

REQUEST FOR PROPOSALS (RFP) 2-2392

EXPRESS LANES MARKETING PROGRAM



**ORANGE COUNTY TRANSPORTATION AUTHORITY
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
(714) 560-6282**

Key RFP Dates

Issue Date:	June 7, 2022
Pre-Proposal Conference Date:	June 15, 2022
Question Submittal Date:	June 16, 2022
Proposal Submittal Date:	June 27, 2022
Interview Date:	July 13, 2022

TRANSPORTATION INFRASTRUCTURE FINANCE AND ADMINISTRATION ACT

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June 7, 2022

**NOTICE OF REQUEST FOR PROPOSALS (RFP)
(RFP): 2-2392: "EXPRESS LANES MARKETING PROGRAM"**

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide a marketing program for the 91 and 405 Express Lanes. The budget for this project is \$300,000 for a two (2)-year initial term.

Please note that by submitting a Proposal, Proposer certifies that it is not subject to any Ukraine/Russia-related economic sanctions imposed by the State of California or the United States Government including, but not limited to, Presidential Executive Order Nos. 13660, 13661, 13662, 13685, and 14065. Any individual or entity that is the subject of any Ukraine/Russia-related economic sanction is not eligible to submit a Proposal. In submitting a Proposal, all Proposers agree to comply with all economic sanctions imposed by the State or U.S. Government.

The Authority has set a **nine percent (9%)** Disadvantaged Business Enterprise (DBE) participation goal for this project.

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, (Lobby Receptionist)
Orange, California 92868
Attention: Yvette Crowder**

Proposals delivered using the U.S. Postal Service shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management
P.O. Box 14184
Orange, California 92863-1584
Attention: Yvette Crowder**

Proposals and amendments to proposals received after the date and time specified above will not be accepted.

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

All firms interested in doing business with the Authority are required to register their business on-line at CAMM NET. The website can be found at <https://cammnet.octa.net>. From the site menu click on CAMM NET to register.

To receive all further information regarding this RFP 2-2392, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Marketing, Advertising & Media Services	Advertising
	Advertising - Public Relations
	Communications Marketing Services
Printing & Reproduction Services	Printing and Related Services
Professional Consulting	Advertising Consulting
	Consultant Services - General

A pre-proposal conference will be held via teleconference on June 15, 2022, at 10:30 a.m.. Prospective Offerors may join or call-in using the following credentials:

- [Click here to join the meeting](#)
- OR Call-in Number: 916-550-9867
- Conference ID: 884 105 719#

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established July 13, 2022, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

Offerors are encouraged to subcontract with small businesses to the maximum extent possible.

All Offerors will be required to comply with all applicable equal opportunity laws and regulations.

The award of this contract is subject to receipt of federal, state and/or local funds adequate to carry out the provisions of the proposed agreement including the identified Scope of Work.

SECTION I: INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS**A. PRE-PROPOSAL CONFERENCE**

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B. EXAMINATION OF PROPOSAL DOCUMENTS

By submitting a proposal, Offeror represents that it has thoroughly examined and become familiar with the work required under this RFP and that it is capable of performing quality work to achieve the Authority's objectives.

C. ADDENDA

The Authority reserves the right to revise the RFP documents. Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals. Failure to acknowledge receipt of Addenda may cause the proposal to be deemed non-responsive to this RFP and be rejected.

D. AUTHORITY CONTACT

All communication and/or contacts with Authority staff regarding this RFP are to be directed to the following Contract Administrator:

Yvette Crowder, Senior Contract Administrator
Contracts Administration and Materials Management Department
Phone: 714.560. 5616
Email: ycrowder@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no Offeror, subcontractor, lobbyist or agent hired by the Offeror proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee

for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any Offeror, subcontractor, lobbyist or agent hired by the Offeror proposer that engages in such prohibited communications may result in disqualification of the Offeror proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section E.2. below. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all firms registered on CAMM NET under the commodity codes specified in this RFP.

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and received via e-mail at ycrowder@octa.net no later than 5:00 p.m., on June 16, 2022.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions RFP 2-2392" in the subject line of the e-mail. The Authority is not responsible for failure to respond to a request that has not been labeled as such.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than June 20, 2022. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via email.

To receive email notification of Authority responses when they are posted on CAMM NET, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Marketing, Advertising & Media Services

Printing & Reproduction Services

Commodity:

Advertising
Advertising - Public Relations
Communications Marketing Services

Printing and Related Services

Professional Consulting

Advertising Consulting
Consultant Services - General

Inquiries received after 5:00 p.m. on June 16, 2022, will not be responded to.

F. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be received in the Authority's office at or before 2:00 p.m. on June 27, 2022.

Proposals received after the above-specified date and time will be returned to Offerors unopened.

2. Address

Proposals delivered in person or by a means other than the U.S. Postal Service shall be submitted to the following:

**Orange County Transportation Authority
Contracts Administration and Materials Management (Camm)
600 South Main Street, (Lobby Receptionist)
Orange, California 92868
Attention: Yvette Crowder**

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management (Camm)
P.O. Box 14184
Orange, California 92863-1584
Attention: Yvette Crowder, Contract Administrator**

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

3. Identification of Proposals

Offeror shall submit one (1) original hard copy of its proposal in a sealed package, addressed as shown above in F.2. The outer envelope must show

the Offeror's name and address and clearly marked as follows:

RFP 2-2392 "Express Lanes Marketing Program"

In addition to the above, Offerors shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a USB flash drive.

4. Acceptance of Proposals

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to issue a new RFP for the project.
- d. The Authority reserves the right to postpone proposal openings for its own convenience.
- e. Each proposal will be received with the understanding that acceptance by the Authority of the proposal to provide the services described herein shall constitute a contract between the Offeror and Authority which shall bind the Offeror on its part to furnish and deliver at the prices given and in accordance with conditions of said accepted proposal and specifications.
- f. The Authority reserves the right to investigate the qualifications of any Offeror, and/or require additional evidence of qualifications to perform the work.
- g. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

The Authority shall not, in any event, be liable for any pre-contractual expenses incurred by Offeror in the preparation of its proposal. Offeror shall not include any such expenses as part of its proposal.

Pre-contractual expenses are defined as expenses incurred by Offeror in:

- 1. Preparing its proposal in response to this RFP;
- 2. Submitting that proposal to the Authority;
- 3. Negotiating with the Authority any matter related to this proposal; or
- 4. Any other expenses incurred by Offeror prior to date of award, if any,

of the Agreement.

H. JOINT OFFERS

Where two or more firms desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The Authority intends to contract with a single firm and not with multiple firms doing business as a joint venture.

I. TAXES

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Offeror is responsible for payment of all taxes for any goods, services, processes and operations incidental to or involved in the contract.

J. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator responsible for this procurement. Any protests filed by an Offeror in connection with this RFP must be submitted in accordance with the Authority's written procedures.

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time-and-expense price contract with fully-burdened labor rates and anticipated expenses for work specified in the Scope of Work, included in this RFP as Exhibit A. The Agreement will have a two (2)-year term with two (2), two (2)-year option terms.

L. CONFLICT OF INTEREST

All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

All Offerors must disclose in their proposal and immediately throughout the course of the evaluation process if they have hired or retained an advocate to lobby Authority staff or the Board of Directors on their behalf.

Offerors hired to perform services for the Authority are prohibited from concurrently acting as an advocate for another firm who is competing for a contract with the Authority, either as a prime or subcontractor.

M. CODE OF CONDUCT

All Offerors agree to comply with the Authority's Code of Conduct as it relates to Third-Party contracts which is hereby referenced and by this reference is incorporated herein. All Offerors agree to include these requirements in all of its subcontracts.

N. DEBARMENT & SUSPENSION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS – PRIMARY PARTICIPANT AND LOWER-TIER PARTICIPANTS

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment, suspension, or voluntary exclusion. Accordingly, the Authority, acting on behalf of the district, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A process has been established by 2 CFR Part 180, as adopted and supplemented by 2 CFR Part 1200 as a means to ensure that debarred, suspended, or voluntarily excluded persons or firms do not participate in Federally assisted projects. A person or firm that is unable to provide a positive certification as required by the solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

O. DISADVANTAGED BUSINESS ENTERPRISE

In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," the Authority has established a **nine percent (9%)** Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12-point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed fifty (50) pages in length, excluding any appendices, cover letters, resumes, or forms.

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Yvette Crowder, Senior Contract Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in

performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP and highlight the participation in such work by the key personnel proposed for assignment to this project.
- (4) Identify subcontractors by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (5) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (6) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.
- (7) Firm shall describe its ability to produce, deliver, or accept files from the following software:
 - Adobe Creative Suite 5 (including Photoshop, Illustrator, InDesign)
 - High resolution PDF
 - Microsoft Office (Word, Excel, PowerPoint)

- Ability for FTP electronic file transfer

b. Proposed Staffing and Project Organization

This section of the proposal should establish the method, which will be used by the Offeror to manage the project as well as identify key personnel assigned.

Offeror to:

- (1) Identify key personnel proposed to perform the work in the specified services and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel that includes education, experience, and applicable professional credentials.
- (3) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (4) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

c. Work Plan

Offeror should provide a narrative, which addresses the Scope of Work, and shows Offeror's understanding of Authority's needs and requirements.

Offeror to:

- (1) Describe the approach to completing the services specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.

- (3) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (4) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.
- (5) Provide samples of past collateral for similar marketing programs. Copies of samples should be included with the original proposal and electronic file.

d. Exceptions/Deviations

State any technical and/or contractual exceptions and/or deviations from the requirements of this RFP, including the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C), using the form entitled "Proposal Exceptions and/or Deviations" included in this RFP. This Proposal Exceptions and/or Deviations form must be included in the original proposal submitted by the Offeror. If no technical or contractual exceptions and/or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit the Proposal Exceptions and/or Deviations form or any technical and/or contractual exceptions after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

All exceptions and/or deviations will be reviewed by the Authority and will be assigned a "pass" or "fail" status. Exceptions and deviations that "pass" do not mean that the Authority has accepted the change but that it is a potential negotiable issue. Exceptions and deviations that receive a "fail" status means that the requested change is not something that the Authority would consider a potential negotiable issue. Offerors that receive a "fail" status on their exceptions and/or deviations will be notified by the Authority and will be allowed to retract the exception and/or deviation and continue in the evaluation process. Any exceptions and/or deviation that receive a "fail" status and the Offeror cannot or does not retract the requested change may result in the firm being eliminated from further evaluation.

4. **Cost and Price Proposal**

As part of the cost and price proposal, the Offeror shall submit proposed pricing to provide the services for work described in Exhibit A, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the prices quoted in the schedules. It is anticipated that the Authority will issue a time-and-expense-price contract specifying fully burdened labor rates and anticipated expenses to complete the Scope of Work.

5. **Appendices**

Information considered by Offeror to be pertinent to this project and which has not been specifically solicited in any of the aforementioned sections may be placed in a separate appendix section. Offerors are cautioned, however, that this does not constitute an invitation to submit large amounts of extraneous materials. Appendices should be relevant and brief.

B. FORMS

1. **Campaign Contribution Disclosure Form**

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Board of Directors, Offeror is required to complete and sign the Campaign Contribution Disclosure Form provided in this RFP and submit as part of the proposal.

This form **must** be completed regardless of whether a campaign contribution has been made or not and regardless of the amount of the contribution.

The prime contractor, subconsultants, lobbyists and agents are required to report all campaign contributions made from the proposal submittal date up to and until the Board of Directors makes a selection.

Offeror is required to submit only **one (1)** copy of the completed form(s) as part of its proposal and it must be included in only the **original** proposal.

2. **Status of Past and Present Contracts Form**

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror

shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

A separate form must be completed for each identified contract. Each form must be signed by the Offeror confirming that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

3. Disadvantaged Business Enterprise Program and Forms

In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," proposers must complete the following forms:

- DBE Participation Commitment Form
- Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the DBE Participation Commitment Form)
- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the "DBE Participation Commitment Form")
- Bidders List

4. Certification of Restrictions on Lobbying

This form requires the Offeror to certify compliance with the lobbying requirements of 31 U.S.C. Section 1352 and the applicable regulations under 49 CFR part 19 and 20. (Required if the bid is equal or greater than \$100,000). The offeror is required to submit the "Certification of Restrictions on Lobbying Form" and "Disclosure of Lobbying Activities Form", in order for the offeror's proposal to be responsive and to be considered for evaluation.

5. Disclosure of Lobbying Activities

This form requires the Offeror to disclose lobbying activities pursuant to the requirements of 31 U.S.C. Section 1352. If Offeror does not have any reportable activities to disclose, they shall check the box entitled "No Reportable Activities" on the attached Standard Form-LLL "Disclosure of Lobbying Activities" and complete Section 16 of the form in order for the

offeror's proposal to be responsive and to be considered for evaluation. The certifying official shall sign and date the form, print his/her name, title and telephone number.

6. Safety Specifications

Offerors shall comply with Safety Specifications Level 1 as included in this RFP as Exhibit H, during the term of the awarded Agreement.

7. Proposal Exceptions and/or Deviation Form

Offerors shall complete the form entitled "Proposal Exceptions and/or Deviations" provided in this RFP and submit it as part of the original proposal. For each exception and/or deviation, a new form should be used, identifying the exception and/or deviation and the rationale for requesting the change. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed nor considered by the Authority.

SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

The Authority will evaluate the offers received based on the following criteria:

1. **Qualifications of the Firm** **25%**

Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
2. **Staffing and Project Organization** **25%**

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
3. **Work Plan** **30%**

Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
4. **Cost and Price** **20%**

Reasonableness of the rates, competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

An evaluation committee will be appointed to review all proposals received for this RFP. The committee is comprised of Authority staff and may include outside personnel. The committee members will evaluate the written proposals using criteria identified in Section III A. A list of top ranked proposals, firms within a competitive range, will be developed based upon the totals of each committee members' score for each proposal.

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established July 13, 2022, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the

evaluation committee will ask questions related to the firm's proposal and qualifications.

At the conclusion of the proposal evaluations, the evaluation committee will score the proposals to develop a competitive range. Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

At the conclusion of the evaluation process, the evaluation committee will recommend to the Legislative and Communications Committee, the Offeror with the highest final ranking or a short list of top ranked firms within the competitive range whose proposal(s) is most advantageous to the Authority. The Board Committee will review the evaluation committee's recommendation and forward its recommendation to the Board of Directors for final action.

C. AWARD

The Authority's Board of Directors will consider the selection of the firm(s) recommended by the Board Committee.

The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

Offeror acknowledges that the Authority's Board of Directors reserves the right to award this contract in its sole and absolute discretion to any Offeror to this RFP regardless of the evaluation committee's recommendation or recommendation of a Board Committee.

The Authority reserves the right to award its total requirements to one Offeror or to apportion those requirements among several Offerors as the Authority may deem to be in its best interest. In addition, negotiations may or may not be conducted with Offerors; therefore, the proposal submitted should contain Offeror's most favorable terms and conditions, since the selection and award may be made without discussion with any Offeror.

The selected Offeror will be required to submit to the Authority's Accounting department a current IRS W-9 form prior to commencing work.

D. NOTIFICATION OF AWARD AND DEBRIEFING

Offerors who submit a proposal in response to this RFP shall be notified via CAMM NET of the contract award. Such notification shall be made within three (3) business days of the date the contract is awarded.

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) business days of notification of the contract award.

EXHIBIT A: SCOPE OF WORK

SCOPE OF WORK OCTA EXPRESS LANES MARKETING PROGRAM

INTRODUCTION

The Orange County Transportation Authority (OCTA) was formed in June 1991 to address ongoing transportation needs in Orange County. OCTA develops and implements transportation programs designed to reduce traffic congestion and improve air quality, and is also responsible for planning, funding, and delivering transportation improvements in Orange County. This includes freeway, streets and roads and transit improvements. OCTA also operates and markets the 91 Express Lanes and will do the same for the upcoming 405 Express Lanes, which is currently under construction and set to open in 2023.

The goal of the Express Lanes Marketing Program is to create awareness and positive perceptions to increase new customer accounts, as well as increase the levels of usage and satisfaction for existing customers. OCTA is seeking a Consultant to partner with to develop market segmentation to identify high potential groups to be targeted for trial use. The Consultant shall develop innovative approaches to generate interest and new accounts. Types of services that will help OCTA achieve these goals include:

- Brand development for brand identity, strategy, and management
- Integrated, strategic marketing plan development
- Marketing campaign development, management and optimization
- Digital marketing: email, social media and mobile marketing strategy development, implementation and optimization
- Online and traditional media planning, buying and optimization
- Ethnic marketing and translation
- Print and digital creative development, design/copywriting and production
- Market/customer research, segmentation study, online survey design, implementation and reporting
- Photography, collateral production, printing, distribution, specialty printing and other promotional items as required

BACKGROUND

91 Express Lanes

The 91 Express Lanes was born from the need for congestion relief on State Route 91 (SR-91) when no public funds were available to solve this critical transportation problem. Built by the California Private Transportation Company (CPTC), the 91 Express Lanes embodied a unique concept in that the private sector would take the risk and the state would get congestion relief at no cost to taxpayers.

Built at a cost of \$135 million, the Orange County section of the project was authorized as a toll road by the State of California in 1989 and opened in 1995. An agreement with

the State of California Department of Transportation (Caltrans) included a non-compete provision that created a 1.5-mile protection zone along each side of SR-91. This zone prohibited improvements along the corridor and created mobility problems as the region and corresponding transportation demands grew.

To mitigate growing concerns over congestion, OCTA acquired the 91 Express Lanes franchise rights in January 2003. This eliminated the non-compete provision, clearing the way for future enhancements that will increase capacity and improve traffic flow along the SR-91 corridor.

In 2008, the Riverside County Transportation Commission (RCTC) received authority to extend the Express Lanes to Interstate 15 (I-15). Traffic congestion on eastbound SR-91 between the cities of Anaheim and Corona is routinely among the worst five areas in the nation. At a cost of \$1.4 billion, the RCTC 91 Corridor Improvement Project added regular lanes, tolled express lanes, auxiliary lanes and direct express lane connectors from the northbound I-15 to the westbound SR-91 and from the eastbound SR-91 to the southbound I-15. Improvements to interchanges, ramps and surface streets were also made along the 91 Corridor.

The Riverside section of the 91 Express Lanes opened in 2017, providing customers with eight (8) additional miles of travel time certainty.

To provide 91 Express Lanes customers with excellent customer service, OCTA and RCTC entered into an agreement with the current 91 Express Lanes operator to service both segments of the Express Lanes.

405 Express Lanes

OCTA in cooperation with Caltrans is widening the Interstate 405 (I-405) between State Route 73 (SR-73) and Interstate 605 (I-605). The project will improve 16 miles of I-405 between the SR-73 freeway in the City of Costa Mesa and I-605 near the Los Angeles County line. The project includes adding one (1) regular lane in each direction between Euclid Street and I-605 and making improvements to freeway entrances, exits and bridges. In addition, the project will add the I-405 Express Lanes, comprising the existing carpool lanes and a new lane in each direction between SR-73 and I-605. Scheduled to open in October 2023, the 405 Express Lanes will give solo drivers the choice to speed up their commute for a toll and give options for carpoolers to use the lanes for free. When the express lanes open, two (2)-person carpools will pay a toll only during peak hours and carpools of three (3) or more will be free at all times.

MARKETING APPROACH

91 Express Lanes

OCTA's Strategic Plan supports gathering feedback from customers and stakeholders to ensure ongoing dialog between OCTA and their customers. Periodic surveys of 91 Express Lane customers play a role in assisting OCTA to better understand customer

perceptions and attitudes, satisfaction level, and travel behaviors and needs. The most recent 91 Express Lanes Customer Satisfaction Survey was conducted in 2014. The full report can be found at www.octa.net/About/Publications/Market-Research. A snapshot of the results of the 91 Express Lanes' customers is as follows:

Customer Demographics

- Average age: 55
- Percent male: 55 percent, percent female: 45 percent
- Percent with college education: 85 percent
- Percent employed full-time: 70 percent
- Ethnic breakdown: 64 percent are Caucasian, 13 percent are Hispanic, 2 percent are African American and 6 percent are Asian American

Customer Satisfaction Survey

- 91 percent are satisfied with the 91 Express Lanes, the same level as 2011
- 82 percent prefer to receive information via email; but 44 percent prefer to continue receiving their billing statement by mail

Survey results indicate that the majority of customers are satisfied; however, the perceived value of the 91 Express Lanes is lower among the high-frequency users. Survey also indicates that the majority would like to receive information via email.

The development and implementation of innovative programs to reach a new customer base and to improve the overall perceived value among high-frequency users of the 91 Express Lanes will be the core focuses for the next few years. The Consultant shall be responsible for the development of marketing collateral and plans as well as creating awareness to the public.

405 Express Lanes

With the opening of the 405 Express Lanes in October 2023, it is important to develop and implement a full-scale branding awareness campaign to introduce the benefits of using the 405 Express Lanes. For those who travel this portion of the I-405, the 405 Express Lanes will be a new experience. In addition to highlighting benefits, the awareness campaign should also provide instruction on using these lanes as well as context for their construction.

To ensure a successful launch of the new 405 Express Lanes brand, the consultant shall have a full range of marketing and creative design development, as well as public communication and outreach skills. While each execution presents its own opportunities and challenges, it is important that all transit branding is informed by the same graphic language for a unified OCTA brand. A public outreach process shall be implemented to gather feedback and input on the new branding concepts via formal focus groups, customer roundtables, and printed or electronic online surveys. Public feedback should be incorporated into final recommendations.

The Consultant shall also be responsible for maintaining the following programs for both 91 Express Lanes and 405 Express Lanes:

- **405 Express Lanes Branding Development**
A full-scale awareness campaign shall need to be implemented to introduce the new 405 Express Lanes, which will begin service in October 2023. The Consultant shall provide creative design, messaging and production support to create online and offline materials and campaigns to ensure a successful launch of the new 405 Express Lanes brand.
- **Express Lanes Marketing and Sales Program(s)**
Develop and implement new targeted marketing programs and maintain existing 91 Express Lanes campaigns/promotions to create awareness, increase usage, and generate new accounts for the Express Lanes.
- **Customer Communications**
Create traditional public information and/or customer communications such as quarterly newsletters and other collateral.

Deliverables shall include, but not be limited to:

1. Job-by-job estimate of time and materials needed to complete the assignment, approved by the designated OCTA Marketing Program Administrator
 2. Marketing plan including strategies, tactics, media recommendations, evaluation criteria, timeline and budget proposal including a draft and final plan
 3. Estimate for each program element, approved by the designated Marketing Program Manager
 4. Execution of online and offline plan elements, including concept, planning, design, layout, web design and programming, and **other functions needed to carry out the requirements of the plan**
 5. Evaluation of program effectiveness (concise review of effectiveness of marketing program)
- **Annual Report - Work Plan and Related Tasks**
The work plan for the Express Lane Annual Report consists of six (6) tasks as outlined below. The total is not to exceed \$25,000 for the development and production of the annual report.

Theme/Concept, Design, Format, and Production Schedule

Consultant shall design and propose suitable format for print, internet, multi-media environment, or any of them combined, for the entire report including theme/concept and produce artwork, including charts and graphs. The consultant's responsibilities also include obtaining OCTA approval and making necessary revisions. The report shall contain, but is not limited to, the following elements:

- Annual Report cover with title and Express Lanes and OCTA logos
- Introduction letter by OCTA Chairman and CEO
- Table of Contents
- Express Lanes report contents
- Financial data
- Board of Directors listing
- Back page with Express Lanes and OCTA logos

Deliverables:

Shall include three theme/concept options; production schedule based on delivery date provided by OCTA; design, format and layout of the report contents and cover (to be approximately 32 pages plus cover and back) including illustrations, graphics, and photography.

Copywriting:

Based on the approved concept and theme, the Consultant shall be responsible for writing and developing all copy required for the Annual Report. OCTA staff will provide project information, financial data, and other information to prepare draft copy. All copy will be subject to review and final approval by the OCTA project manager. The consultant shall be responsible for final proofreading before printing.

Deliverables:

Shall include an outline and draft copy consistent with the report concept and theme, and final report copy subject to review and approval by the OCTA project manager.

Photography and Illustrations:

Photographs and/or illustrations of Express Lanes activities, facilities, landmarks, or other designated sites that are required for the Annual Report. The Consultant shall develop a list of suggested photographs or illustrations and site recommendations for OCTA staff to review and approve.

Deliverables:

The Annual Report shall contain approximately between six (6) and twelve (12) transportation related photographs or illustrations to be used throughout the report in conjunction with the approved design. Depending on the concept/theme, some of the images will be provided by OCTA, and others shall require original photography, with all rights held by OCTA.

Final Digital Mechanical for Print:

After final copy is approved by OCTA, the Consultant must proof all report material, provide editing suggestions, and submit a color proof for OCTA review and approval. Once the color proof is approved, a complete digital file shall be compiled and provided to OCTA upon printing of the annual report. In addition, the Consultant must also select and specify type, paper or electronic medium, and colors with final approval by the OCTA project manager. Special care must be

taken so the document shall reflect the professionalism of OCTA, but also be prudent in the use of toll payer's funds.

Deliverables:

Consultant shall deliver original color proof and photocopies for final review and shall also provide complete digital file and printing specifications, including type, paper stock or electronic medium, and colors by the mutually agreed upon date.

Printing of Annual Report:

Upon final approval of the annual report, Consultant shall provide production estimates from three different vendors Consultant has a relationship with for approval by OCTA. Upon approval of selected vendor, Consultant to coordinate and oversee production of the annual report and provide final annual reports to OCTA.

Deliverables:

Shall include up to three (3) print estimates of final annual report for approval; coordination and oversight of printing of annual report; up to 100 final samples delivered to OCTA, with the balance of up to 500 annual reports delivered to mail house for mailing.

Mail House Services for Annual Report:

Upon printing of annual report, Consultant shall provide OCTA with estimate to mail approximately 500 annual reports to various stakeholders. The annual report shall be inserted into an envelope and mailed, first class mail using the OCTA indicia permit. Envelopes and an electronic list of addresses will be provided by OCTA.

Deliverables:

Shall include up to two (2) different mail house estimates for approval, mailing of approximately five hundred (500) annual reports, and delivery to US Postal office in Costa Mesa.

Target Markets

Although OCTA will continue to reach the general market as part of its Express Lanes Marketing and Program, the following have also been identified as target markets with potential for ridership growth:

- Residents living in close proximity to the Express Lanes
- Employers and employees working in close proximity to the Express Lanes
- Originating and connecting counties (Riverside, Orange, Los Angeles)
- Current subscribers
- General public
- College students
- Area businesses
- Stakeholders/cities
- Marketing partners

- Destinations
- Media

Goals and Objectives

The primary goals and objectives of the Express Lanes Marketing Program are to:

- Position the Express Lanes as a fast, reliable and predictable alternative to traveling the freeway
- Create awareness of Express Lanes service
- Increase Express Lane new accounts
- Increase number of transponders per account
- Enhance satisfaction and perceived value from frequent users

SCOPE OF SERVICES

As the demographics and communication behaviors of residents of Orange County and those in close proximity to the alignment continue to change, marketing the Express Lanes is becoming increasingly complex. In an effort to address these changes and implement comprehensive marketing activities, Consultant shall perform various marketing activities. Consultant shall provide turnkey marketing activities in each of the following areas:

- *Integrated, Strategic Marketing Plan Development*
A comprehensive and overarching plan shall be developed to serve as a blueprint for the contractual period of time. The plan shall be well thought-out and positioned to guide all marketing efforts to be cohesive and effective in achieving the organizational goals.
- *Marketing & Digital Marketing Campaign Development, Management and Optimization*
Each campaign shall include, but not be limited to, the following components to aid in driving traffic, building brand awareness, and increase ridership and sales:
 - Campaign goals development and effectiveness tracking
 - Identifying target audiences and providing insight to customer behavior
 - Developing key campaign messaging and potential offers for campaign success
 - Developing strategy for reaching and engaging target audiences
 - Developing mixed media campaign consisting of traditional and online media
- *Email, Social Media and Mobile Marketing Strategy Development, Implementation and Optimization*
Research, develop and propose new and innovative digital marketing strategies and tactics through email, social media, and/or mobile to help OCTA retain current customers and acquire new customers. Execute a successful agile marketing plan to improve performance and return on investment (ROI). Provide systematic solution to implement, manage and optimize social media platforms as well as analytics to maximize public interaction and engagement.

- *Online and Traditional Media Planning, Buying and Optimization*
Understand where target audiences live online and offline, develop a flexible and high-quality media plan for each campaign to include targeting endemic and broad reach sites/media as well as niche media/sites with loyal and passionate followings to engage potential customers in a clutter-free, relevant environment. Online media buying and optimization systems and technology are also required to provide real-time analytics data for refining campaign and discover insights to maximize ROI. In addition to this contract, OCTA has some reserved funds for direct media buy.
- *Ethnic Marketing and Translation (Hispanic and Asian)*
Research, develop and implement marketing programs targeting specific ethnic markets in Orange County. Develop media plans that understand where ethnic target audiences live online and offline to meet ridership and sales goals. Provide translation services for target markets, to include Spanish, Chinese, Korean, Vietnamese, Tagalog and Farsi, as well as other languages per the request of OCTA.
- *Print and Digital Creative Development, Design, Copywriting and Production*
Create strategic and innovative headlines, creative concepts, design theme and messaging that resonate with campaign target audiences in both online and print formats. Be able to respond quickly to execute creative development through design, copywriting, and production in a timely manner to meet the project deadlines. Consultant shall have the ability to produce, deliver, or accept files from the following software:
 - Adobe Creative Suite 5 (including Photoshop, Illustrator, InDesign)
 - High resolution PDF
 - Microsoft Office (Word, Excel, PowerPoint)
 - Ability for FTP electronic file transfer
- *Market and Customer Research, Segmentation Studies, Online Surveys, Implementation and Reporting*
To assist marketing planning and strategy development, identified research needs to gain customer insights and market intelligent information through primary and secondary research and surveys. Use state-of-the-art techniques to design, implement, and report appropriate study/survey as needed.
- *Photography*
Provide original photography services to support approved marketing plans to showcase OCTA's products and services in a favorable and imaginative way. Photography support should include selection and management of paid models, the ability to provide studio shots on seamless, interior building and/or bus shots including people and location shots showcasing various buses. Buses will either be static or moving.

- *Printing and Fulfillment Services*

Various types of printing projects shall require production, distribution, installation and/or removal during the course of this contract term, based on the approved marketing plan developed. Prior to release of all projects for print, a formal estimate will be received and approved by OCTA's project manager. Consultant or Consultant's subcontractor should have the following minimum requirements:

- One (1)- to six (6)-color lithographic printing
- Standard turnaround on print jobs shall be 15 working days; maximum turn on
- Any one (1) project would be no more than 20 business days from receipt of digital
- Mechanical to delivery.
- Ability to manage multiple print projects at the same time (such as between three (3) to seven (7)
- Unique print jobs) in the maximum turn time of 10 business days.
- Ability to provide mail house services such as distribution of mailed direct mail
- Print pieces, receipt and fulfillment of direct mail offers.
- Ability to produce, deliver or accept files from the following software:
- Adobe Creative Suite (including Photoshop, Illustrator, InDesign)
- High resolution PDF

PROJECT MANAGEMENT

OCTA's Marketing Program Administrator will be the key contact for the Consultant and will direct the Consultant's work efforts. The Consultant shall be responsible for implementing the services described in the Scope of Work under the direction of the OCTA Marketing Program Administrator. The Marketing Program Administrator will form, and be a part of, an internal project team to assist in providing project direction.

The Consultant shall designate a project manager to coordinate all marketing activities. The project manager will be permanently assigned in this capacity for the duration of the contract period. The project manager shall have the authority to make commitments and decisions that are binding to the Consultant. Any changes to Consultant's personnel under this project shall be subject to OCTA's written approval.

All projects shall require an approved, signed estimate based on specific project specifications prior to commencement of work. The Consultant shall invoice OCTA for services rendered on a monthly basis.

CONTRACT PERIOD

The contract period will be for an initial two (2)-year effective September 1, 2022 through August 31, 2024, with two (2), two (2)-year option terms.

DEFINITIONS OF JOB FUNCTIONS

To support the services listed, a list of job functions and a brief description that may be required, but not limited to the following:

Market Research Manager – Gathers and analyzes qualitative and quantitative data in preparation of promotional campaigns for the client to identify and assess changing behaviors in the marketplace.

Market Research Analyst – Responsible for providing assistance to the Market Research Manager in all phases of the marketing research process from project conception to client presentations.

Account Planning & Research – Ensures that all strategic initiatives “work” by contributing to the strategic process through marketing plan development, brief generation; market trend research, implementation and analysis; intelligence support, etc.

Account Manager – Primarily responsible for the initiation and execution of all marketing, creative, media, and research projects for the brands. Maintains strong, lasting client relationships based on progress in achieving client’s marketing objectives.

Account Coordinator – Assists Account Manager in maintaining the day-to-day services of the projects and accounts they are assigned to.

Creative Director – Experienced specialist in either art or copy, supervises a group of creative staff to produce outstanding creative work.

Art Director – Formulates concepts and executes layout designs for artwork and copy to be presented by visual communications.

Production Manager – Works directly with creative staff to identify and coordinate needed materials for the production of given tactics and manages their production.

Traffic Manager – Acts as a liaison between Account Services and all other departments. Supervises, coordinates and ensures the on time and orderly flow of all advertising from job initiation to its release and billing.

Concept Development – Creation of conceptual designs and solutions based on approved marketing plan.

Design & Layout – Execution of approved conceptual design based on customer feedback.

Computer Production – Final computer layout and revisions through mechanical release for production.

Photo Manipulation/Retouching – Computer manipulation of photographs to attain marketing goals.

Illustration – Creation of images based on traditional or computer-generated illustrative methods.

Copywriter – Responsible for the total creative product in direct mail, print or broadcast media; produces bold, strategic, persuasive messages in all media.

Proofreader – Responsible for reviewing all projects to ensure accuracy, of the written word and visual message. Ensures that all tactics within a marketing campaign carry a consistent message.

Social Media Manager – A digital-savvy communications professional with experience designing and executing social media for brands. Develops and executes innovative social media marketing programs for clients that effectively “break through the noise” and connect with participants by delivering value.

Social Media Specialist – Develop and maintain comprehensive social media strategies that define how social media marketing techniques will be applied to increase visibility and traffic across all clients’ brands and products.

e-Marketing Specialist – Works to expand social media marketing services and online content strategies for clients—whether that’s in social networks or finding creative, new ways to tell stories on clients’ Web sites or other Web properties.

Photo Supervision – Oversees photographer to ensure integrity of the concept is captured in the visual medium.

Photographer – Creates original photography based on set parameters. Understanding that photographer’s bill by day rate or one-half day rate, provide hourly rate based on this pricing in order for pricing comparison.

Media Planning & Buying – Responsible for all media activities on a group of accounts; develops the media plan; selects media to achieve a given sales objective within a predetermined budget; supervises others; has professional and client contact. Responsible for the negotiation and placement of all media for existing clients and new business, in addition to making special recommendations to be presented to the client and key account management personnel.

Translator – Provides translation services of marketing projects, either in-house or through a subcontractor. Responsible for proofreading and validating the integrity of the translation provided.

Accounting / Billing Clerk – Gathers information from a variety of sources to compile and prepare customer charges for billing purposes.

EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET

EXPRESS LANES MARKETING PROGRAM

Provide fully-burdened hourly rates for the designated job categories for the designated job categories. The fully-burdened hourly rates will be included in the resulting agreement should Offeror's proposal be selected for contract award. All rates are "fully loaded", i.e., includes all overhead, general costs, administrative costs and profit.

Firm Name: _____

SCHEDULE I: LABOR CHARGES

Key Personnel:

Job function	Name	Fully-Burdened Hourly Rates		
		Initial Term 9/1/22 - 8/31/24	First Option Term 9/1/24 - 8/31/26	Second Option Term 9/1/26 - 8/31/28
Account Manager				
Creative Director				
Copywriter				
Concept Development				
Design Layout				

Note: For cost analysis purposes, please provide hourly rates for the above designated job categories.



Other Labor Charges:

Fully-Burdened Hourly Rates

Job Function	Initial Term 9/1/22 - 8/31/24	First Option Term 9/1/24 - 8/31/26	Second Option Term 9/1/26 - 8/31/28
Market Research Manager			
Market Research Analyst			
Account Planning & Research			
Account Coordinator			
Art Director			
Production Manager			
Traffic Manager			
Computer Production			
Photo Manipulation / Retouching			
Illustration			
Proofreader			
Social Media Manager			
Social Media Specialist			
eMarketing Specialist			
Photo Supervision			
Photographer			
Media Planning & Buying			
Translator			
Account Billing / Clerk			

SCHEDULE II: OTHER DIRECT COSTS SCHEDULE (ODC)

Type of ODC	Unit	Initial Term 9/1/22 thru 8/31/24 Rate	First Option Term 9/1/24 thru 8/31/26 Rate	Second Option Term 9/1/26 thru 8/31/28 Rate

Additional ODC required and authorized by the Authority but not included in this Agreement will be reimbursed either (a) "at cost" or (b) up to the applicable current rate listed in this Schedule II, whichever is less.

Additional sheets may be included.

Please note the following:

- The Authority will not reimburse Consultant for hours charged to perform activities associated with the preparation and review of invoices submitted to the Authority.
- The Authority will not reimburse Consultant for local meals and travel time, unless previously approved, and any other expenses not included within this Exhibit B.

1. I acknowledge receipt of **RFP 2-2392** and Addenda No.(s)____.
2. This offer shall remain firm for _____ days from the date of proposal.
(Minimum of 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

E-MAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

NAME AND TITLE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

DATE SIGNED _____

EXHIBIT C: PROPOSED AGREEMENT

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PROPOSED AGREEMENT NO. C-2-2392

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

THIS AGREEMENT is effective as of this ____ day of _____, 2022 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), , , , , (hereinafter referred to as "CONSULTANT").

WITNESSETH:

WHEREAS, AUTHORITY requires assistance from CONSULTANT to provide a marketing program for the 91 Express Lanes and 405 Express Lanes; and

WHEREAS, said work cannot be performed by the regular employees of AUTHORITY; and

WHEREAS, CONSULTANT has represented that it has the requisite personnel and experience, and is capable of performing such services; and

WHEREAS, CONSULTANT wishes to perform these services;

NOW, THEREFORE, it is mutually understood and agreed by AUTHORITY and CONSULTANT as follows:

ARTICLE 1. COMPLETE AGREEMENT

A. This Agreement, including all exhibits and documents incorporated herein and made applicable by reference, constitutes the complete and exclusive statement of the terms and conditions of the Agreement between AUTHORITY and CONSULTANT and it supersedes all prior representations, understandings and communications. The invalidity in whole or in part of any term or condition of this Agreement shall not affect the validity of other terms or conditions.

B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's performance of any terms or conditions of this Agreement shall not be construed as a waiver or

EXHIBIT C

relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

The Chief Executive Officer of AUTHORITY, or designee, shall have the authority to act for and exercise any of the rights of AUTHORITY as set forth in this Agreement.

ARTICLE 3. SCOPE OF WORK

A. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AUTHORITY.

B. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

Names

Functions

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY.

D. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with prior notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these

qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

A. This Agreement shall commence upon execution by both parties, and shall continue in full force and effect from September 1, 2022 through August 31, 2024 (Initial Term), unless earlier terminated or extended as provided in this Agreement.

B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an additional twenty-four (24) months, commencing September 1, 2024, and continuing through August 31, 2026 ("First Option Term"), and thereupon require CONSULTANT to continue to provide services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work", and at the rates set forth in Article 5, "Payment."

C. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an additional twenty-four (24) months, commencing September 1, 2026, and continuing through August 31, 2028 ("Second Option Term"), and thereupon require CONSULTANT to continue to provide services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work", and at the rates set forth in Article 5, "Payment."

D. AUTHORITY's election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or CONSULTANT's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extending from September 1, 2022 through August 31, 2028, which period encompasses the Initial Term, First Option Term and Second Option Term.

ARTICLE 5. PAYMENT

A. For CONSULTANT's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provisions set forth in Article 7, AUTHORITY shall pay CONSULTANT on a time-and-expense basis in accordance with the following provisions.

B. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONSULTANT. Drive time may not be charged to AUTHORITY. Work

EXHIBIT C

completed shall be documented in a monthly progress report prepared by CONSULTANT, which shall accompany each invoice submitted by CONSULTANT. AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B, entitled "Price Summary Sheet," which is attached to and by this reference, incorporated in and made a part of this Agreement. These rates shall remain fixed for the term of this Agreement and are acknowledged to include CONSULTANT's overhead costs, general costs, administrative costs and profit. CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment until such time as CONSULTANT has documented to AUTHORITY's satisfaction that CONSULTANT has fully completed all work required. AUTHORITY's payment in full shall constitute AUTHORITY's final acceptance of CONSULTANT's work.

C. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. CONSULTANT may also submit invoices electronically to AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. Each invoice shall be accompanied by the monthly progress report specified in paragraph B of this Article. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C- 2-2392;
2. Specify the effort for which the payment is being requested;
3. The time period covered by the invoice;
4. Labor (staff name, hours charged, hourly billing rate, current charges, and cumulative charges) performed during the billing period;
5. Total monthly invoice (including project-to-date cumulative invoice amount);
6. Itemized expenses including support documentation incurred during the billing period;
7. Monthly Progress Report;
8. Certification signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup

EXHIBIT C

information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.

9. Any other information as agreed or requested by AUTHORITY to substantiate the validity of an invoice.

ARTICLE 6. PROMPT PAYMENT CLAUSE

A. AUTHORITY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subconsultants in accordance with regulatory mandates. The provisions of this Article apply to both DBE and non-DBE subconsultants. Pursuant to Title 49 of the Code of Federal Regulations (CFR) Part 26.29:

B. "CONSULTANT or subconsultant agrees to pay each subconsultant under this Agreement for satisfactory performance of its agreement no later than fifteen (15) days from the receipt of each progress payment CONSULTANT receives from AUTHORITY on account of the work performed by the subconsultant. CONSULTANT agrees further to return retainage payments to each subconsultant within fifteen (15) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by AUTHORITY. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with AUTHORITY's prior written approval." CONSULTANT shall incorporate this clause verbatim, set forth above, in all subcontract, broker, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms. In the event that there is a dispute over all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed amount.

C. Any violation of these provisions shall subject the violating CONSULTANT to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions

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Code and Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subcontract performance or noncompliance by a subconsultant.

D. Failure to comply with these provisions without prior written approval from AUTHORITY will constitute noncompliance, which shall result in the application of appropriate administrative sanctions to the licensee, including, but not limited to, a penalty payable to the subconsultant, of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

ARTICLE 7. MAXIMUM OBLIGATION

Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONSULTANT's profit) shall be _____ Dollars (\$_____.00) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

ARTICLE 8. NOTICES

All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of said notices in person or by depositing said notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid and addressed as follows:

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To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Yvette Crowder

Title:

Title: Senior Contract Administrator

Phone:

Phone: (714) 560 – 5616

Email:

Email: ycrowder@octa.net

ARTICLE 9. INDEPENDENT CONSULTANT

A. CONSULTANT's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONSULTANT's personnel performing services under this Agreement shall at all times be under CONSULTANT's exclusive direction and control and shall be employees of CONSULTANT and not employees of AUTHORITY. CONSULTANT shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.

B. Should CONSULTANT's personnel or a state or federal agency allege claims against AUTHORITY involving the status of AUTHORITY as employer, joint or otherwise, of said personnel, or allegations involving any other independent contractor misclassification issues, CONSULTANT shall defend and indemnify AUTHORITY in relation to any allegations made.

ARTICLE 10. INSURANCE

A. CONSULTANT shall procure and maintain insurance coverage in full force and effect during the entire term of the Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CONSULTANT shall provide the following insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations,

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1 Independent Contractors', Contractual Liability, Advertising and Personal Injury Liability, and Property
2 Damage with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 general aggregate and
3 \$2,000,000 Products/Completed Operations aggregate;

4 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a
5 combined single limit of \$1,000,000 for each accident;

6 3. Workers' Compensation with limits as required by the State of California including a
7 Waiver of Subrogation in favor of AUTHORITY, its officers, directors and employees; and

8 4. Employers' Liability with minimum limits of \$1,000,000 per accident, \$1,000,000 policy
9 limit-disease, and \$1,000,000 policy limit employee-disease.

10 B. Proof of such coverage, in the form of a certificate of insurance and an insurance policy
11 blanket additional insured endorsement, designating the AUTHORITY, its officers, directors and
12 employees as additional insureds on general liability and automobile liability, as required by Agreement.
13 Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the
14 effective date of the Agreement and prior to commencement of any work. Such insurance shall be
15 primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.
16 Furthermore, AUTHORITY reserves the right to request certified copies or review all related insurance
17 policies, in response to a related loss.

18 C. CONSULTANT shall include on the face of the certificate of insurance the Agreement Number
19 C-2-2392 and, the Senior Contract Administrator's Name, Yvette Crowder.

20 D. CONSULTANT shall also include in each subcontract, the stipulation that subconsultants shall
21 maintain insurance coverage in the amounts required of CONSULTANT as provided in the Agreement.
22 Subconsultants will be required to include AUTHORITY as additional insureds on the Commercial
23 General Liability, and Auto Liability insurance policies.

24 E. Insurer must provide AUTHORITY with at least thirty (30) days' prior notice of cancellation or
25 material modification of coverage, and ten (10) days' prior notice for non-payment of premium.

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ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

(1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 2-2392, (3) CONSULTANT's proposal dated _____; and (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 12. CHANGES

A. By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make changes in the general scope of this Agreement, including, but not limited to, the services furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work suspension or change causes an increase or decrease in the price of this Agreement or in the time required for its performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its claim for adjustment within ten (10) calendar days after the change or work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from proceeding immediately with the Agreement as changed.

B. CONSULTANT shall only commence work covered by an amendment after the amendment is executed by AUTHORITY.

ARTICLE 13. DISPUTES

A. Except as otherwise provided in this Agreement, when a dispute arises between CONSULTANT and AUTHORITY, the project managers shall meet to resolve the issue. If project managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMM, shall be the final and conclusive administrative decision.

B. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. Nothing in this Agreement, however, shall be construed as making final the decision of any

AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the State of California.

ARTICLE 14. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONSULTANT written notice thereof. Upon termination, AUTHORITY shall pay CONSULTANT its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to CONSULTANT in accordance with the provisions of the FAR referenced above and Article 8, herein. Upon receipt of said notification, CONSULTANT agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

B. In the event either Party defaults in the performance of any of their obligations under this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Upon receipt of such notice, CONSULTANT shall immediately cease work, unless the notice from AUTHORITY provides otherwise. Upon receipt of the notice from AUTHORITY, CONSULTANT shall submit an invoice for work and/or services performed prior to the date of termination. AUTHORITY shall pay CONSULTANT for work and/or services satisfactorily provided up to the date of termination in compliance with this Agreement. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under this Agreement. AUTHORITY shall not be liable for any claim of lost profits or damages for such termination.

ARTICLE 15. INDEMNIFICATION

A. CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents (indemnities) from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or

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damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent acts, omissions or willful misconduct by CONSULTANT, its officers, directors, employees, agents, subconsultants or suppliers in connection with or arising out of the performance of this Agreement.

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONSULTANT, without the prior written consent of AUTHORITY. Consent by AUTHORITY shall not be deemed to relieve CONSULTANT of its obligations to comply fully with all terms and conditions of this Agreement.

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described below. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

<u>Subcontractor Name/Addresses</u>	<u>Subcontractor Functions</u>

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

CONSULTANT shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities of the CONSULTANT which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. CONSULTANT shall maintain such books, records; data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during

CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 16 of this Agreement. CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 18. CONFLICT OF INTEREST

CONSULTANT agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONSULTANT is unable, or potentially unable to render impartial assistance or advice to the AUTHORITY; CONSULTANT's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the CONSULTANT has an unfair competitive advantage. CONSULTANT is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONSULTANT. CONSULTANT is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONSULTANT. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the entire term of this Agreement.

ARTICLE 19. CODE OF CONDUCT

CONSULTANT agrees to comply with the AUTHORITY's Code of Conduct as it relates to Third-Party contracts, which is hereby referenced and by this reference is incorporated herein. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 20. PROHIBITION ON PROVIDING ADVOCACY SERVICES

CONSULTANT and all subconsultants performing work under this Agreement, shall be prohibited from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY, either as a prime consultant or subconsultant. Failure to refrain from such representation may result in termination of this Agreement.

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ARTICLE 21. FEDERAL, STATE AND LOCAL LAWS

CONSULTANT warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 22. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONSULTANT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 23. CIVIL RIGHTS ASSURANCE

During the performance of this Agreement, CONSULTANT, for itself, its assignees and successors in interest agree as follows:

A. Compliance with Regulations: CONSULTANT shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

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C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: CONSULTANT shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this information the CONSULTANT shall so certify to the AUTHORITY as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the CONSULTANT's noncompliance with nondiscrimination provisions of this Agreement, the AUTHORITY shall impose Agreement sanctions as it may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the CONSULTANT under the Agreement until the CONSULTANT complies; and/or

2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

F. Title VI of the Civil Rights Act: In determining the types of property or services to acquire, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for

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FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title VI regulations.

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 et seq., prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

H. DISADVANTAGED BUSINESS ENTERPRISE (DBE): shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the AUTHORITY deems appropriate, which may include, but is not limited to:

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

Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A) through (H) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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ARTICLE 24. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED

CONSULTANT CONTRACTS

A. In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," AUTHORITY has established a nine (9%) percent Disadvantaged Business Enterprise (DBE) participation goal for the services required in this Agreement.

B. At the time of contract execution, the CONSULTANT committed to utilize one or more DBE Firms in the performance of this DOT-assisted contract. CONSULTANT agrees to enter into agreements with the DBE subconsultants listed on Attachment A-1 "DBE Participation Commitment" and ensure they perform work and/or supply materials in accordance with original commitments. No changes to CONSULTANT's DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

C. CONSULTANT must take appropriate actions to ensure that it will satisfy good faith efforts to attain the DBE goal and/or the DBE commitment made at award (whichever is higher), when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONSULTANT must apply and report its DBE goal commitment against the total current Agreement value, including any change orders and/or amendments.

D. If there is a DBE goal and/or DBE commitment on the Agreement, CONSULTANT must complete and submit within the specified timelines, DBE documentation electronically through the AUTHORITY-approved electronic reporting system (ECAT).

E. CONSULTANT shall comply with all the requirements set forth in Attachment A titled, "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS", which is attached to and, by this reference, incorporated in and made a part of this Agreement.

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ARTICLE 25. PROHIBITED INTERESTS

A. CONSULTANT covenants that, for the term of this Agreement, no director, member, officer or employee of AUTHORITY during his/her tenure in office or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

B. No member of or delegate to, the Congress of the United States shall have any interest, direct or indirect, in this Agreement or to the benefits thereof.

ARTICLE 26. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any professional publication, magazine, trade paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be released by CONSULTANT to any other person or agency except after prior written approval by AUTHORITY, except as necessary for the performance of services under this Agreement. All press releases, including graphic display information to be published in newspapers, magazines, etc., are to be

handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

ARTICLE 27. PATENT AND COPYRIGHT INFRINGEMENT

A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by CONSULTANT when such use in combination infringes upon an existing U.S. letters patent or copyright.

B. CONSULTANT shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONSULTANT, at no expense to AUTHORITY, shall obtain for AUTHORITY the right to use and sell said item, or shall substitute an equivalent item acceptable to AUTHORITY and extend this patent and copyright indemnity thereto.

ARTICLE 28. FINISHED AND PRELIMINARY DATA

A. All of CONSULTANT's finished technical data, including but not limited to illustrations, photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photo prints and other graphic

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information required to be furnished under this Agreement, shall be AUTHORITY's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

B. It is expressly understood that any title to preliminary technical data is not passed to AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONSULTANT solely for the purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 12, and a price shall be negotiated for all preliminary data.

ARTICLE 29. COVENANT AGAINST CONTINGENT FEES

CONSULTANT warrants, by execution of this Agreement, that he/she has not employed or retained any company or person, other than a bona fide employee working for the consultant; to solicit or secure this Agreement; and that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the AUTHORITY shall have the right to annul this Agreement without liability, or at its discretion; to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 30. LOBBYING

CONSULTANTS who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or

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attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

ARTICLE 31. HEALTH AND SAFETY REQUIREMENTS

CONSULTANT shall comply with all the requirements set forth in Exhibit ___, titled "Level 1 SAFETY, HEALTH AND ENVIRONMENTAL SPECIFICATIONS." As used therein, "Contractor" shall mean "Consultant," and "Subcontractor" shall mean "Sub-consultant."

ARTICLE 32. PRIVACY ACT

CONSULTANT shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government before the CONSULTANT or its employees operate a system of records on behalf of the Federal Government. CONSULTANT understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Agreement.

ARTICLE 33. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

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ARTICLE 34. FEDERAL CHANGES

CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement between the AUTHORITY and FTA, as they may be amended or promulgated from time to time during this Agreement. CONSULTANT's failure to comply shall constitute a material breach of contract.

ARTICLE 35. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the AUTHORITY, CONSULTANT, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 36. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA assisted project for which this Agreement's work is being performed. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by

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FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CONSULTANT, to the extent the Federal Government deems appropriate. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 37. RECYCLED PRODUCTS

CONSULTANT shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 CFR Part 247. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 38. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 39. CLEAN AIR

CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT shall report each violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 40. CLEAN WATER REQUIREMENTS

CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT shall report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 41. DEBARMENT AND SUSPENSION

CONSULTANT shall not do business with a subcontractor or other participant who is debarred, suspended or otherwise disqualified. CONSULTANT shall comply with 2 CFR Part 180, as adopted and supplemented by 2 CFR Part 1200. CONSULTANT shall include these requirements in any lower tier covered transaction it enters into.

ARTICLE 42. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A. Definitions. As used in this Article:

1. "Backhaul" means intermediate links between the core network, or backbone network, and the smallsubnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

2. "Covered foreign country" means The People's Republic of China.

3. "Covered telecommunications equipment or services" means:

a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

b) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

c) Telecommunications or video surveillance services provided by such entities or using suchequipment; or

d) Telecommunications or video surveillance equipment or services

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produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

4. "Critical technology" means:

- a) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under 22 C.F.R. subchapter M of chapter I;
- b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under 15 C.F.R. subchapter C of chapter VII, and controlled
 - 1. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - 2. For reasons relating to regional stability or surreptitious listening;
- c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 C.F.R. Part 810 (relating to assistance to foreign atomic energy activities);
- d) Nuclear facilities, equipment, and material covered by 10 C.F.R. Part 110 (relating to export and import of nuclear equipment and material);
- e) Select agents and toxins covered by 7 CFR Part 331, 9 C.F.R. Part 121, or 42 C.F.R. Part 73; or
- f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. §4817).

5. "Interconnection arrangements" means arrangements governing the physical

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connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

6. "Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

7. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

8. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

B. Prohibition

1. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency, on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. CONSULTANT is prohibited from providing to AUTHORITY or the Federal Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR §4.2104.

2. Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses

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any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR section 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federally-funded contract.

C. Exceptions. This Article does not prohibit CONSULTANT from providing:

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

D. Reporting Requirement

1. In the event CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or CONSULTANT is notified of such by a subcontractor at any tier or by any other source, CONSULTANT shall report the information in paragraph (d)(2) of this Article to the Chief Executive Officer of AUTHORITY, or designee, unless elsewhere in this Agreement are established procedures for reporting the information; in the case of the Department of Defense, CONSULTANT shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, CONSULTANT shall report to the Chief Executive Officer of AUTHORITY, or designee, for the indefinite delivery contract and the Chief Executive Officer of AUTHORITY, or designee, for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

2. CONSULTANT shall report the following information pursuant to paragraph (D)(1) of this Article:

- a) Within one (1) business day from the date of such identification or

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notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

b) Within ten (10) business days of submitting the information in paragraph (D)(2)(i) of this Article: any further available information about mitigation actions undertaken or recommended. In addition, CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. CONSULTANT shall insert the substance of this Article, including this paragraph (E) and excluding paragraph (B)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

ARTICLE 43. NOTICE TO AUTHORITY AND FTA OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS

CONSULTANT shall report to AUTHORITY and FTA any current or prospective legal matter that may affect the Federal Government, including a major dispute, default, breach, litigation, or naming the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interest in the federal award, any underlying agreements, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. In addition, CONSULTANT shall promptly notify AUTHORITY, FTA, and the U.S. DOT Inspector General of any knowledge of potential fraud, waste,

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or abuse occurring on the Project. This includes knowledge that any person or entity, including CONSULTANT, has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. "Knowledge," as used in this Article, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency; a criminal indictment or civil complaint; or probable cause that could support a criminal indictment, or any other credible information in the possession of the CONSULTANT. CONSULTANT agrees to include these requirements in all subcontracts at any tier.

ARTICLE 44. FORCE MAJEURE

Either party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by an unforeseeable cause beyond its control, including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products, plants or facilities by the federal, state or local government; national fuel shortage; or a material act or omission by the other party; when satisfactory evidence of such cause is presented to the other party; and provided further that such nonperformance is unforeseeable, beyond the control and is not due to the fault or negligence of the party not performing.

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1 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-2-2392 to be
2 executed as of the date of the last signature below.

3 **CONSULTANT**

ORANGE COUNTY TRANSPORTATION AUTHORITY

4
5 By: _____

By: _____

6 Darrell E. Johnson
Chief Executive Officer

7
8
9 **APPROVED AS TO FORM:**

10
11 By: _____

12 James M. Donich
General Counsel

13
14
15 **APPROVED:**

16
17 By: _____

18 Maggie McJilton
Executive Director
People and Community Engagement

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS

I. DBE Participation

It is the CONSULTANT'S responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and AUTHORITY's DBE program developed pursuant to these regulations.

CONSULTANT must complete and submit, within the specified timelines, the required DBE documentation in Section IV. of this Attachment, through the AUTHORITY's electronic reporting system (ECAT). CONSULTANT's submitted "DBE Participation Commitment Form," executed subcontracts and/or purchase orders, as well as on-going DBE documentation will be utilized to monitor CONSULTANT's DBE commitment. Unless otherwise directed and/or approved in writing by AUTHORITY prior, CONSULTANT must not effectuate any changes to its DBE participation commitment.

CONSULTANT must complete and submit all required DBE documentation to effectively capture DBE utilization on AUTHORITY's U.S. DOT-assisted contracts whether achieved race neutrally or race consciously. No changes to CONSULTANT'S DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

To ensure full compliance with the requirements of 49 CFR, Part 26 and AUTHORITY's DBE Program, CONSULTANT must:

- A. Take appropriate actions to ensure that it will satisfy good faith efforts to meet the DBE agreement goal and continue to meet the DBE commitment made at award, when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONSULTANT must apply and report its DBE goal commitment against the total Agreement value, including any change orders and/or amendments.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation ("U.S. DOT"), AUTHORITY has adopted a Disadvantaged Business Enterprise ("DBE") Policy and Program in conformance with Title 49 CFR, Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs".

The project is subject to these stipulated regulations and AUTHORITY's DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR, Part 26, in the performance of agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of AUTHORITY to:

Fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in AUTHORITY's U.S. DOT-assisted contracts and subcontracts. AUTHORITY is firmly committed to the DBE Program objectives, which are designed to:

- A. Ensure non-discrimination in the award and administration of AUTHORITY's U.S. DOT-assisted contracts;
- B. Create a level playing field by which DBE's can fairly compete for AUTHORITY's U.S. DOT-assisted contracts;
- C. Ensure that AUTHORITY's DBE Program and Overall Goals are narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBE's in the AUTHORITY's DBE Program;
- E. Help remove barriers which impede the participation of DBE's in AUTHORITY's U.S. DOT-assisted contracts;
- F. Promote the use of DBE's in all types of U.S. DOT-assisted contracts and procurement activities conducted by AUTHORITY;
- G. Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;
- H. Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program; and
- I. Establish and provide opportunities for DBEs by providing flexibility in the implementation of AUTHORITY's DBE Program.

CONSULTANT must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant. Any terms used in this section that are defined in 49 CFR, Part 26, or elsewhere in the Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and AUTHORITY's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations must prevail.

III. AUTHORITY's DBE Policy Implementation Directives

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise ("DBE") Program exists to ensure participation, equitable competition, and assistance to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY's analysis

of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Recipient's disparity studies, AUTHORITY's DBE Program is implemented utilizing both race-conscious and race-neutral means. When a contract-specific DBE goal is assigned to a project, meeting the contract-specific goal by committing to utilize DBEs, or documenting a bona fide good faith effort to do so, is a condition of award.

A. Definitions

The following definitions apply to the terms used in these provisions:

1. ***"Disadvantaged Business Enterprise (DBE)"*** means a small business concern:
(a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. ***"Small Business Concern"*** means a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
3. ***"Socially and Economically Disadvantaged Individuals"*** means any individual who is a citizens (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
 - a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
 - b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa";
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race";
 - iii. "Native Americans," which includes persons who are enrolled

- members of a federally or State recognized Indian tribe, Alaskan Natives, or Native Hawaiians”;
- iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong”;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka”;
 - vi. Women; and
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- c) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
4. **“Owned and Controlled”** means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
5. **“Manufacturer”** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CONSULTANT.
6. **“Regular Dealer”** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Agreement are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
7. **“Fraud”** includes a firm that does not meet the eligibility criteria of being a certified DBE and attempts to participate in a U.S. DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty. AUTHORITY may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to

such action under 49 CFR, Part 31. AUTHORITY may refer cases of identified fraud to the Department of Justice, for prosecution under 18 U.S.C. 1001, or any other applicable provisions of law. Any person who makes a false or fraudulent statement in connection with participation of a DBE in any U.S. DOT-assisted program or otherwise, violates applicable Federal statutes.

8. ***“Other Socially and Economically Disadvantaged Individuals”*** means those individuals who are citizens of the United States (or lawfully admitted permanent residents), and who, on a case-by-case basis, are determined by Small Business Administration or AUTHORITY to meet the social and economic disadvantage criteria described below.

B. “Social Disadvantage”

1. The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
2. The individual must demonstrate that he/she has personally suffered social disadvantage.
3. The individual's social disadvantage must be rooted in treatment which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial; not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

C. “Economic Disadvantage”

1. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
2. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

IV. Submission of DBE Information and Ongoing Reporting Requirements (Post-Award)

CONSULTANT must complete and submit within the specified timelines, the following DBE and Non-DBE documentation, electronically through the submission process detailed below:

Form/Electronic Submittal	Frequency of Submission	Process for Submission:
Monthly DBE Attainment and Subconsultant Prompt Payment Verification Report	Monthly by the 10 th of each month	Enter data and submit via ECAT to AUTHORITY
DBE Subcontract Agreements	Within ten (10) days of prime contract award, or with Request to Add for DBE firms added post-award	Upload Subcontract to Subconsultant profile and submit via ECAT to AUTHORITY
Request to Add Subconsultant	As needed (see instructions below)	Enter data and submit via ECAT to AUTHORITY
DBE Commitment Change Request(s)	As needed (see instructions below)	Enter data and submit via ECAT to AUTHORITY
On-Going Good Faith Efforts (GFE) Post-Award	As needed (see instructions below)	Upload GFE attachment and submit via ECAT to AUTHORITY
Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subconsultants	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY
Disadvantaged Business Enterprises (DBE) Certification Status Change	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY

A penalty of ten dollars (\$10) per day, per Form/Electronic submittal will be implemented for late submission of any of the above.

A. Monthly DBE Attainment and Subconsultant Prompt Payment Verification Data Submission

This submission serves to ensure CONSULTANT's DBE commitments are attained, properly reported, and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work/service.

This submission further serves to monitor prompt payment to both DBE and non-DBE firms, and collect DBE utilization data as required under 49 CFR, Part 26.

CONSULTANT is required to enter data directly into ECAT and submit by the 10th of each month until completion of the Agreement. CONSULTANT's first submission is due following the first month of Agreement activity. Even if no DBE participation will be reported within a period, CONSULTANT must complete and submit Monthly by the required timelines.

If there is not a DBE goal and no DBE commitment has been made by CONSULTANT, CONSULTANT is required to enter data directly into ECAT and submit by bi-annually on April 10th and October 10th of each year. Additionally, upon completion of the contract, a final report must be submitted and marked final.

Data required for submission includes the amount(s) received by CONSULTANT from AUTHORITY and the amount(s) paid to lower-tier subconsultants during the Month. CONSULTANT to submit pertinent payment details for any firm (DBE and Non-DBE) to whom they have reported a payment within the reporting period. CONSULTANT is advised not to report the participation of DBE(s) toward the CONSULTANT's DBE attainment until the amount being claimed has been paid to the DBE.

Pertinent payment details include:

- Invoice Number
- Invoice Amount
- Payment Amount
- Invoice Date
- Check Number
- Date of Payment
- Corresponding Prime Invoice (associated to subconsultants' invoice)
- Retention
- Disputed or Withheld invoice amounts

If DBE trucking credit is being claimed, CONSULTANT must electronically report through ECAT the amount paid to DBE trucking companies and their lower-tier firms (including owner operators for the leasing of trucks). Pertinent payment details required for submission will include truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks paid during that month. If the DBE leases trucks from a non DBE, CONSULTANT may count only the fee or commission the DBE receives as a result of the lease arrangement.

Firms will receive a notification from ECAT when a payment is reported to them and will be required to log-in to ECAT to verify the payment information provided by CONSULTANT. A reported payment to a lower-tier DBE firm will not be credited towards the DBE goal until the DBE firm has validated the payment through ECAT. All payments reported by CONSULTANT must be validated by affected firm, prior to the 10th of each month following the reporting period.

Electronic submission of the Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Data includes a certification under penalty of perjury of the prompt payment assurance statement of compliance, providing assurance that timely payments have been issued to all subconsultants in accordance with regulatory mandates and as required by 49 CFR Part 26.29.

B. DBE Subcontract Agreements

CONSULTANT must electronically submit to AUTHORITY via ECAT, copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. CONSULTANT must immediately notify AUTHORITY in writing, of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

C. Additional DBE Firms

In the event CONSULTANT identifies additional DBE subconsultants not previously identified by CONSULTANT for DBE participation under the Agreement, CONSULTANT must notify AUTHORITY by filling out and submitting a "Request to Add," through ECAT. This will enable AUTHORITY to verify the firm's eligibility, capacity, CUF and scope of work. Proposed firms will not be applied towards CONSULTANT'S DBE participation until approved by AUTHORITY.

CONSULTANT must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation). This supporting documentation is a required upload by ECAT when submitting a Request to Add.

D. DBE Commitment Change Request(s), DBE Substitution, Termination and Increasing or Decreasing Commitment Values

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the CONSULTANT obtains AUTHORITY's written consent. CONSULTANT shall not terminate, decrease or substitute a listed DBE for convenience and perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, another DBE firm or obtain materials from other sources without prior written authorization from AUTHORITY. CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE on the DBE Participation

Commitment form, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY. This includes partial terminations.

CONSULTANT shall provide written notification to AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

AUTHORITY shall only provide written consent to a request to use other forces or sources of materials if CONSULTANT has good cause to terminate or decrease its DBE commitment to a DBE firm. For the purposes of this section good cause includes any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on the requirements of the project.
2. Listed DBE firm fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of CONSULTANT.
3. Listed DBE firm fails or refuses to meet the CONSULTANT's reasonable, nondiscriminatory bond requirements.
4. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
5. Listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
6. AUTHORITY has determined that the listed DBE firm is not a responsible firm.
7. Listed DBE firm voluntarily withdraws from the project and provides written notice of its withdrawal.
8. Listed DBE is ineligible to receive credit for the type of work required.
9. Listed DBE owner dies or becomes disabled resulting in the inability of the DBE to perform the work on the Contract.
10. Other documented good cause that the Authority determines compels the termination (inclusive of decreases to commitment values and substitutions) of a DBE firm.

To submit a request to substitute, decrease or terminate a DBE subconsultant commitment, CONSULTANT is required to submit a DBE Commitment Change Request through ECAT. The DBE Commitment Change Request includes options to increase, decrease, substitute or terminate a DBE commitment.

If decrease, substitute or terminate is selected, CONSULTANT must give notice in writing to the DBE, with a copy to AUTHORITY, of its intent to decrease, substitute and/or terminate, and provide justification, allowing the DBE five (5) days to respond to CONSULTANT of the reasons, if any, why it objects to the proposed termination of its contract and why AUTHORITY should not approve CONSULTANT's request. The following documentation will be required by ECAT when submitting the DBE Commitment Change Request.

1. One or more of the good cause justifications listed above.
2. Notices from CONSULTANT to the DBE regarding the request.
3. Responses from the DBEs to CONSULTANT regarding the request.
4. Any documentation necessary to validate the good cause justification.
5. Proof of DBE certification of proposed firm (if requesting to substitute).
6. Written confirmation of work and amount signed by proposed firm (if requesting to substitute).

In the event of an approved DBE substitution, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by CONSULTANT within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days if necessary, at the request of the CONSULTANT. The substitute DBE must be certified as a DBE within the appropriate NAICS categories at the time of request for substitution.

CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY in writing. This includes partial terminations.

Should CONSULTANT elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, AUTHORITY will review the documentation and provide a determination through ECAT to CONSULTANT stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed by AUTHORITY.

E. On-Going Good Faith Efforts Post-Award

During the term of the Agreement, CONSULTANT shall continue to make a Good Faith Effort (GFE) to ensure that DBEs have an opportunity to successfully perform in the Agreement, and that the CONSULTANT meets the DBE contract goal. These efforts shall include, but shall not be limited to, the following:

- a. Negotiating in good faith to attempt to finalize and execute a subconsultant agreement with the DBEs committed to;
- b. Continuing to provide assistance to DBE firms in obtaining bonding, lines of credit, etc.
- c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting AUTHORITY approval to substitute the DBE.
- d. Paying all firms (DBEs and non-DBEs) in a timely manner, as listed in the Agreement specifications;

- e. Alerting AUTHORITY in a timely manner of any problems anticipated in attaining the DBE participation committed to in the proposal;
- f. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of AUTHORITY.

Should CONSULTANT's DBE commitment fall below the DBE contract goal, submittal of good faith effort documentation will be required on a monthly basis until the goal has been met through executed DBE contract agreements. Documentation should include but is not limited to:

- a. Conducting market research to identify and solicit DBE firms that have the capability to perform the work on the Agreement. All reasonable and available means should be utilized. . This may include attendance at matchmaking meetings and events, advertising, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired and which are located in the area or surrounding areas of the project.
- b. CONSULTANT should solicit this interest as early in the process as practicable to allow the DBEs to respond to the solicitation and submit a timely proposal. CONSULTANT should determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.
- c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Agreement work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when CONSULTANT might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance.
- d. Effectively using the services of available minority/women community organizations; minority/women consultant groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

F. Final Report-Utilization of Disadvantaged Business Enterprises

Upon completion of the project, CONSULTANT must electronically designate their last Monthly DBE Attainment and Subconsultant Prompt Payment Verification Report as final and submit to the Authority utilizing ECAT within thirty (30) days from the date of project completion. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

G. Disadvantaged Business Enterprises Certification Status Change

If a DBE subconsultant is decertified during the life of the project, the decertified subconsultant must notify the CONSULTANT in writing with the date of decertification and last date of work on the project while still certified. Within ten (10) days of receipt of decertification documentation, CONSULTANT must electronically furnish the written documentation to AUTHORITY via ECAT. Upon completion of the project, "Disadvantaged Business Enterprises Certification Status Change" must be signed and certified correct by the CONSULTANT indicating each DBE's existing certification status utilizing ECAT.

If there are no changes, CONSULTANT indicates "No Changes." The signed and certified form must be furnished to AUTHORITY within thirty (30) days from the date of project completion.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

AUTHORITY requires CONSULTANT to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by AUTHORITY, unless otherwise provided by applicable record retention requirements for CONSULTANT'S agreement, whichever is longer. These records will be made available for inspection upon request in accordance with Article 21 entitled "Access to Records and Reports", of this Agreement. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

AUTHORITY reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by posting CONSULTANT payment data to a website, database, or other place accessible to subconsultants to assist them in determining when they should expect to receive payment.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of proposal submission:

1. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be certified through the California Unified Certification Program ("CUCP") at the time of proposal submission. A listing of DBEs certified by the CUCP is available the link to the CUCP web site, which can be accessed at:
<https://ucp.dot.ca.gov/licenseForm.htm>
2. A DBE may participate as a prime CONSULTANT, subconsultant, joint venture partner, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own work forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.

4. The use of joint-checks for DBE firms must be approved by AUTHORITY prior to execution, and a joint-check agreement must accompany the request to AUTHORITY.
5. A DBE must perform a commercially useful function in accordance with 49 CFR Part 26.55 (i.e. must be responsible for the execution of a distinct element of the work, and must carry out its responsibility by actually performing, managing, and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

- A. When a DBE is proposed to participate in the Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If CONSULTANT is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.
 1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the subconsultant is a certified DBE and performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONSULTANT's DBE attainment.
 2. CONSULTANT is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
 - a) Sixty percent (60%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a regular dealer; or
 - b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.
 3. The following types of fees or commissions paid to DBE subconsultants, Brokers, and Packagers may be credited toward CONSULTANT'S DBE attainment, provided that the fee or commission is reasonable and not excessive, as compared with fees or commissions customarily allowed for similar work including:
 - a) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Agreement;
 - b) Fees charged for delivery of material and supplies (excluding the cost of

- materials or supplies themselves), when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
- c) Fees and commissions charged for providing any insurance specifically required in the performance of the Agreement.
4. If the CONSULTANT listed a non-certified, 1st tier subconsultant to perform work on this Agreement, and the non-certified subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the Agreement. If a DBE CONSULTANT performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
5. CONSULTANT is advised not to report the participation of DBE(s) toward the CONSULTANT'S DBE attainment until the amount being claimed has been paid to the DBE.

VII. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in the AUTHORITY's U.S. DOT-assisted contracts. CONSULTANT is cautioned against knowingly and willfully using "fronts." The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; by email at hotline@oig.dot.gov, or by mail to the following: DOT Inspector General, 1200 New Jersey Ave SE, West Bldg 7th Floor, Washington, DC 20590.

VIII. Dispute Resolution

All contracts in excess of five-hundred thousand dollars (\$500,000) shall contain provisions or conditions which will allow for dispute resolution remedies in instances where CONSULTANTs violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

CONSULTANT shall incorporate this Section into each subcontract related to work arising under this Agreement and shall not incorporate by reference.

CONSULTANT and subconsultant agree to notify AUTHORITY within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

CONSULTANT and subconsultant further agree to proceed through informal meetings,

mediation, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

I. INFORMAL MEETINGS:

AUTHORITY is available to assist CONSULTANT with coordination of informal meeting requests to assist in the resolution of disputes between CONSULTANT and subconsultant. AUTHORITY's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from CONSULTANT and subconsultant for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

II. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. AUTHORITY's DBELO and her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

Performance During Dispute: Unless otherwise directed by AUTHORITY, CONSULTANT and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

Flow Down Requirements: The dispute resolution provisions flow down to all tiers.

These provisions shall not apply to disputes between CONSULTANT and AUTHORITY. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

IX. Administrative Remedies and Enforcement

CONSULTANT must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs," and ensure that all subconsultant, regardless of tier, are also fully compliant. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as AUTHORITY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or

4. Disqualifying CONSULTANT from future proposing as non-responsible.

In instances of identified non-compliance, a Cure Notice will be issued to CONSULTANT identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

CONSULTANT will be given ten (10) working days from the date of the Cure Notice to remedy or to: (1) File a written appeal accompanied with supporting documentation; and/or (2) Request a hearing with AUTHORITY to reconsider AUTHORITY's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of CONSULTANT'S right to appeal. If CONSULTANT files an appeal, AUTHORITY, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If after review of CONSULTANT'S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONSULTANT, the written determination must state the specific remedy(ies) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance, AUTHORITY will release all withholdings.

In addition to administrative remedies defined in this section, AUTHORITY is not precluded from invoking other contractual and/or legal remedies available under federal, state or local laws.

EXHIBIT D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

The attached Campaign Contribution Disclosure Form must be completed by applicants for, or persons who are the subject of, any proceeding involving a license, permit, or other entitlement for use pending before the Board of Directors of the OCTA or any of its affiliated agencies. (Please see next page for definitions of these terms.)

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are an applicant for, or the subject of, any proceeding involving a license, permit, or other entitlement for use, you are prohibited from making a campaign contribution of more than \$250 to any board member or his or her alternate. This prohibition begins on the date your application is filed or the proceeding is otherwise initiated, and the prohibition ends three months after a final decision is rendered by the Board of Directors. In addition, no board member or alternate may solicit or accept a campaign contribution of more than \$250 from you during this period.
- B. These prohibitions also apply to your agents, and, if you are a closely held corporation, to your majority shareholder as well. These prohibitions also apply to your subcontractor(s), joint venturer(s), and partner(s) in this proceeding. Also included are parent companies and subsidiary companies directed and controlled by you, and political action committees directed and controlled by you.
- C. You must file the attached disclosure form and disclose whether you or your agent(s) have in the aggregate contributed more than \$250 to any board member or his or her alternate during the 12-month period preceding the filing of the application or the initiation of the proceeding.
- D. If you or your agent have in the aggregate contributed more than \$250 to any individual board member or his/or her alternate during the 12 months preceding the decision on the application or proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the board member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Campaign Contribution Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

1. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts), and all franchises.
2. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit or other entitlement for use. If an individual acting as an agent is also acting in his or her capacity as an employee or member of a law, architectural, engineering, consulting firm, or similar business entity, both the business entity and the individual are "agents."
3. To determine whether a campaign contribution of more than \$250 has been made by you, campaign contributions made by you within the preceding 12 months must be aggregated with those made by your agent within the preceding 12 months or the period of the agency, whichever is shorter. Contributions made by your majority shareholder (if a closely held corporation), your subcontractor(s), your joint venturer(s), and your partner(s) in this proceeding must also be included as part of the aggregation. Campaign contributions made to different directors or their alternates are not aggregated.
4. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and California Code of Regulations, Title 2 Sections 18438-18438.8.

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

Was a campaign contribution made to any OCTA Board Member within the preceding 12 months, regardless of dollar amount of the contribution by either the proposing firm, proposed subconsultants and/or agent/lobbyist? Yes _____ No _____

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- | | | |
|-------------------------------------------------------------------------------------------|-----------|----------|
| <input type="radio"/> The Prime Contractor | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes _____ | No _____ |

Note: Under the State of California Government Code section 84308 and California Code of Regulations, Title 2, Section 18438, campaign contributions made by the Prime Contractor and the Prime Contractor's agent/lobbyist who is representing the Prime Contractor in this RFP must be aggregated together to determine the total campaign contribution made by the Prime Contractor.

Identify the Board Member(s) to whom you, your subconsultants, and/or agent/lobbyist made campaign contributions, the name of the contributor, the dates of contribution(s) in the preceding 12 months and dollar amount of the contribution. Each date must include the exact month, day, and year of the contribution.

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Mark A. Murphy, Chairman

Gene Hernandez, Vice Chairman

Lisa A. Bartlett, Director

Doug Chaffee, Director

Barbara Delgleize, Director

Andrew Do, Director

Katrina Foley, Director

Brian Goodell, Director

Patrick Harper, Director

Michael Hennessey, Director

Steve Jones, Director

Fred Jung, Director

Joseph Muller, Director

Tam Nguyen, Director

Vicente Sarmiento, Director

Donald P. Wagner, Director

EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

On the form provided below, Offeror/Bidder shall list the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract.

A separate form must be completed for each contract. Offeror/Bidder shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value. Offeror/Bidder shall also provide a brief summary and the current status of the litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations. If the contract was terminated, list the reason for termination.

Offeror/Bidder shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of the bid. Each form must be signed by an officer of the Offeror/Bidder confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact Name:	Phone:
Project Award Date:	Original Contract Value:
Term of Contract:	
(1) Litigation, claims, settlements, arbitrations, or investigations associated with contract:	
(2) Summary and Status of contract:	
(3) Summary and Status of action identified in (1):	
(4) Reason for termination, if applicable:	

By signing this Form entitled "Status of Past and Present Contracts," I am affirming that all of the information provided is true and accurate.

Name

Signature

Title

Date

**EXHIBIT F: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS AND FORMS**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
REQUIREMENTS**

1.0 DBE Goal

To assist proposers in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs are ready, willing and able to compete for subcontracting opportunities on this project. The DBE Goal for this contract is **nine percent (9%)**.

2.0 DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation ("U.S. DOT"), the Orange County Transportation Authority ("Authority") has adopted a Disadvantaged Business Enterprise ("DBE") Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs." The contract is subject to the following stipulated regulations. Pursuant to the intent of these Regulations, it is the policy of the Authority to fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in Authority's U.S. DOT-assisted contracts and subcontracts. The Authority is firmly committed to its DBE Program objectives, which are designed to:

- 2.1** Ensure non-discrimination in the award and administration of Authority's U.S. DOT-assisted contracts.
- 2.2** Create a level playing field on which DBEs can compete fairly for the Authority's U.S. DOT-assisted contracts.
- 2.3** Ensure that the DBE Program and Overall Goal are narrowly tailored in accordance with applicable law.
- 2.4** Ensure that only firms that meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in the Authority's DBE program.
- 2.5** Help remove barriers which impede the participation of DBEs in the Authority's U.S. DOT-assisted contracts.
- 2.6** Promote the use of DBEs in all types of U.S. DOT-assisted agreements and procurement activities conducted by the Authority.
- 2.7** Provide training and other assistance through our resource partners to address capital, bonding and insurance needs.

- 2.8** Assist in the development of DBE firms that can compete successfully in the marketplace outside the DBE Program; and
- 2.9** Establish and provide opportunities for DBEs by providing flexibility in the implementation of the Authority's DBE Program.

Proposers shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

Race-Neutral/Race-Conscious DBE Program Measures

The Authority will utilize both race-neutral and race-conscious means to meet its overall DBE Program goal.

Race-neutral measures include, but are not limited to, conducting outreach, training, providing other resource assistance and assessing proposal delivery schedules to ensure that DBEs interested in proposing for U.S. DOT-assisted solicitations are provided Additional Authority Race-Neutral measures include ensuring that DBEs and other small business are afforded ample opportunity to participate in the Authority's U.S. DOT-assisted solicitations by unbundling large contracts to make them more accessible to small businesses and requiring or encouraging prime consultants to subcontract portions of work that they might, otherwise, perform with their own work forces. Race-neutral participation also includes any time a DBE obtains a Prime Contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

In conjunction with the race-neutral measures listed above, the Authority will implement race-conscious measures through the use of contract goals and good faith efforts. When a contract-specific goal is assigned to a project, proposers must demonstrate responsiveness by committing to meet the DBE goal or documenting a bona fide good faith effort to do so, as a condition of award. Contract-specific goals are specifically targeted at DBEs certified through the California Unified Certification Program ("CUCP").

3.0 **Definitions**

The following definitions apply to the terms as used in these provisions:

- 3.1 ***"Disadvantaged Business Enterprise (DBE)"*** means a for-profit small business concern: (a) which is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 3.2 ***"Small Business Concern"*** means a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- 3.3 ***"Socially and Economically Disadvantaged Individuals"*** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
- 3.3.1 Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- 3.3.2 Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- 3.3.2.1 "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- 3.3.2.2 "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- 3.3.2.3 "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

- 3.3.2.4 "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - 3.3.2.5 "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - 3.3.2.6 Women; and
 - 3.3.2.7 Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- 3.3.3 Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
- 3.4 **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals;" and (b) whose management and daily business operations are controlled by one or more such individuals.
- 3.5 **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
- 3.6 **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- 3.7 **"Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE, and that attempts to participate in a U.S. DOT-assisted

program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty. The Authority may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31. The Authority may refer cases of identified fraud to the Department of Justice, for prosecution under 18 U.S.C. 1001, or any other applicable provisions of law. Any person who makes a false or fraudulent statement in connection with participation of a DBE in any U.S. DOT-assisted program or otherwise violates applicable Federal statutes.

- 3.8** ***"Other Socially and Economically Disadvantaged Individuals"*** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.

3.8.1 Social Disadvantage

- 3.8.1.1 The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
- 3.8.1.2 The individual must demonstrate that he/she has personally suffered social disadvantage.
- 3.8.1.3 The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
- 3.8.1.4 The individual's social disadvantage must be chronic, longstanding and substantial; not fleeting or insignificant.
- 3.8.1.5 The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
- 3.8.1.6 A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

3.8.2 Economic Disadvantage

- 3.8.2.1 The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.
- 3.8.2.2 The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

- availability of financing
- bonding capability
- availability of outside equity capital
- available markets

With respect to the individual and the business concern:

- personal and business assets
- personal and business net worth
- personal and business income and profits

4.0 DBE Proposal Submission Requirements

Proposer must complete and submit the following DBE Exhibits (forms) with their proposal:

- DBE Participation Commitment Form

Proposer must complete and submit the following DBE Exhibits (forms) to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date:

- Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the DBE Participation Commitment Form)

- DBE Information - Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the DBE Participation Commitment Form)
- Bidders List

Required Forms	Submission
DBE Participation Commitment Form	Required at time of proposal
Letter of Acknowledgement and Commitment (required from each DBE firm listed on the DBE Participation Commitment Form)	Required no later than 4:00 p.m. on the 2 nd business day after the proposal due date
DBE Information – Good Faith Efforts	Required no later than 4:00 p.m. on the 2 nd business day after the proposal due date
Bidders List	Required no later than 4:00 p.m. on the 2 nd business day after the proposal due date

4.1 “DBE Participation Commitment Form” (Exhibit F-1) required at time of Proposal. The Proposer is to provide the following information for each DBE that will participate in the contract:

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 Valid DBE Certification ID to confirm eligibility status through the CUCP, in conformance with 49 CFR Part 26;
- 4.1.3 A description of the work that each DBE will perform or provide;
- 4.1.4 The dollar amount of the work to be performed or provided by the DBE;
- 4.1.5 The dollar amount of the work eligible to be credited for each DBE towards the DBE goal (should not include lower-tier participation and should account for the type of work to be performed);
- 4.1.6 The proposer shall also submit, for each DBE to perform under this Agreement, a **Letter of Acknowledgement and Commitment (Exhibit F-2)** signed and dated from each DBE listed, acknowledging that the DBE is participating in the contract for the specified dollar

value and scope of work listed on the DBE Participation Commitment Form. The dollar amount and scope(s) in the Letter of Acknowledgement and Commitment, and the amount and scope reflected on the DBE Participation Commitment Form must match identically.

Letter(s) of Acknowledgement and Commitment must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.

4.2 Letter of Acknowledgement and Commitment (Exhibit F-2)

The proposer shall also submit, for each DBE to perform under this Agreement, a written confirmation signed and dated from each DBE listed, acknowledging that the DBE is participating in the contract for the specified dollar value and scope of work listed on the DBE Participation Commitment Form. A signed quote or proposal from the DBE firm can be used in lieu of the written confirmation; however, the dollar amount and scope(s) in the quote/proposal, and the amount and scope reflected on the DBE Participation Commitment Form must match identically.

4.3 “DBE Information - Good Faith Efforts” (Exhibit F-3)

To be a responsible and responsive proposer, the proposer must make good faith efforts to meet the goal. The proposer can meet this requirement in two ways. (i) the proposer can meet the goal by documenting commitments for participation by DBE firms sufficient for this purpose; or (ii) the proposer can demonstrate that he/she took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

If the proposer did not meet or obtain enough DBE participation to meet the DBE goal, the proposer must complete and submit the “DBE Information – Good Faith Efforts,” form demonstrating that the proposer made adequate good faith efforts to meet the goal.

If the proposer has met the DBE goal based on the participation of DBEs listed on the proposer’s “DBE Participation Commitment Form,” it is at the proposer’s discretion (i.e. this is not mandatory) to submit “DBE Information – Good Faith Efforts,” form. However, the submission of good faith efforts documentation can protect the proposer’s eligibility for award of the contract if the Authority determines that the proposer failed to meet the goal for various reasons (e.g. a DBE firm was not certified at proposal submission

or the proposer made a mathematical error). Submittal of only the “DBE Information – Good Faith Efforts,” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made; therefore, the proposer is encouraged to attach additional information and supporting documents as necessary.

Good Faith Efforts documentation must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.

For further guidance, refer to instructions on Exhibit E-2 “DBE Information – Good Faith Efforts,” form and the United States Department of Transportation’s (“U.S. DOT”) DBE Program, Appendix A of Title 49 CFR Part 26 - “Guidance Concerning Good Faith Efforts,” and the DBE Section of the Authority’s Pre-Proposal Power Point.

4.4 “Bidders List” (Exhibit F-4)

The Authority is required by Regulations to create and maintain a “Bidders List,” of all firms proposing or quoting on the Authority’s U.S. DOT-assisted contracts for use in calculating the Authority’s DBE goal(s). Proposers are required to complete and submit the requested information listed on the “Bidders List” form, for all firms (DBE[s] and non-DBE[s]) who submitted a bid, proposal or quote, including firms who were contracted by the prime proposer.

The “Bidders List” must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.



DBE PARTICIPATION COMMITMENT FORM

**THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE PROPOSAL AS A
CONDITION OF DBE RESPONSIVENESS**

NOTE: Refer to instructions on the reverse side of this form.

Proposer to Complete this Section

1. RFP No.: _____

2. Project Name/Description: _____

3. Prime Proposer Name: _____

4. Contract DBE Goal %: _____

5. Proposer's Total Bid Price _____
(If applicable)

Required DBE Commitment Information

6. DBE Firm (Name and Address)	7. DBE Certification Number	8. Description of Scope of Services/Work	9. Dollar Value (\$) or Percent (%) of Participation	10. Dollar Value (\$) or Percent (%) of Eligible DBE Participation/Commitment

Note: As a condition of responsiveness, the proposer is required to submit with the Proposal a DBE Letter of Acknowledgement and Commitment signed and dated from each DBE listed in Column 6 acknowledging that the DBE is participating in the contract for the specified dollar value (\$) or percent (%) and scope of work.

The dollar and/or percentage amount and scope committed in the DBE Letter of Acknowledgement and Commitment and the dollar and/or percentage amount and scope shown on this form MUST match identically.

11. Total Dollar Value (\$) or Percent (%) of Eligible DBE Participation:

\$ _____

12. Eligible DBE Participation Represented as a Percentage (%) of Proposer's Total Proposal Price

_____ %

Proposer Assurance: The proposer certifies that information on this form is complete and accurate, that it has verified the listed DBE(s) certification status and is only crediting eligible DBE participation towards meeting the contract DBE goal.

13. Preparer's Name (Print) _____

14. Preparer's Signature _____

15. Preparer's Title _____

16. Date _____

() _____
17. Telephone No.

18. Email Address _____

INSTRUCTIONS - DBE Participation Commitment Form

Proposer is required to ensure all information is complete and accurate:

1. **RFP No.** - Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Prime Proposer Name** - Enter the proposer's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Proposer's Total Proposal Price** - Enter the proposer's total proposal price.
6. **DBE Firm** - Enter name and address of the proposed DBE firm. Identify all DBE firms being claimed for credit, regardless of tier.
7. **DBE Certification Number** - Enter the DBE's certification identification number. All DBEs must have a valid DBE certification at time of proposal due date.
8. **Description of Scope of Services/Work** - Enter the scope of services/work for each DBE firm listed to participate on this contract.
9. **Dollar Value (\$) or Percent (%) of Participation** - Enter the total dollar value or percent of participation for each listed DBE firm.
10. **Dollar Value (\$) or Percent (%) of Eligible DBE Participation/Commitment** - Enter the dollar value or percent of participation eligible to count towards meeting the contract DBE goal. This value should exclude work performed by lower tier subcontractors and account for the DBE's capacity based on their certification type in conformance with the DBE crediting provisions set forth in Title 49 CFR Part 26.55.
11. **Total Dollar Value (\$) of Eligible DBE Participation** - Enter the sum of all eligible participation listed in column 10.
12. **Eligible DBE Participation Represented as a Percentage (%) of Proposer's Total Price** - Enter the corresponding percentage of the total eligible DBE participation that the proposer is counting towards the proposer's DBE goal commitment (Formula: Item (11) Total Dollar Value (\$) of Eligible DBE Participation / Item (5) Proposer's Total Price = Proposer's DBE Goal Commitment Percent (%). If percent (%) is used in lieu of dollar value (\$) for Item (11), then Item (12) should equal percent listed in Item 11).
13. **Preparer's Name (Print)** - Clearly enter the name of the authorized person preparing the form on behalf of the proposer.
14. **Preparer's Signature** - Authorized person's signature.
15. **Preparer's Title** - Enter the position/title of the authorized person signing the form on behalf of the proposer.
16. **Date** - Enter the date the form is signed.
17. **Telephone No.** - Enter the area code and telephone number of the authorized person signing the form on behalf of the proposer.
18. **Email Address** - Enter the email address of the authorized person signing the form on behalf of the proposer.

NOTE: A firm is only eligible to count towards DBE participation in the NAICS codes contained within its California Unified Certification Program (CUCP) DBE Profile. Proposers are to verify that listed subconsultants contain DBE certification in the NAICS codes relevant to the scope they are being listed to perform.

DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT

1. RFP NO.: _____

2. Project Name/Description: _____

3. Proposer: _____

4. DBE Commitment Information

(A) Description of work to be performed by DBE firm (include bid item number on the DBE Participation Commitment Form as applicable):

(B) Dollar value of this work \$ _____

5. DBE ACKNOWLEDGMENT*

I acknowledge that my firm has been listed by the Proposer named above, and is committed, to perform the scope and portion of work (A and B) stated above.

DBE Firm's Name: _____

Name: _____

Signature: _____

Title: _____

Telephone: _____

*If the proposer does not receive award of the prime contract, any and all representations in this letter of Acknowledgment and Commitment shall be null and void.

This form may be used to fulfill the DBE Participation Commitment Letter requirement as stated in the RFP instructing that the "the proposer is required to submit with the proposal a DBE Letter of Acknowledgement and Commitment signed and dated from each DBE acknowledging that the DBE is participating in the contract for the specified dollar value (\$) and scope of work.

INSTRUCTIONS - DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT

Proposer is required to ensure all information is complete and accurate:

1. **RFP No.** - Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Proposer's Name** - Enter the proposing firm's name.
- 4A. **Description of work** - Scope of work to be performed that will be credited towards DBE participation. To include bid item number on the DBE Participation Commitment Form as applicable.
- 4B. **Dollar Value** - Enter the total dollar value of participation for the DBE firm.
5. **DBE Acknowledgement** – DBE to provide firm name, authorized person's name, signature, title, and telephone number if they have been notified that they were listed for the scope and value reflected in #4.

NOTE: If the proposer does not receive award of the prime contract, any and all representations in the letter of Acknowledgment and Commitment shall be null and void



DBE INFORMATION - GOOD FAITH EFFORTS

RFP No: _____ Proposal Due Date _____

The Orange County Transportation Authority (Authority) established a Disadvantaged Business Enterprise (DBE) goal of _____% for this contract. The information provided herein shows that a good faith effort was made by _____(Proposer).

Proposer shall submit the following information to document adequate good faith efforts to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority's proposal due date, or as otherwise specified in the solicitation. Although not required, proposer should submit the following information even if the "DBE Participation Commitment Form" indicates that the proposer has met the DBE goal. This will protect the proposer's eligibility for award of the contract if Authority determines that the proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at proposal submission, or the proposer made a mathematical error.

Submittal of only the form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following good faith efforts items (A through H) shall be minimally performed prior to proposal submission. Proposer to complete the following items in sufficient detail to effectively demonstrate that good faith efforts were undertaken to meet the established DBE goal:

- A. Items of Work the Proposer Made Available to DBE Firms; a description of work items and approximate dollar amounts made available to DBE firms by the proposer, value of work items as a percentage of total contract work, breakdown of larger scopes of contract work (including those items normally performed by the proposer with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the proposer's responsibility to demonstrate that sufficient work was made available to facilitate DBE participation as follows (Provide documents that sufficiently evidence the efforts detailed below):

Description of Work Item	Proposer Normally Performs (Y/N)	Unbundled from Larger Scope (Y/N) If Yes, List Scope	Amount (\$)	Percentage of Contract

- B. Solicitation Effort Documentation; the names and dates of written notices sent to certified DBEs soliciting proposals for this project and the dates and methods used to following up initial solicitations to determine with certainty whether the DBEs were interested (attach all copies of solicitation, telephone records, fax confirmations, email communications, etc.), amount of DBEs to respond, documentation to demonstrate the DBE firms were provided information about the contract (location of project, contract number, proposal due date, items of work made available and contact information) in the Request for Proposal from the proposer, the proposer solicited through all reasonable means (e.g. attendance at pre-proposal meetings, advertising and written notices) the interest of all certified DBEs who have the capability to perform the work of the contract, proposer to provide proof of aforementioned items, and DBEs in the market area for the work identified in 'Item A' as follows:

DBE Firm	Contact Name/Title	Method of Solicitation	Date of Initial Solicitation	Date of Follow-Up Solicitation	Response/ Interested in Proposing

(Note: Solicitations should occur at a minimum no later than 14 calendar days prior to the Authority's proposal due date and follow up to the solicitation should allow DBE firms reasonable time to respond). DBE firms solicited must be advised if the original proposal date has been extended.

- C. Rejected DBE Proposal Documentation; the names, addresses, phone numbers, and amount of rejected DBE firms, the reasons for the proposer's rejection of the DBE firms, the firms selected and accepted for that work (attach all copies of quotes from the firms involved inclusive of a detailed cost breakdown if opted to self-perform work) and the price (rates) difference for each DBE if the selected firms is not a DBE, include an explanation of quote(s) rejected.
- D. Publication Efforts Made to Advertise the Projects to Solicit DBE Participation; names and dates of each publication in which a request for DBE participation for this project was placed by the proposer (attach copies of advertisements or proof of publications). Publications should be placed at a minimum 14 calendar days before the Authority's proposal due date. If RFP due date is extended, proposer is to re-advertise new proposal due date.

Publications	Type of Publication (Trade/General/ Minority/Focus)	Dates of Advertisement	Duration of Advertisement	Readvertisement (Proposal-Due Date Extension)

- E. Agencies, Organizations, or Groups Contacted to Provide Assistance in Contracting, Recruiting, and Using DBEs; the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (Attach copies of requests to agencies, responses received and efforts made by the proposer in response).

- F. Efforts to Provide Information About the Plans, Specifications, and Contract Requirements; efforts made to assist interested DBEs in obtaining necessary materials, or related assistance or services, proposer to provide evidence of effort.

- G. Assistance with Lines of Credit, Insurance, and/or other Services; efforts made to assist interested DBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to DBEs, proposer to provide a list of any assistance provided to DBEs:

- H. Additional Data to Support a Demonstration of Good Faith Efforts; in determining whether a proposer made adequate good faith efforts, the Authority will take into account the performance of other proposers in meeting the DBE contract goal. Attach any additional information to support demonstration of good faith in this section:

NOTE: USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS.



Bidders List

The Department of Transportation requires the Authority to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, propose or quote on the Authority's DOT-assisted contracts, in accordance with 49 CFR Part 26.11. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The proposer is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary proposer, and submit this information to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority's proposal due date, or as otherwise specified in the solicitation. The Authority will utilize this information to assist in the Authority's DBE goal-setting process.

Prime Name and Location	Type of Work/Services/Materials Provided:	Agreement Amount	Percentage of Bid Item Sub-consulted	Consultant License No.	DBE (Y/N)	Phone:	Annual Gross Receipts
	NAICS/WCC			DIR Reg Number	DBE Certification ID	E-mail:	
Prime Proposer:							<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Less than \$5 million <input type="checkbox"/> Less than \$10 million <input type="checkbox"/> Less than \$15 million <input type="checkbox"/> More than \$15 million Age of Firm: _____yrs.
Contact Name:							
Address:							

Subconsultant Name and Location	Type of Work/Services/Materials Provided:	Agreement Amount	Percentage of Bid Item Sub-consulted	Consultant License No.	DBE (Y/N)	Phone:	Annual Gross Receipts
	NAICS/WCC			DIR Reg Number	DBE Certification ID	E-mail:	
Firm Name:							<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> Less than \$5 million <input type="checkbox"/> Less than \$10 million <input type="checkbox"/> Less than \$15 million <input type="checkbox"/> More than \$15 million Age of Firm: _____yrs.
Contact Name:							
Address:							

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Subconsultant Name and Location	Type of Work/Services/Materials Provided:	Agreement Amount	Percentage of Bid Item Sub-consulted	Consultant License No.	DBE (Y/N)	Phone:	Annual Gross Receipts
	NAICS/WCC			DIR Reg Number	DBE Certification ID	E-mail:	
Firm Name:							<input type="checkbox"/> Less than \$1 million
Contact Name:							<input type="checkbox"/> Less than \$5 million
Address:							<input type="checkbox"/> Less than \$10 million
							<input type="checkbox"/> Less than \$15 million
							<input type="checkbox"/> More than \$15 million
							Age of Firm: _____yrs.
Firm Name:							<input type="checkbox"/> Less than \$1 million
Contact Name:							<input type="checkbox"/> Less than \$5 million
Address:							<input type="checkbox"/> Less than \$10 million
							<input type="checkbox"/> Less than \$15 million
							<input type="checkbox"/> More than \$15 million
							Age of Firm: _____yrs.
Name:							<input type="checkbox"/> Less than \$1 million
Contact Name:							<input type="checkbox"/> Less than \$5 million
Address:							<input type="checkbox"/> Less than \$10 million
							<input type="checkbox"/> Less than \$15 million
							<input type="checkbox"/> More than \$15 million
							Age of Firm: _____yrs.

NOTE: USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS TO THE BIDDERS LIST REQUIREMENTS.

EXHIBIT G: RESTRICTIONS ON LOBBYING

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

1. Authority, as used in this clause, means the Orange County Transportation Authority, acting on behalf of the Orange County Transit District.
2. Covered Federal action, as used in this clause, means any of the following Federal actions:
 - a. The awarding of any Federal contract.
 - b. The making of any Federal grant.
 - c. The making of any Federal loan.
 - d. The entering into of any cooperative agreement.
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
3. Indian tribe and tribal organization, as used in this clause, have the meaning provided in Section 450b of the Indian self-determination and Education Assistance Act (25 U.S.C. 450) and include Alaskan Natives.
4. Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
5. Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
6. Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States code, including a position under a temporary appointment.
 - b. A member of the uniformed services, as defined in the subsection

101(3), Title 37, United States Code.

- c. A special Government employee, as defined in Section 202, Title 18, United States Code.
 - d. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix section 3.
- 7. Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 8. Reasonable compensation, as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
 - 9. Reasonable payment, as used in this clause means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
 - 10. Recipient, as used in this clause, includes the CONSULTANT and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 11. Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
 - 12. State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State regional or interstate entity having governmental duties and powers.

B. PROHIBITIONS

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires consultant to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - a. Agency and legislative liaison by own employees.
 - (1) The prohibition on the use of appropriated funds, in subparagraph C.1. of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (2) For purposes of paragraph C.3.a.(1) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (3) The following agency and legislative liaison activities are permitted any time where they are not related to a specific solicitation for any covered Federal action:

Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities.

Technical discussions and other activities regarding the application of adaptation of the person's products or services for

an agency's use.

- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

- (5) Only those services expressly authorized by paragraph C.3.a.(1) of this clause are permitted under this clause.

b. Professional and technical services

- (1) The prohibition on the use of appropriated funds, in subparagraph C.1. of this clause, does not apply in the case of:

A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as condition for receiving that Federal action.

Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application or that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include contractors and trade associations.

- (2) For purposes of paragraph C.3.a.(1) of this clause, professional and technical services shall be limited to advise and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.
- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (4) Only those services expressly authorized by paragraph C.3.a.(1) and (2) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

c. Disclosure

- (1) The consultant who requests or receives from an agency a Federal contract shall file with that agency a disclosure form OMB standard form LLL, Disclosure of Lobbying Activities, (Attachment to the bid package) if such person has made or had agreed to made any payment using non appropriated funds (to include profits from any covered Federal action), which

would be prohibited under subparagraph B.1. of this clause, if paid for with appropriated funds.

- (2) The consultant shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph II.A. of this clause. An event that materially affects the accuracy of the information reported includes:

A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- (3) The consultant shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime consultant. The prime consultant shall submit all disclosures to the District at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding consultant.

d. Agreement

The consultant agrees not to make any payment prohibited by this clause.

e. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be

applicable.

- (2) Consultants may rely without liability on the representation made by their subcontractors in the certification and disclosure forms.

f. Cost Allowability:

Nothing in this clause is to be interpreted to make allowable or reasonable any costs, which will otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provisions.

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf (name of bidder/offeror) of
_____ that:
(Firm name)

1. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence making lobbying contracts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the attached Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
3. If bidder/offeror does not have any reportable activities to disclose, they shall check the box entitled "No Reportable Activities" on the attached Standard Form-LLL "Disclosure of Lobbying Activities" and complete Section 16 of the form. The certifying official shall sign and date the form, print his/her name, title and telephone number.
4. The undersigned shall require that the language of this certification be included in all subcontracts, and that all subcontractors shall certify and disclose accordingly.

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

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

Executed this _____ day of _____, 202_____

By _____
(Signature of authorized official)

(Title of authorized official)

☐ **NO REPORTABLE ACTIVITIES** (Bidder/Offeror required to complete Section 16 below.)

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by
OMB
003480045

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material changes For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) SF - LLL - A if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other specify: _____	
12. Forum of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify nature: _____ value: _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s) or Member(s) contracted for Payment indicated in Item, 11: (attach Continuation Sheet(s) SF-LLL-A if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by Code 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.	Signature: _____ Print name: _____ Title: _____ Telephone No: _____ Date: _____	
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address city, state, and zip code of the prime Federal recipient. Include Congressional District.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency, name if known. For example, Department of Transportation, United State Coast Guard.
7. Enter the Federal program name for description of the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/ proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a.). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Office of Management and Budget Paperwork Reduction Project (0348-0446), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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EXHIBIT H: SAFETY SPECIFICATION

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during this work scope.
- D. The Authority Project Manager shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- F. California Code of Regulations (CCR) Title 8 Standards are minimum requirements; each Contractor is encouraged to exceed minimum requirements. When the Contractor's safety requirements exceed statutory standards, the more stringent requirements shall be applied for the safeguard of public and employees.

1.2 REGULATORY

- A. Injury/Illness Prevention Program
The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

B. Substance Abuse Prevention Program

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

C. Heat Illness Prevention Program

Contractor shall comply with CCR Title 8, Section, Section 3395, Heat Illness Prevention. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

D. Hazard Communication Program

Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of SDS for all applicable chemical products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- a. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

E. Storm Water Pollution Prevention Plan

The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements. The program or plan if required by scope shall be provided to the Authority's Project Manager, upon request, within 72 hours.

1.3 INCIDENT NOTIFICATION AND INVESTIGATION

A. The Authority shall be promptly notified of any of the following types of incidents including but not limited to:

1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
3. Incidents impacting the environment, i.e. spills or releases on Authority projects or property.
4. Outside Agency Inspections; agencies such as Cal/OSHA, DTSC, SCAQMD, State Water Resources Control Board, FTA, CPUC, EPA, USACE and similar agencies.

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the public that arise from the performance of Authority contract work. An immediate verbal notice followed by an initial written incident investigation report shall be submitted to the Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days and include the following information. The Current Status of anyone injured, photos of the incident area, detailed description of what happened, Photos of the existing conditions and area of the injury/incident, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of task planning documentation, copy of the Physician's first report of injury, copy of Cal/OSHA 300 log of work related injuries and illnesses, the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.
- D. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using 5 whys and fishbone methods), and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.
 - 1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement. A serious injury also includes a lost workday or reassignment or restricted injury case as determined by the Physician's first report of injury or Cal/OSHA definitions.
 - 2. Serious Incident: includes but not limited to property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, Metrolink, FTA, FRA etc.) notification or representation.
 - 3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

4. Significant Near Miss Incident; includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

1.4 DESIGNATED HEALTH AND SAFETY REPRESENTATIVE

- A. Upon contract award, the contractor within 10 business days shall designate a health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
- B. This person shall be a competent or qualified individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards (Cal/OSHA) and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.

1.5 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 or 3 safety reflective vests, and appropriate footwear.
- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. OCTA Yard Safety Rules

END OF SECTION

EXHIBIT I: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

The following form shall be completed for each technical and/or contractual exception or deviation that is submitted by Offeror for review and consideration by Authority. The exception and/or deviation must be clearly stated along with the rationale for requesting the exception and/or deviation. If no technical or contractual exceptions or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted Authority’s technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit this form or any contractual exceptions and/or deviation after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

Offeror:_____

RFP No.:_____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

- Scope of Work (Technical) _____
- Proposed Agreement (Contractual) _____

Reference Section/Exhibit: _____ Page/Article No. _____

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only: