. “Board Member” means a member of the MTA Board of Directors.

5-05-070 Campaign Contribution and Contribution. “Campaign contribution” and “contribution” have the same meaning as the term “contribution” as defined in Government Code Section 82015.

5-05-080 Consultant. “Consultant” has the same meaning as set forth in Title 2 California Code of Regulations, Section 18701(a)(2).

5-05-090 Contractor. “Contractor” means any construction company, engineering firm, consultant, legal firm, or any company, supplier, or business entity who is presently engaging in any business with the MTA or any owner or employee of such entities and all entities who have submitted a bid or proposal for an MTA contract. "Contractor" shall also include any consultant and any subcontractor to a contractor.

5-05-100 Designated MTA Employee. “Designated MTA Employee means an MTA official whose position with the MTA entails the making or the participation in the making of decisions which could foreseeably have a material effect on a financial interest of that official. Such persons are designated in the MTA’s Conflict of Interest Code.

5-05-110 Financial Interest. “Financial interest” on the part of a Board Member which would preclude participation in an MTA decision means any interest which would constitute a financial interest under subdivision (c) Public Utilities Code Section 130700. “Financial interest” on the part of an MTA employee which would preclude participation in an MTA decision means any interest which would constitute a financial interest under Government Code Section 87103 and any regulations of the California Fair Political Practices Commission interpreting that section.

5-05-120 Gift. “Gift” has the same meaning as set forth in Government Code Section 82028 and any regulations of the California Fair Political Practices Commission interpreting that section.

5-05-130 Lobbying and Lobbyist Services. “Lobbying” and “lobbyist services” mean any action by a lobbyist or lobbying firm to influence or attempt to influence MTA action through direct or indirect communication, other than administrative testimony, with an MTA official.

5-05-140 Lobbying Firm. “Lobbying firm” means any business entity, including an individual lobbyist, that meets either of the following criteria:

A. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing MTA action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist; or

B. The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any MTA official for the purpose of influencing MTA action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing MTA action.

5-05-150 Lobbyist. “Lobbyist” means any individual who receives any economic consideration, other than reimbursement for reasonable travel expenses, for lobbying, including consultants and officers or employees of any business entity seeking to enter into a contract with the MTA.

5-05-160 Lobbyist Employer. “Lobbyist employer” means any person, other than a lobbying firm, who does either of the following:

A. Employs one or more lobbyists for the purpose of influencing MTA action; or

B. Contracts for the services of a lobbyist or lobbying firm for economic consideration for the purpose of influencing MTA action.

5-05-170 MTA Action. “MTA action” means the drafting, introduction, consideration, modification, enactment, or defeat of an ordinance, resolution, contract, or report by the governing board of an organizational unit of the MTA, or by an MTA official, including any action taken, or required to be taken, by a vote of the Board of Directors, or by the members of the governing board of an organizational unit of the MTA, except those actions relating to Article 10 of Chapter 5 of Part 3 of Division 10 (commencing with Section 30750) of the Public Utilities Code.

5-05-180 MTA Employee. “MTA employee” means any individual, including a consultant who receives compensation from the MTA for full or part-time employment. The term MTA employee includes a "designated MTA employee".

5-05-190 MTA Official. “MTA official” means any Board Member or member of an organizational unit of the MTA, or MTA employee.

5-05-200 Official Responsibility. “Official responsibility” means the direct administrative or operating duties for the MTA, whether intermediate or final, and whether exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct MTA action.

5-05-210 Person. “Person” has the same meaning as set forth in Government Code Section 82047.

5-05-220 Public Official. “Public official” has the same meaning as set forth in Government Code Section 82048.

5-05-230 Signed. “Signed” means executed or adopted, with the present intention to authenticate and affirm, using either:

- A. A handwritten signature; or
- B. An electronic sound, symbol, or process unique to the filer and assigned by the Ethics Officer, which is attached to or logically associated with the filing of a report or statement using the MTA’s electronic filing system.

5-05-240 **Significant Other.** “Significant other” means an individual with whom an MTA official participates in a dating relationship.

Chapter 5-10

Board Member Code of Conduct

5-10-010 Incorporation of Statutory Provisions. The provisions of Chapter 6, entitled *Code of Conduct for the Board of the Los Angeles County Metropolitan Transportation Authority*, of Division 12 of the Public Utilities Code (commencing with Section 130600), and Public Utilities Code Section 130051.20, along with such other provisions as are included in this chapter, shall constitute the code of conduct for members of the Board of Directors. Any other code of conduct for Board Members which is in existence on the effective date of this chapter is repealed.

5-10-020 Enforcement and Sanctions.

A. An alleged violation of this chapter by any member of the Board of Directors or by a member or his or her staff shall be referred to the Inspector General for investigation. Upon completion of the investigation, and if the matter has been determined not to be criminal in nature and can be disclosed, the Inspector General shall report the findings to the Board of Directors. If the matter is determined to be criminal in nature, the Inspector General shall refer the matter to the appropriate enforcement authorities for prosecution.

B. For any matter reported to the Board of Directors under paragraph A., the Board shall determine the appropriate sanction, if any, to be imposed. The sanction imposed should depend upon the severity of the violation and may be progressive unless the violation is determined to be so egregious as to warrant more severe action as an initial sanction.

C. The Board of Directors may consult with the Inspector General, the Ethics Officer and/or the General Counsel for an opinion regarding the sanctions appropriate for any violation. The sanctions imposed may include any of the following:

1. Public or private censure by the Board of Directors;

2. Disqualification from participation in any discussion or vote on the matter related to the violation;
3. Removal of the Board member from one or more Board committees for a specified period of time;
4. Permanent removal of the Board member from one or more Board committees;
5. Suspension from all Board of Director actions for a period of time;
6. A monetary fine in an amount determined by the Board of Directors, including but not limited to, forfeiture of the stipend for participation as a member of the Board of Directors; and
7. Any other sanction determined by the Board of Directors to be appropriate and reasonable based upon the nature of the violation.

D. In an instance where a violation of this chapter has been committed by a person who is staff to a member of the Board of Directors, in addition to any sanction imposed on the staff member, a sanction may be imposed on the member of the Board of Directors to whom that staff member reported if the Board of Directors determines that the member of the Board of Directors knew or reasonably should have known of the conduct of the staff member which violated this chapter.

E. If a violation of this chapter results in a criminal prosecution or the imposition of civil liability, the Board of Directors may recommend additional sanctions after the criminal or civil proceedings are completed.

Chapter 5-15

Employee Code of Conduct

5-15-010 MTA Values. The MTA is a public agency that shall conduct its business with integrity in an honest and ethical manner. MTA employees shall comply with the letter and spirit of this chapter and the law. Strict compliance with the chapter is not necessarily sufficient,

and any attempts to evade or circumvent any requirements of this chapter or of any rules or laws applicable to the MTA and its employees is improper.

5-15-020 Questions and Advice. The MTA has an Ethics Officer to oversee ethics issues that arise in the workplace. The functions of the Ethics Officer are described in chapter 2-25 and include creating ethics policies and codes of conduct, administration of lobbyist and statement of economic interest disclosure programs, training MTA employees and contractors on these policies and programs, conducting hearings on rejections of certain bids or proposals, and providing advice relating to ethics questions that arise at the MTA. Questions concerning these or other ethics related matters should be directed to the Ethics Officer. Questions about other legal matters should be directed to the General Counsel.

5-15-030 Business Conduct. MTA Employees shall conduct the MTA's business in compliance with the law, this chapter, MTA policies, and good judgment based on the MTA's values and goals. MTA employees shall avoid speech or behavior that is likely to create an appearance of impropriety.

5-15-040 Professionalism. It is up to each MTA employee to maintain a professional, safe, and productive work environment. MTA employees shall treat each other professionally and with courtesy and at all times. Differences of opinion on work issues should be expressed in a constructive manner that promotes sharing of ideas and effective teamwork to resolve problems to meet the challenges of the MTA.

5-15-050 Nondiscrimination. No person shall be discriminated against in employment because of race, color, creed, religion, sex, ancestry, age, national origin, marital status, sexual orientation, veteran status, physical or mental disability or any other status protected by applicable federal or state statutes, except where a bonafide occupational qualification applies. Derogatory comments, which relate to race, ethnicity, religion, national origin or sexual orientation or other comments of a sexual nature, are not appropriate in a professional environment and are prohibited in the MTA workplace.

5-15-060 Sexual Harassment. No person employed by or associated with the MTA shall engage in sexual harassment in conducting MTA business. Sexual harassment includes any sexual advances or requests for sexual favors which are unwelcome or where submission to or rejection of such conduct is used as the basis for employment decisions. Sexual harassment also includes verbal, visual or physical conduct of a sexual nature, which creates an intimidating, hostile or offensive working environment.

5-15-070 Relationships With Contractors. MTA business shall be conducted in a manner above reproach, with impartiality, and with preferential treatment for none. Particularly in relationships with contractors and potential contractors, MTA employees must avoid any actual or appearance of conflict of interest or impropriety.

5-15-080 Contacts with Bidders or Proposers.

A. Beginning at the time a procurement is issued and ending at the time when the contract award recommendation is made public, all MTA employees involved in the procurement shall not disclose any information to anyone other than MTA officials entitled to receive such information unless the disclosure is considered public information and is made equally available to all participants in the procurement process. All contacts with bidders or proposers to that procurement including their lobbyists, agents and representatives, shall be reported as set forth in paragraph C.

B. MTA employees involved in the procurement, as referred to in paragraph A, include, but are not limited to, the contract administrator, the project manager, the in house-evaluator(s) of a proposal, the staff responsible for determining and writing the specifications of a procurement, the staff responsible for drafting and creating the solicitation documents, the staff involved in determining and drafting the contract award recommendation, the clerical staff who prepared (including word-processing) any documents relating to the procurement, and all staff in the chain of approval, up to the Chief Executive Officer.

C. The report required by paragraph A. shall include all contacts with bidders or proposers, and their lobbyists, agents and representatives. The contacts shall include, but not be limited to, meals, meetings, conferences, sporting events, and cultural events. This report shall not include contacts made as part of the procurement process, including, but not limited to, pre-bid or pre-proposal meetings, exchange of information which is given to all proposers, interviews and protest applications. MTA employees engaging in such contacts shall file a Disclosure of Contacts Form with the administrative head of procurement for the MTA within five (5) days of the contact(s), but in no event later than the date the item is to be considered by Board of Directors or the appropriate Board committee, whichever is sooner.

5-15-090 Contractor's Personnel. Each contractor retained by the MTA is fully responsible for the quality and performance of its staff and retains full responsibility for the selection of its personnel. MTA officials shall not direct or recommend personnel that the contractor should hire, even if the contractor requests a recommendation. However, the MTA retains the right in its absolute discretion to require the removal of any personnel of a contractor or subcontractor assigned at any level to perform services on an MTA contract if the MTA determines, in its sole discretion, that the personnel to be removed are not able to adequately or appropriately perform the services required for the particular contract. Any direction by the MTA to a contractor that specified personnel be removed from work on an MTA contract shall be made in writing.

5-15-100 Professional Associations. Memberships in professional associations and organizations by MTA employees are encouraged as such memberships can contribute to their professional development and enhance expertise. These relationships, however, can give other association members more access to MTA employees than non-members and create the appearance of bias or favoritism in their dealings with the MTA. MTA employees must always ensure that their dealings with other members of such organizations are consistent with the

provisions of this title and do not result in preferential treatment or even the appearance of preferential treatment.

5-15-110 Use of MTA Assets.

A. MTA employees shall not use any MTA assets for personal gain or for any purpose other than MTA business. MTA assets include, but are not limited to, time, facilities, equipment, stationery, records, mailing lists, supplies, badges, vehicles, prestige or influence.

B. MTA telephones, computers, e-mail and internet access are provided for the purpose of conducting MTA business. Subject to the restrictions in this section and if permitted by the employee's supervisor, some occasional and limited personal use is allowed so long as it does not interfere with the performance of the employees' MTA duties and does not result in any additional expense to the MTA. However, MTA telephones, computers, e-mail or internet access shall not be used for e-mail chain letters, for religious or political advocacy, for excessive personal communications, for personal financial gain, to seek outside employment, for any purpose that could reasonably be viewed as abusive, harassing, hostile or intimidating to MTA customers or employees, to access entertainment or sexually explicit sites, or for any use otherwise prohibited by law. Employees shall reimburse the MTA for all personal toll calls. The MTA reserves the right to monitor and review all records of usage by MTA employees of any MTA assets. No use of MTA telephones, computers, e-mail or internet access, or use of any other MTA asset, shall be private to the employee, and no MTA employee shall be given any basis for an expectation of privacy in any such use.

5-15-120 Confidential Information. MTA employees shall maintain the confidentiality of any confidential information relating to contracts, construction, procurement, litigation strategy, personnel files, MTA employee medical information, or other proprietary information to which they have access through their employment with the MTA. Such confidentiality shall be

maintained during and after employment with the MTA. MTA employees shall not use confidential information for any purpose other than in the performance of their job for the benefit of the MTA. Confidential information shall only be disclosed to authorized persons.

5-15-130 Gifts.

A. This section exists to assure the public that public employees are not influenced to show favoritism to a contractor based on receiving gifts or for being rewarded for doing his or her job in a way that will or did benefit the giver of the gift.

B. No MTA employees shall accept gifts exceeding fifty dollars (\$50) in value in a calendar year or exceeding ten dollars (\$10) in value in a calendar month from a single source that is an MTA contractor, subcontractor, lobbyist, lobbying firm, lobbyist employer or anyone else doing business with the MTA. No MTA employee shall accept any gift from a bidder or proposer on an MTA contract.

C. Designated MTA employees may accept gifts totaling less than \$340, or such amount allowed pursuant to Government Code Sections 89502 and 89503 as adjusted biennially, in a calendar year from a single source other than one identified in paragraph B., above. Designated employees must report such gifts totaling fifty dollars (\$50) or more from a single source, or a single gift of fifty dollars (\$50) or more from multiple sources, in a calendar year on their annual Statements of Economic Interests according to state law.

D. Any MTA employee who receives a gift in excess of the limitations in this section, must either return the gift or donate it to a charity within thirty (30) days after receipt. MTA employees may also bring any gifts to the Ethics Officer for distribution to a charity. MTA employees should keep a log of all gifts received and the value, source, and disposition of the gifts.

5-15-140 Honoraria. No designated MTA employee may accept an honoraria. An honoraria is a payment received for making a speech, publishing an article, or attending any public or private conference, convention, meeting, social event, meal or similar gathering.

Honoraria payments are prohibited because they can be, or can appear to be, a disguised way of providing personal benefits to public employees as an inducement to influence their conduct. Questions about whether a particular payment is prohibited honoraria should be directed to the Ethics Officer.

5-15-150 Travel Payments. Payment or reimbursement for travel and lodging may be considered a gift for purposes of the gift limits unless it is paid by MTA for business travel. Travel payments donated by other persons, even if permitted, may have to be reported by a designated MTA employee on his or her annual Statement of Economic Interests and may require the MTA employee to be disqualified from MTA issues concerning the donor of the travel. Questions about donated travel expenses should be directed to the Ethics Officer.

5-15-160 Conflicts of Interest.

A. A conflict of interest, or at least an appearance of impropriety, exists when the interests, investments, outside employment or personal enterprises of the employee or a member of his or her immediate family could compromise the employee's duty of loyalty, or otherwise conflict with, or appear to conflict with his or her job performance, objectivity, impartiality, or ability to make fair business decisions in the best interest of the MTA. A conflict of interest may arise in any situation in which an MTA employee is in a position where he or she could use his or her contacts or position in the agency to advance the private business or financial interests of the employee or his or her immediate family, whether or not at the expense of the MTA. An MTA employee may also have a conflict of interest if called upon to make a decision concerning a former employer of that employee or of a member of his or her immediate family.

B. An MTA employee has a conflict of interest and shall not participate in the making of any decision or contract in which the MTA employee has a financial interest. Any MTA employee with such a conflict of interest must disqualify himself or herself from making, participating in the making, or in any way attempting to use his or her official position to influence the MTA decision in which he or she knows, or has reason to know, that he or she has

a financial interest. An MTA employee should also disqualify himself or herself from participating in an MTA decision where the MTA employee does not have a disqualifying financial interest, but where the making of the decision will have some other significant effect on the employee, a member of his or her immediate family or another person with whom the MTA employee has a close personal relationship.

C. Any MTA employee who may have a conflict of interest as described in paragraph B. relative to a prospective contractor, subcontractor, bidder or contract, or any other MTA decision or issue, at the earliest possible time, must advise his or her supervisor of the possible conflict of interest.

D. An MTA employee may not buy anything from or sell anything to the MTA in connection with a contract the MTA employee worked on in his or her official capacity.

E. Pursuant to Public Utilities Code Section 130051.20, no MTA employee shall make, participate in or use his or her official position to influence a contract decision if the employee has received a political contribution exceeding ten dollars (\$10) in the previous four years from an entity seeking to contract with the MTA or from an agent of that entity.

F. Upon request, the Ethics Officer or the General Counsel shall advise an MTA employee and his or her supervisor regarding whether it is appropriate for the MTA employee to participate in a decision involving a possible conflict of interest.

5-15-170 Statement of Economic Interest. Each designated MTA employee shall file with the Ethics Officer an original complete and accurate statement of economic interest disclosure form (“Form 700”) disclosing the personal financial information required by law, promptly after assuming office, annually on or before April 1 (or the first business day following April 1 if it falls on a weekend day) of each year of employment, a leaving office statement within thirty (30) days after leaving the MTA, and as otherwise provided pursuant to the MTA conflict of interest code and applicable state law. The Ethics Officer shall maintain a supply of blank Form 700s and make them available to MTA employees. Completed forms will be public

documents retained by the Ethics Officer and disclosed as required by the California Public Records Act. Failure to timely file a Form 700 may result in fines by the MTA filing officer required pursuant to state law, prosecution by the Fair Political Practices Commission, and other sanctions set by law or set forth in this chapter.

5-15-180 Incompatible Activities. No MTA employee shall engage in any outside activity that is inconsistent, incompatible, or that interferes with his or her ability to efficiently and effectively carry out his or her MTA duties. Incompatible activities include, but are not limited to, any of the following:

- A. Accepting money or other benefit from an outside employer for work that the employee would be required or expected to do as part of his or her MTA employment;
- B. Performing work for an outside employer which may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by another MTA employee;
- C. Accepting money or other benefit from someone doing business or seeking to do business with the MTA, that could reasonably be interpreted as having been intended to influence the MTA employee in his or her job at the MTA or intended as a reward for past performance in his or her job;
- D. Any situation that might involve a conflict of loyalties for the MTA employee between the MTA and any other person or entity;
- E. Using MTA assets including time, facilities, equipment, vehicles, employee lists, stationery, records, mailing lists, supplies, badge, uniform, prestige or influence for personal gain or non-MTA related activities;
- F. Time demands from outside activities that would interfere with the ability of the MTA employee to devote his or her full work time, attention, and efforts to his or her MTA duties;
- G. Lobbying the MTA on behalf of any other person or entity; and
- H. Outside employment for which employment with the MTA is a prerequisite.

5-15-190 Outside Employment. An MTA employee shall not engage in any other employment without the written permission of his or her MTA supervisor. Such permission must be obtained prior to the MTA employee commencing any outside employment. If the MTA employee is reassigned to a new supervisor that employee must promptly obtain permission from his or her new supervisor. No approval to engage in outside employment shall be granted for any outside employment or activity that would violate any provision of this chapter. Questions about whether an outside activity or employment will violate this chapter should be directed to the Ethics Officer.

5-15-200 Contracts with MTA Employees. The MTA shall not contract with an MTA employee, or with any business in which an MTA employee serves as an officer, principal, partner, major shareholder, or as a key employee or consultant relative to any contract with the MTA.

5-15-210 Restrictions Upon Leaving the MTA. In order to prevent the appearance of impropriety, an unfair competitive advantage to companies hiring former MTA employees, and the potential compromise of the loyalty of MTA employees who may be desirous of future employment with an MTA contractor, all MTA employees are subject to the post-employment restrictions set forth in this section.

A. No person may register as a lobbyist or lobby the MTA for one (1) year after leaving MTA employment.

B. The MTA shall not contract with a former MTA employee for one (1) year after he or she leaves MTA employment if that former employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

C. The MTA shall not contract with a business where a person who left MTA employment within the preceding one (1) year serves as an officer, principal, partner or major shareholder, or has been identified as a key personnel, if the former MTA employee held a

position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

D. The MTA shall not contract with a business which has a subcontractor which employs a person who left employment with the MTA in the preceding one (1) year and where the former MTA employee serves as an officer, principal, partner, major shareholder, or has been identified as key personnel, if the former MTA employee held a position of substantial responsibility in the area of service to be performed by the contract or participated in any way in developing the contract or its specifications.

E. Pursuant to Public Utilities Code Section 130051.20, any former MTA employee who participated as a decision maker in the preparation, evaluation, award, or implementation of a contract, shall not within three (3) years of leaving the MTA, accept employment with any company that was awarded a contract as a result of the MTA employee's participation, evaluation, award or implementation of that contract.

F. Former MTA employees shall not at any time disclose to unauthorized persons or use for personal gain or other non-MTA related purposes any MTA confidential information.

5-15-220 Participation in Political or Charitable Activities. MTA employees may not engage in political or charitable activities during official duty hours or while on MTA premises. MTA employees may pursue such interests when off duty. MTA Employees shall not solicit political or charitable contributions from other MTA employees while on duty and at no time shall attempt to coerce such contributions. MTA employees shall not solicit political or charitable contributions from MTA contractors at any time. However, an MTA employee may communicate through the mail, or by other means, requests for political funds or charitable contributions from a significant segment of the public which may include MTA officers, employees or contractors, so long as it is clear that MTA officers, employees and contractors were not targeted for the solicitation. MTA employees shall not use employee lists, MTA mailing lists, vendor lists and lobbyist lists to solicit political or charitable contributions.

5-15-230 MTA Employees Holding Elective Office. An MTA employee who holds elective office shall not be involved in MTA projects within the geographic jurisdiction of his or her elective office. At the time of his or her election to any office subject to this section, the MTA employee shall disclose this information to his or her supervisor and shall disqualify himself or herself from participating in any MTA project within the jurisdiction of the elective office.

5-15-240 The Hatch Act. An MTA employee considering running for a partisan elective office must become familiar with the Hatch Act (Title 5, Chapter 15, U.S.C. Sections 1501 *et seq.*) and comply with its requirements. The Hatch Act governs the partisan political activities of employees of state or local agencies whose principal employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency.

5-15-250 Receipt of Political Contributions. Pursuant to Public Utilities Code Section 130051.20, no MTA employee or member of his or her immediate family shall accept, solicit, or direct a political contribution of over ten dollars (\$10) from any company, consultant, or firm seeking a contract with the MTA or that has contracted with the MTA in the preceding four (4) years.

5-15-260 Procurement Restrictions. While informational and market research contacts between MTA employees and prospective contractors can be a valuable source of data to the MTA, such contacts can sometimes provide an unfair advantage in a future procurement to the persons contacted as part of the market research. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective contractor and to avoid even the appearance of such preferential treatment. Requests for complimentary services or products or for free travel for specified individuals to view products are not permitted. Prospective contractors should not be requested to provide such things as testing services, custom drawings, special investigations, major demonstrations, or the furnishing of significant

samples unless such requests are required of all prospective contractors as a part of a procurement.

5-15-270 Contacts with Board Members or their Staff During Procurement.

Beginning when a procurement is issued and ending when the contract award recommendation is made public, MTA employees shall not communicate with Board Members or their staff regarding the procurement. If a Board Member or a member of his or her staff attempts to communicate with an MTA employee to influence the recommended award, this communication shall be reported to the Inspector General.

5-15-280 Compliance and Enforcement. All MTA employees have a responsibility to conduct the MTA's business in compliance with this chapter. The Inspector General shall investigate violations of this chapter and report his or her findings to the Board and to the Chief Executive Officer who shall take such action as is appropriate under the circumstances. Any violation of a provision of this chapter which is based upon a state or federal law may also be enforced by any appropriate enforcement agency.

5-15-290 Duty to Report. Each MTA employee is obligated to report to his or her supervisor, the Inspector General or the Ethics Officer any facts made know to the employee which show that an MTA contractor or MTA employee has engaged in business practices regarding an MTA matter which appear to be unethical, or which may violate this chapter or any applicable state or federal law.

5-15-300 Whistleblower Protection. The MTA is committed to fair treatment of all its employees and recognizes its responsibility under state and federal law to protect from punishment and harassment any person who reports a potential ethics issue, whether or not the allegation is found to have merit. The MTA shall not take any action or threaten any action against any MTA employee as a reprisal for making a report under section 5-15-290, unless the report was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

5-15-310 Sanctions For Violating This Chapter. A violation of this chapter by an MTA employee may result in the imposition of discipline, up to and including dismissal. The appropriate discipline will be determined by the employee's supervisor in consultation with the executive officer of the organizational unit in which the employee works and the Human Resources Department. The discipline imposed will depend upon the severity of the violation and may be progressive unless the violation is determined to be so serious as to warrant more severe action initially. The imposition of discipline by the MTA for a violation of this chapter, where such violation is also a violation of a state or federal law, shall not affect the ability of any appropriate prosecutorial agency to seek the imposition of any penalty allowed by law for such a violation.

5-15-320 No Employment Contract. This chapter sets forth rules of conduct for MTA employees. However, nothing in this administrative code shall be construed as establishing an employment contract between the MTA and any of its employees.

Chapter 5-20

Contractor Code of Conduct

5-20-010 Application of the Contractor Code of Conduct. This chapter shall govern the conduct of all Contractors of the MTA. These standards supersede all prior written ethics policies adopted by the MTA which are in conflict with these standards. These standards are to be read in conjunction with applicable provisions of the MTA Procurement Manual and other applicable MTA ordinances, policies and procedures. All Contractors shall ensure that their subcontractors comply with this chapter.

5-20-020 Purpose.

A. The purposes of this chapter are to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations

governing the conduct of contractors doing business with the MTA so they will be able to compete fairly and perform their work and services in an ethical manner.

B. This document does not purport to respond to all ethical issues which may arise in the course of doing business with the MTA. Each person and entity doing business with the MTA is expected at all times to conduct himself or herself in the manner of an ethical, reasonable person.

5-20-030 Interpretation. The Ethics Officer is charged with educating and advising regarding ethical issues. All persons subject to this chapter are authorized to contact the Ethics Officer for an interpretation of this chapter.

5-20-040 Enforcement. The provisions of this chapter may be enforced by the Inspector General and other appropriate enforcement authorities. Violations of law or of this chapter by a contractor should be reported to the Inspector General.

5-20-050 Contract Performance. All contractors doing or seeking to do business with the MTA should refrain from conduct which they know or reasonably should know is likely to create in the minds of an objective observer the perception that they are using or performing their contract with the MTA in an improper manner. Improper conduct in the performance of a contract which will constitute a violation of this chapter includes, but is not limited to, the following:

- A. The making of false or misleading representations regarding any aspect of the performance of the contract;
- B. An intentional breach of any contract term;
- C. Intentional or grossly negligent use of inferior products; and
- D. Misuse of MTA information or access to MTA personnel.

5-20-060 Contacts by Staff Prior to the Issuance of a Solicitation. While informational and market research contacts by MTA employees with prospective contractors can be a valuable source of data to the MTA, such contacts can sometimes provide an unfair advantage in a future

procurement to persons contacted as part of the market research. All parties must exercise sound judgment and caution to ensure that there is no preferential treatment of any prospective contractor and to avoid even the appearance of such preferential treatment.

5-20-070 Lobbying. The MTA shall not award a contract to any person or entity who is in violation of chapter 5-25.

5-20-080 Prohibition Regarding Gifts and Contributions. No bidder or proposer or any of their consultants or proposed subcontractors shall offer, give, or promise to offer or give, directly or indirectly, any gift to any MTA Board Member or employee. No contractor or person doing business with the MTA, or any of their subcontractors, shall offer or give, directly or indirectly, to any MTA Board Member or employee any gift(s) totaling more than fifty dollars (\$50) in a calendar year or more than ten dollars (\$10) in any calendar month. All persons doing business with the MTA or seeking to do business with the MTA, and each of their subcontractors and proposed subcontractors, are charged with full knowledge of the requirements of Public Utilities Code Section 130051.20, regarding the making of campaign contributions, and shall not violate or conspire with any other person to violate said Section.

5-20-090 Prohibition Regarding Offers of Employment. No bidder, proposer, or contractor shall offer, or promise to offer, either directly or indirectly, any future employment or business opportunity to any MTA official, or member of his or her immediate family, significant other or business associates of such persons if such offer of employment is conditioned expressly or impliedly on the awarding of a present or future contract or preference in the awarding of a contract to anyone at any time by the MTA.

5-20-100 Prohibition Regarding Information. Prior to a contract award, no bidder, proposer or contractor shall solicit or obtain, directly or indirectly, from any MTA employee, any information relating to current or future contracts, or a specific pending procurement, unless such information is at the time a public record required to be disclosed under the California Public

Records Act, or has otherwise been made available at the same time in the same form to all other bidders, proposers and contractors.

5-20-110 Prohibitions on Use and Disclosure of Confidential Information. At no time shall any contractor who obtains confidential or proprietary MTA information in the course of doing or seeking to do business with the MTA disclose any such information to any person not authorized by the MTA to receive such information or use such information for any personal gain except as necessary to fulfill its contractual obligations to the MTA.

5-20-120 Contractor Pre-Qualification. The MTA will accept bids and proposals for contracts and procurement of goods or services only from firms or entities which are complying with the MTA pre-qualification process as set forth in chapter 4-05. Firms or entities seeking certification as pre-qualified shall submit a completed pre-qualification application. Firms or entities intending to bid as a joint venture should submit a separate pre-qualification application for each joint venture.

5-20-130 Prohibition Regarding Participation in Procurement Development. No contractor who participates in the development of a scope of work, solicitation documents, contractual instruments or technical specifications may participate as a proposer or sub-proposer on that particular procurement or perform any work on that particular procurement or any other procurement that would constitute an organizational conflict of interest or would give that contractor an unfair advantage over other bidders on that procurement. This prohibition may be waived in writing by the administrative head of procurement for the MTA upon a showing of good cause.

5-20-140 Contractor's Personnel. Each contractor retained by the MTA is fully responsible for the quality and performance of its staff and retains full responsibility for the selection of its personnel. MTA officials are not permitted to direct or recommend personnel that the contractor should hire, and no contractor shall request such a recommendation. However, the MTA retains the right in its absolute discretion to require the removal of any

personnel of a contractor or subcontractor assigned at any level to perform services on an MTA contract if the MTA determines, in its sole discretion, that the personnel to be removed are not able to adequately or appropriately perform the services required for the particular contract. Any direction by the MTA to a contractor that specified personnel be removed from work on an MTA contract shall be made in writing.

5-20-150 Duty to Disclose Conflicts of Interest.

A. Each bidder, proposer and contractor, and each of their consultants and subcontractors, seeking to do business, or doing business, with the MTA has an obligation to promptly disclose in writing to the administrative head of procurement for the MTA any of the following potential conflicts of interest which become known to the management of the bidder, proposer or contractor:

1. Any financial relationship between the bidder, proposer or contractor and a Board Member or member of his or her staff, or an MTA employee;
2. Any financial or close personal relationship between any officers, directors or key employees of the bidder, proposer or contractor and a Board Member or member of his or her staff, or MTA employee;
3. Any outstanding offer of employment to, or the current or former employment of, any current or former Board Member or member of his or her staff, or of an MTA employee or former employee, by the bidder, proposer or contractor; or
4. Any campaign contributions exceeding ten dollars (\$10) made by or on behalf of the bidder, proposer or contractor or its lobbyist to any current Board Member within the previous four (4) years.

B. The duty to disclose potential conflicts of interest as described in paragraph A. exists prior to and during any employment or contract and regardless of whether the facts actually constitute a conflict of interest under any law. The Ethics Officer, in consultation with

the General Counsel, shall provide advice to the administrative head of procurement for the MTA and to the Board of Directors as to whether any facts disclosed under this section constitute a prohibited conflict of interest, and of the impact, if any, of that conflict on the relationship between the bidder, proposer or contractor and the MTA.

C. Failure to make a disclosure as required by this section, shall be sufficient cause for the MTA to decline to do business with the bidder, proposer or contractor or any of its subcontractors or consultants.

5-20-160 Sanctions.

A. The MTA encourages good faith reporting of all suspected violations of this chapter. There shall be no penalty or other adverse consequences imposed upon anyone making a good faith report of a suspected violation of this chapter. The identity of any person reporting a violation of this chapter not be disclosed except as necessary to carry out the purposes and requirements of this chapter.

B. Any party alleged to have violated this chapter, shall be presumed innocent of that charge unless and until a violation is demonstrated by credible evidence, and prior to any such determination of any actual violation no penalty may be imposed.

C. Suspected violations of this chapter shall be reported immediately to the Inspector General for investigation. The Inspector General shall investigate the allegations and, if they are determined to have merit, the matter will be referred to the appropriate enforcement authorities.

D. In any instance where the Inspector General has determined that an allegation of a violation of this chapter has merit, the administrative head of procurement for the MTA, or his or her designee, may take one or more of the following actions:

1. Meet with the contractor to obtain an explanation of the violation;
2. Impose a fine upon the contractor as authorized by the contract documents;

3. Suspend the contract or subcontract involving the offending contractor and commence debarment proceedings under chapter 4-10;
4. Direct the prime contractor to remove the offending subcontractor from the project;
5. Rescind, void, or terminate the contract; and/or
6. Impose another reasonable and appropriate penalty.

E. In any instance where the administrative head of procurement for the MTA proposes a sanction under this section, he or she shall notify the contractor in writing of the recommended action. The contractor may request an informal hearing with the administrative head of procurement for the MTA or his or her designee to explain the contractor's position regarding the alleged violation and/or the proposed sanction. Any such request must be made in writing and received by the administrative head of procurement within ten (10) working days of the issuance of the notice of the recommended sanction. If no request is received within the ten (10) working day period, the sanction may be imposed forthwith. If a timely request for an informal hearing is received, the informal hearing shall take place within ten (10) working days after the administrative head of procurement receives the request. The contractor may be represented by legal counsel at its own expense at the hearing. Within ten (10) working days after the informal hearing, the administrative head of procurement or his or her designee shall advise the contractor in writing of the outcome of the hearing. Except as set forth in paragraph F., the decision of the administrative head of procurement shall be final.

F. If the administrative head of procurement for the MTA imposes a sanction under paragraph D.3., the contractor shall have such hearing rights as are set forth in chapter 4-10. If the administrative head of procurement imposes a sanction under paragraph D.2., which involves a fine in excess of one thousand dollars (\$1,000), or imposes a sanction under paragraph D.4., D.5. or D.6., the contractor may request arbitration before the American Arbitration Association pursuant to its rules and regulations to determine whether a violation of this chapter has been

shown, and, if so, whether the sanction imposed is appropriate. A request for arbitration must be in writing and be directed to the administrative head of procurement. This request must be received within ten (10) working days after the decision of that official becomes final. The contractor shall bear the costs associated with any such arbitration. The arbitration hearing shall take place in the County of Los Angeles as soon as possible. The decision of the arbitrator shall be final.

G. Notwithstanding any other provision of this section, in any procurement where a violation of this chapter has been established prior to the award of the contract, the MTA, at its sole discretion, shall determine whether to terminate the procurement or to proceed to award a contract with or without disqualifying the offending bidder or proposer.

Chapter 5-25

Lobbying the MTA

5-25-010 Registration and Fees.

A. Each lobbyist, lobbying firm, and lobbyist employer shall register in writing with the Ethics Officer within ten (10) days after qualifying as a lobbyist, lobbying firm, or lobbyist employer. Registration shall be completed prior to the commencement of lobbying. Registration shall include the filing of a registration statement, and the payment of such fees as are authorized by this section. Registration shall be renewed annually by January 15 of each succeeding year by the filing of a renewal statement and the payment of the required fees.

B. Each lobbyist, lobbying firm, and lobbyist employer required by this section to register and to file an annual renewal statement may be charged a fee for each filing in an amount sufficient to cover the direct costs of implementing this chapter as determined by the Ethics Officer. Failure to pay any such fee when due shall be a violation of this chapter.

5-25-020 Lobbyist Registration Statement. The registration and renewal statements for each lobbyist shall include all of the following:

A. The name, business address, e-mail address and telephone number of the lobbyist;
and

B. For each person or company from whom the lobbyist receives compensation to provide lobbying services, all of the following:

1. The full name, business address, e-mail address and telephone number of the person or company;

2. The time period of the contract or employment agreement;

3. The lobbying interests of the person or company;

4. A written, signed statement authorizing the lobbyist to lobby the MTA on behalf of that person or company; and

5. A statement signed by the lobbyist certifying that he or she has read and understands and will comply with the requirements and restrictions contained in this chapter.

5-25-030 Lobby Firm Registration Statement. The registration and renewal statements for each lobbying firm shall include all of the following:

A. The full name, business address, e-mail address and telephone number of the lobbying firm;

B. A list of the lobbyists who are partners, owners, officers, or employees of the lobbying firm; and

C. For each person or company with whom the lobbying firm contracts to provide lobbying services, the following:

1. The full name, business address, e-mail address and telephone number of the person or company;

2. The time period of the contract;

3. Information sufficient to identify the lobbying interests of the person or company;

4. A written, signed statement authorizing the lobbying firm to lobby the MTA on behalf of that person or company; and

5. A statement signed by the designated responsible person that he or she has read and will comply with the requirements and restrictions contained in this chapter.

5-25-040 Lobbyist Employer Registration Statement. The registration and renewal statement for each lobbyist employer shall include all of the following:

A. The full name, business address, e-mail address and telephone number of the lobbyist employer;

B. A list of the lobbyists or lobbying firms who are employed by the lobbyist employer;

C. The lobbying interests of the lobbyist employer, including identification of specific contracts or MTA actions; and

D. A statement signed by the designated responsible person that he or she has read and will comply with the requirements and restrictions contained in this chapter.

5-25-050 Mandatory Record Keeping. Lobbyists, lobbying firms, and lobbyist employers that make offers, receive payments, make payments, or incur expenses or expect to receive payments, make payments, or incur expenses in connection with activities which are reportable pursuant to this section, shall keep all statements and reports filed pursuant to this chapter together with detailed accounts, records, bills, and receipts, for a period of four (4) years and make them reasonably available for inspection for the purposes of auditing for compliance with, or enforcement of, this chapter.

5-25-060 Quarterly Reports. Each lobbyist, lobbying firm, and lobbyist employer shall file with the Ethics Officer a written quarterly report as set forth in this chapter within thirty (30) days after the end of each calendar quarter. The period covered by the first quarterly report of a lobbyist, lobbying firm, or lobbyist employer shall begin with the first day of the calendar quarter in which the filer first registered or qualified and shall end with the last day of the calendar quarter for which the report is being made. Thereafter, except as otherwise provided in this chapter, the period covered by a quarterly report shall be from the beginning of the calendar year through the last day of the calendar quarter for which the report is being made. Each quarterly report shall include a signed statement certifying that the information contained in the report is a true and complete disclosure of the information required to be reported under this chapter.

5-25-070 Lobbyist Quarterly Report. Each lobbyist shall complete a quarterly report, which shall be signed and filed with the Ethics Officer, which shall contain all of the following:

A. The full name, business address, e-mail address and telephone number of each person or company who contracted with the lobbyist for lobbying services and each other person

or entity on whose behalf the lobbyist attempted to influence MTA action, even if the lobbyist is compensated for such efforts by another person. The lobbyist shall also include a description of the specific lobbying interests of the person or company, and the total payments, including fees and the reimbursement of expenses, received from the person or company for lobbying services during the reporting period. If the lobbyist lobbied on a specific contract, the lobbyist shall disclose the contract number and describe in detail the nature of the contract. The lobbyist shall also disclose payments received for lobbying on a specific contract; and

B. A report of all activity expenses by the lobbyist during the reporting period, including:

1. The date and amount of each activity expense;
 2. The full name and official position, if any, of the beneficiary of each expense, a description of the benefit and the amount of the benefit; and
 3. The full name of the payee of each expense if other than the beneficiary;
- and
4. The date, amount, name of the recipient, including the name of the recipient account or committee, for all contributions of ten dollars (\$10) or more made or delivered by the lobbyist to an MTA official during the reporting period. Each time a new Board Member is seated during a calendar quarter, the quarterly report for that calendar quarter shall include the information required by this paragraph as to that new Board Member for that calendar quarter and for the immediately preceding four (4) years.

5-25-080 Lobbying Firm Quarterly Report. Each lobbying firm shall complete a quarterly report, which shall be signed and filed with the Ethics Officer, which shall contain all of the following:

A. The full name, business address, e-mail address and telephone number of the lobbying firm;

B. The full name, business address, e-mail address and telephone number of each person or company who contracted with the lobbying firm for lobbying services, a description of the specific lobbying interests of the person or company, and the total payments, including fees and the reimbursement of expenses, received from the person or company for lobbying services during the reporting period. If the lobbying firm lobbies for a specific contract or retains a lobbyist to lobby a specific contract, the lobbying firm shall disclose the contract number and describe in detail the nature of the contract;

C. A report of all activity expenses by the lobbying firm during the reporting period, including:

1. The date and amount of each activity expense;
 2. The full name and official position, if any, of the beneficiary of each expense, a description of the benefit and the amount of the benefit; and
 3. The full name of the payee of each expense if other than the beneficiary;
- and
4. The date, amount, name of the recipient, including the name of the recipient account or committee, for all contributions of ten dollars (\$10) or more made or delivered by the lobbying firm to an MTA official during the reporting period. Each time a new Board Member is seated during a calendar quarter, the quarterly report for that calendar quarter shall include the information required by this paragraph as to that new Board Member for that calendar quarter and for the immediately preceding four (4) years.

5-25-090 Lobbyist Employer Quarterly Report. Each lobbyist employer shall complete a quarterly report, which shall be signed and filed with the Ethics Officer, which shall contain all of the following:

- A. The name, business address, e-mail address and telephone number of the lobbyist employer;
- B. The total amount of payments to each lobbying firm;

- C. The total amount of all payments to lobbyists employed by the filer;
- D. A description of the specific lobbying interests of the filer. If the lobbyist employer has contracted with a lobbying firm or lobbyist to lobby a specific contract, the lobbyist employer shall disclose the contract number and describe in detail the nature of the contract. The lobbyist employer shall also disclose the amount of money paid to a lobbying firm or lobbyist to lobby the specific contract;
- E. A report of all activity expenses by the lobbyist employer during the reporting period, including:
 - 1. The date and amount of each activity expense;
 - 2. The full name and official position, if any, of the beneficiary of each expense, a description of the benefit and the amount of the benefit; and
 - 3. The full name of the payee of each expense if other than the beneficiary.
 - 4. The date, amount, name of the recipient, including the name of the recipient account or committee, for all contributions of ten dollars (\$10) or more made or delivered by the lobbyist employer to an MTA official during the reporting period. Each time a new Board Member is seated during a calendar quarter, the quarterly report for that calendar quarter shall include the information required by this paragraph as to that new Board Member for that calendar quarter and for the immediately preceding four (4) years; and
- F. The total of all other payments to influence MTA action.

5-25-100 Registration Statement and Quarterly Report Amendments. Each registration and renewal statement and each quarterly report shall be amended in writing within ten (10) days of a change in the information included in the statement, or of the discovery of information that was omitted or incorrectly reported on a quarterly report. However, if the change includes the name of a person by whom a lobbyist or lobbying firm is retained, the registration statement

shall be amended to show that change prior to the commencement of lobbying by the lobbying firm or the lobbyist.

5-25-110 Filing Method. Any written statement or report required to be filed, or payment required to be made, pursuant to this chapter shall be filed in the format and form of payment, including the electronic media type or other means, specified by the Ethics Officer unless the Ethics Officer waives such requirement in writing upon demonstration of a significant hardship by the filer.

5-25-120 Retention Period. Each registration and renewal statement and each quarterly report required to be filed with the Ethics Officer pursuant to this chapter shall be retained by the MTA for a minimum of four (4) years, and shall be available for inspection by the public during regular working hours. A computer printout of any electronically filed statement or report shall be treated as an original for purposes of admissibility in any court or other proceeding.

5-25-130 Gift Restrictions.

A. No lobbyist, lobbying firm or lobbyist employer shall make any gifts to any MTA official aggregating more than ten dollars (\$10) in a calendar month, or act as an agent or intermediary in the making of any gift, or arrange for the making of any gift by any other person.

B. No MTA official shall knowingly receive any gift which is prohibited by this chapter.

5-25-140 Other Prohibitions. No lobbyist or lobbying firm shall do any of the following:

A. Take any action with the purpose of placing an MTA official under personal obligation to the lobbyist, the lobbying firm, or the lobbyist's or the lobbying firm's employer;

B. Deceive or attempt to deceive any MTA official with regard to any material fact pertinent to any MTA action;

C. Cause or influence any MTA action for the purpose of thereafter being employed to secure its passage or defeat;

D. Attempt to create a fictitious appearance of public favor or disfavor of any MTA action, or cause any communications to be sent to any MTA official in the name of any fictitious person, or in the name of any real person except with the consent of that real person;

E. Represent, either directly or indirectly, that the lobbyist or the lobbying firm can control any MTA official;

F. Accept or agree to accept any payment that is contingent upon the outcome of any MTA action; or

G. Make or direct any payment, directly or indirectly, which is prohibited by Public Utilities Code Section 130051.20 or Government Code Section 84308.

5-25-150 Prohibitions Related to Procurements.

A. Commencing with the issuance of a Request for Proposals (RFP), a Request for Information and Qualifications (RFIQ), or an Invitation for Bids (IFB), and ending on the date the staff recommendation for award is made public, no lobbyist representing a person or entity submitting a proposal in response to the RFP, RFIQ or IFB shall contact by any means or engage in any discussion concerning the award of the contract with any MTA official or any staff to a Board Member. Any such contact shall be grounds for the disqualification of the proposer.

B. During price negotiations of non-low bid contracts, lobbyists shall not contact, lobby or otherwise attempt to influence MTA officials or any staff to a Board Member, other than negotiation team members, relative to any aspect of the contract under negotiation. This provision shall apply from the time of award until the recommendation for execution of the contract is made public. Any concerns relative to any contract under negotiation shall be communicated only to the CEO for resolution.

C. A lobbyist representing a person or entity who submitted a proposal or bid in response to the RFP, RFIQ, or IFB shall not contact a Board Member or his or her staff regarding a protest submitted regarding the recommended contract award or any lawsuit or potential

lawsuit regarding the recommended contract award or any issue relating to the underlying procurement.

5-25-160 Lobbying on Behalf of MTA. Any person or entity who receives compensation pursuant to a contract or subcontract to lobby on behalf of, or otherwise represent the MTA, shall be prohibited from lobbying the MTA on behalf of any person or entity.

5-25-170 Lobbying By MTA Officials or Staff to Board Members. No MTA official or person who is staff to a Board Member shall lobby the MTA until one year after leaving the MTA or after ceasing to be staff to a Board Member.

5-25-180 Termination of Lobbying Activities.

A. Lobbying firms and lobbyist employers upon ceasing all lobbying activity which required registration shall file a notice of termination within thirty (30) days after the cessation.

B. Lobbyists and lobbying firms shall remain subject to the prohibitions of this chapter for twelve (12) months after filing a notice of termination.

5-25-190 Non-Applicability. The provisions of this ordinance are not applicable to any of the following:

A. An elected public official who is acting in his or her official capacity to influence MTA action; or

B. Any newspaper or other periodical of general circulation, book publisher, radio or television station which, in the ordinary course of business, publishes or broadcasts news items, editorials, or other documents, or paid advertisement, that directly or indirectly urges MTA action, if the newspaper, periodical, book publisher, radio or television station engages in no further or other activities in connection with urging MTA action other than to appear before the MTA in support of, or in opposition to the MTA action.

5-25-200 Enforcement. The Inspector General is authorized to investigate alleged violations of this chapter. The Ethics Officer is authorized to assess a late fee and/or to terminate

a registration for failure to timely file statements or reports or to timely pay the required fees.

The Ethics Officer is authorized to waive any penalty for a late filing upon a showing that the late filing was not willful or that the enforcement of a penalty for the late filing would otherwise not further the purposes of this chapter. Both the Inspector General and the Ethics Officer are authorized to make recommendations to the Board of Directors related to the imposition of any other penalty authorized by this chapter for a violation of this chapter.

5-25-210 Sanctions for Violations of this Chapter.

A. Any party committing a violation of this chapter shall be subject to the following possible sanctions:

1. The Ethics Officer may assess a late fee or terminate that party's registration for failure to timely file any statement or report, or to timely pay any fee, required by this chapter;
2. The party's bid or other proposal to enter into a contract with the MTA may be rejected;
3. The party may be disqualified from lobbying on the matter related to the violation;
4. The party may be suspended from all MTA lobbying activities for a specific period of time;
5. The party may be permanently prohibited from all MTA lobbying activities;
6. The party may be subject to civil penalty in an amount up to five hundred (\$500) dollars, or three times the amount of an unlawful gift or expenditure, whichever is greater, as directed by the court in a civil action brought by the civil prosecutor or by a person residing within the jurisdiction of the MTA.

B. Any sanction imposed for a violation of this chapter shall depend upon the severity of the violation and may be progressive unless the violation is so egregious as to warrant more severe action initially.

C. Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor.

D. The District Attorney of the County of Los Angeles is authorized to bring civil or criminal prosecutions for violations of this chapter.

5-25-220 Procedures for Imposing Certain Sanctions. Before the imposition of a sanction authorized by section 5-25-210, other than a criminal prosecution or a sanction under paragraphs A.1. or A.6. of section 5-25-210, the following procedures should be followed:

A. Information relating to the alleged violation shall be forwarded to the Inspector General for investigation;

B. Upon completion of the investigation, the Inspector General shall submit his or her findings to the Board of Directors for review;

C. The Board of Directors, or such person or body as may be designated by the Chair of the Board of Directors, shall hold an administrative hearing relating to the alleged violation. Any entity may submit evidence in support of or in opposition to the allegations;

D. If the Board of Directors or its designee finds that a violation of this chapter has occurred, it shall decide the appropriate sanctions to impose. The decision of a designee of the Board of Directors shall be forwarded to the Board of Directors for approval. The decision of the Board of Directors shall be final.

E. The imposition of any sanction, or the failure to impose a sanction, by the Board of Directors shall not preclude the imposition of a late fee, the termination of a registration or the imposition of any criminal or civil penalty authorized by this chapter.

Chapter 5-30

Financial Employees Code of Conduct

5-30-010 Purpose. This Financial Employees Code of Conduct is adopted in recognition of the unique and critical nature of the services provided to the MTA by those MTA employees who are entrusted with the expenditure, investment or management of MTA funds and financial assets. The requirements of this chapter are in addition to the other requirements imposed upon MTA employees by this title.

5-30-020 MTA Financial Employees. As used in this chapter, the term MTA financial employee shall mean any MTA employee who prepares, reports, approves, manages or compiles data related to budgets or financial matters for the MTA or who has any authority to manage, invest, expend or authorize the expenditure of MTA funds or financial assets.

5-30-030 Actions Affecting MTA Funds and Financial Assets. Each MTA financial employee shall use, manage, invest and expend MTA funds and other financial assets in a prudent, cost effective and fiscally responsible manner in compliance with MTA and other governmental accounting rules and policies.

5-30-040 Financial Information. Each MTA financial employee shall provide financial information that is accurate, complete, objective, relevant, timely, and understandable, and which fairly represents the MTA financial conditions and operating results without being misleading by expression, inference or silence concerning any material fact.

5-30-050 Compliance with Accepted Standards. Each MTA financial employee shall comply with generally accepted accounting principles and standard financial practices applicable to governmental agencies in all MTA financial matters. No MTA financial employee shall expose MTA funds or financial assets to any unnecessary or significant risk of loss.

5-30-060 Conflicts of Interest. Each MTA financial employee shall refrain from participating in any matter involving MTA funds or other financial assets where that employee has a conflict of interest. Each potential conflict of interest shall be promptly be reported by the employee to his or her supervisor.

5-30-070 Confidential Information. No MTA current or former financial employee shall make public or otherwise disclose any confidential financial information acquired in the course of his or her work with the MTA except as legally required or as specifically authorized by the MTA. No current or former MTA financial employee shall ever use any such confidential financial information for personal gain.

5-30-080 Internal Controls. The Chief Financial Officer shall establish and maintain internal controls designed to ensure compliance with this chapter.

5-30-090 Enforcement. Suspected violations of this chapter shall be reported to the Chief Financial Officer, the Ethics Officer, or the Inspector General, who shall investigate the alleged violation and report to the Chief Executive Officer or other appropriate MTA official a recommendation for any corrective action found necessary.

Chapter 5-35

MTA Conflict of Interest Code

5-35-010 Adoption and Appendix. This chapter shall constitute the Conflict of Interest Code for the MTA and the PTSC as required by Government Code Sections 87300 *et seq.* The Ethics Officer shall prepare an Appendix A to the Conflict of Interest Code which designates MTA officials by position who are obligated to file disclosure statements and which sets forth the appropriate disclosure categories for each position. The Ethics Officer shall review Appendix A each even-numbered year. If a change in the Appendix A is necessitated by changed circumstances, the Ethics Officer shall submit an amended Appendix A to the Conflict of Interest Code to the Los Angeles County Board of Supervisors, the reviewing body for the MTA's Conflict of Interest Code, for its approval in accordance with the Political Reform Act.

5-35-020 Definitions. The following terms when used in this chapter shall have the meaning set forth in this section.

A. “Political Reform Act” means the Political Reform Act of 1974 (Government Code Sections 81000, *et seq.*) as said Act reads on the date this ordinance is adopted and as said Act may be amended from time to time. Any word defined in the Political Reform Act shall have the meaning ascribed to it by the Political Reform Act when that word is used in this chapter.

B. “Business Position” means a position of director, officer, partner, trustee, employee, or any position of management in any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

C. “FPPC” shall mean the California Fair Political Practices Commission.

5-35-030 Adoption of Model Code. The Political Reform Act requires each state and local government agency to adopt a conflict of interest code. The provisions of Title 2, California Administrative Code, Section 18730, subdivision (b), adopted by the FPPC as a model conflict of interest code, as that regulation reads on the date of adoption of this chapter and as it may be amended from time to time by the FPPC, are hereby adopted and incorporated herein by this reference as the Conflict of Interest Code for the MTA and the PTSC. Designated positions of MTA officers subject to the disclosure requirements of this chapter shall be set forth in an Appendix A to the Conflict of Interest Code. Said Appendix A, as amended from time to time by the Ethics Officer as provided in this chapter, is incorporated into the Conflict of Interest Code by this reference.

5-35-040 Filing Requirement. Each MTA officer holding a position designated in the Appendix A to the Conflict of Interest Code shall file with the Ethics Officer statements disclosing the information required by the disclosure categories set forth in this chapter on such forms as may be specified by the FPPC. Copies of the forms to be used shall be supplied by the Ethics Officer. Every MTA officer holding a position designated in Appendix A to the Conflict

of Interest Code shall retain his or her filing obligations, notwithstanding any reclassification or title change that may occur in the future as to the same or substantially similar job duties.

5-35-050 Disclosure Categories. The disclosure categories for the Conflict of Interest Code are as follows:

A. Disclosure Category 1. Persons holding designated positions in this category shall disclose all interest in real property within the jurisdiction of Los Angeles County. Real property shall be deemed to be within the jurisdiction if the property or any part of it is located within or not more than two miles outside the boundaries of the jurisdiction or within two miles of any land owned or used by the MTA. Persons are not required to disclose property used primarily as their residence or for personal recreational purposes.

B. Disclosure Category 2. Persons holding designated positions in this category shall disclose all income, investments and business positions.

C. Disclosure Category 3. No category 3 at this time.

D. Disclosure Category 4. Persons holding designated positions in this category shall disclose all business positions at investments in, or income received from, business entities that manufacture, provide or sell service and/or supplies of a type utilized by the agency and associated with the job assignment of designated positions assigned to this disclosure category.

E. Disclosure Category 5. Individuals who perform under contract the duties of any position designated in Appendix A of the Conflict of Interest Code shall be subject to the provisions of the Conflict of Interest Code and shall disclose reportable interests in categories assigned to that designated position. In addition, individuals who, under contract, participate in decisions, by providing information, advice, recommendations, or counsel to the agency, which could affect their financial interests, shall be subject to the provisions contained in this Chapter (unless they are not “consultants” as defined by the Political Reform Act). Such consultants shall disclose pursuant to the broadest disclosure category in the Conflict of Interest Code, subject to the following limitation: The Chief Executive Officer, a Deputy Executive Officer, or

the Ethics Officer, may determine that a particular consultant, although in a “designated position”, is retained to perform a range of duties that is limited in scope and thus is not required to comply fully with the disclosure requirements described in this chapter. Any such determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of the disclosure requirements. The determination of the Chief Executive Officer, Deputy Executive Officer or Ethics Officer, is a public record and shall be retained for public inspection by the Ethics Officer.