

**REQUEST FOR PROPOSALS (RFP) 2-2640**

# **405 EXPRESS LANES VIDEO SERVICES**



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

## **Key RFP Dates**

<b>Issue Date:</b>	<b>September 29, 2022</b>
<b>Question Submittal Date:</b>	<b>October 4, 2022</b>
<b>Proposal Submittal Date:</b>	<b>October 17, 2022</b>
<b>Interview Date:</b>	<b>October 27, 2022</b>

**DEPARTMENT OF TRANSPORTATION FUNDED PROJECT  
TRANSPORTATION INFRASTRUCTURE FINANCE AND ADMINISTRATION ACT**

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## **NOTICE OF REQUEST FOR PROPOSALS (RFP)**

**RFP: 2-2640: “405 EXPRESS LANES VIDEO SERVICES”**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

The Orange County Transportation Authority (Authority) invites proposals from qualified contractors to provide 405 Express Lanes video services. The budget for this project is \$120,000 for one (1) year initial term with one, two (2)-year option 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.**

Although the Authority has not established a specific goal for DBE participation in this procurement, all Offerors are encouraged to take all reasonable steps to obtain DBE participation as set forth in Part 26, Title 49 CFR.

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, Senior Contract Administrator**

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, Senior Contract Administrator**

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

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 2-2640, firms and subcontractors 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	Video Production

The Authority has established October 27, 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. 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.

**B. 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.

**C. 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  
Email: [ycrowder@octa.net](mailto: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 contractor 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.

**D. CLARIFICATIONS**

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section D.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.

**1. Examination of Documents**

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section D.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 must be put in writing and received via e-mail at [ycrowder@octa.net](mailto:ycrowder@octa.net) no later than 4:30 p.m., on October 4, 2022.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions RFP 2-2640" 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 October 6, 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 subcontractors 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	Video Production

Inquiries received after 4:30 p.m. on October 4, 2022, will not be responded to.

**E. SUBMISSION OF PROPOSALS**

**1. Date and Time**

Proposals must be received in the Authority's office at or before 2:00 p.m. on October 17, 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, Senior Contract Administrator**

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, Senior 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 E.2. The outer envelope must show the Offeror's name and address and clearly marked as follows:

"RFP 2-2640: 405 Express Lanes Video Services"

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

**F. 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.

**G. 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.

**H. 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.

**I. 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.

**J. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time and expense contract with fully-burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A. The Agreement will have a one (1)-year initial term with one, two (2)-year option term.

**K. 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.

**L. 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.

**M. 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.

**N. DISADVANTAGED BUSINESS ENTERPRISE**

The Authority has not established a specific goal for DBE participation in this procurement for the services required in this solicitation. All Offerors are encouraged to take all reasonable steps to obtain DBE participation in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

**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 ½" 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.

**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 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 work 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) Outline sequentially the activities that would be undertaken in completing the work and specify who would perform them.
- (3) Furnish a project schedule for completing the work in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.

- (6) 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. Offeror shall provide three (3) samples of video/footage shot, either on a USB drive or through a web link

**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 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. 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.

### **2. 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 Race-Neutral Participation Commitment Form (Exhibit E-1)
- Letter of Acknowledgement and Commitment (Exhibit E-2)
- Bidders List (Exhibit E-3)

**3. 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.

**4. 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.

**5. Safety Specifications**

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

**6. 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 20%**  
 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; appropriateness of resource allocation among the work; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
- 4. Cost and Price 25%**  
 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 October 27, 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 management, 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 for final action.

**C. AWARD**

The Authority will evaluate the proposals received and will submit, the proposal considered to be the most competitive to Authority's management, for consideration and selection. 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.

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**

### **405 EXPRESS LANES VIDEO SERVICES**

#### **INTRODUCTION**

The Orange County Transportation Authority (OCTA) wishes to contract with a full-service video production firm (Contractor) for the 405 Express Lanes marketing needs. Contractor shall have experience producing in areas including but not limited to:

- Public service announcements
- Branding videos
- Documentary or short-story segments
- Narrative stories
- Online videos
- Transportation-related videos
- Preferred experience producing videos for toll roads

Contractor shall be capable of delivering a wide range of video services. This shall require proficiency in areas such as video production, editorial, sound design, color correction, 2D and 3D animation and visual effects. Contractor shall be able professionally pre-produce, produce, edit, finish and distribute using the following capabilities but not limited to:

- Concept development
- Scripting
- Storyboarding
- Pre-production; from storyboards to location scouting
- Producing
- Directing
- Color-match footage
- Color-correcting suites
- Recording studio
- Sound effects
- Motion graphics and animation, especially 3Ds MAX and Adobe After Effects
- Digital environments
- Closed captioning and subtitling
- Mastering for broadcast and online

#### **Non-Technical Skills:**

- Ability to effectively communicate technical ideas to a non-technical audience
- Ability to take abstract ideas from staff and complete them in a professional and timely manner
- Ability to work under strict deadlines and budget constraints

## **BACKGROUND**

OCTA in cooperation with The California Department of Transportation (Caltrans) is widening the San Diego Freeway (I-405) between State Route 73 (SR-73) and Interstate 605 (I-605). The project will improve the 16 miles of I-405 from the SR-73 freeway in Costa Mesa to the I-605 near the Los Angeles County line. It will add a general purpose (regular) lane in each direction from Euclid to I-605, plus a new express lane from the SR-73 to the SR-22. The new express lane and the existing carpool lanes will become the 405 Express Lanes. The 405 Express Lanes will be two lanes in each direction from SR-73 to I-605.

Because of the high demand for the I-405 and the need to stay within the existing right of way, the project cannot provide enough additional lanes to eliminate congestion. The 405 Express Lanes, however, will provide a fast, stress-free travel option. Because the amount of traffic in the 405 Express lanes will be optimized by raising and lowering tolls in response to traffic demand, the 405 Express Lanes will be more predictable and move more vehicles per lane during peak periods than the regular, general-purpose lanes. Solo drivers in the 405 Express Lanes will pay the full toll and carpools are anticipated to be offered discounts or free travel. The toll policy has not been finalized yet but it will be designed to provide customers with a safe, reliable, congestion-free commute. The 405 Express lanes will offer people a choice to travel faster when they absolutely need to.

In 2040, it's expected to take 29 minutes to travel during rush hour from SR-73 to I-605 in the general-purpose lanes after improvements to the I-405 are complete. That commute can be reduced to 13 minutes if a driver chooses to take the 405 Express Lanes.

To communicate about the project with various audiences, OCTA creates and implements innovative communications programs that help educate the public on transportation issues that affects their lives. Video is one of the primary communications tactics that OCTA uses for sharing transportation information. Video speaks to a wide range of topics ranging from transportation planning to construction impacts and community benefits.

### **Audiences**

- General public
- Customers and prospective customers
- County and city officials
- Local Businesses
- OCTA employees
- OCTA Board of Directors

## **SITUATION ANALYSIS**

The steady increase in online video viewership, along with the decreased costs associated with producing videos and overall changes in consumer expectations, catalyzed the shift toward a greater emphasis on video for providing effective



communications while reducing costs. Video has become essential in enhancing public awareness, perception, and reach for communications for transportation projects.

## **COMMUNICATIONS APPROACH**

OCTA wishes to collaborate with a full-service video production Contractor that offers pre-production, production and post-production capabilities to create an effective 405 Express Lanes program video that achieve communications goals. Contractor shall support OCTA video production needs in order to generate a cost-efficient and highly effective video.

## **SCOPE OF SERVICES**

To support the opening of the 405 Express Lanes, a full-scale branding awareness and marketing campaign shall be conducted to introduce the benefits of using the new service. Tactics shall include videos on barding, how to use the service, and other videos as needed.

**405 Express Lanes Branding Video** – This effort includes developing an informative and entertaining “branding video” that introduces the benefits of using the new service, which could include any of the following:

- General service overview
- What are express lanes? (Why they work, how they function, what are the advantages?)
- Benefits of express lanes
- Interchange improvements

**405 Express Lanes How To Video** – This effort includes developing an informative “how to video” that outlines general information and specific directions on how to use the new service, which could include any of the following:

- Account sign up
- Transponder requirement
- Tolls and discounts
- How to use the Express Lanes
- Violations

A highly-engaging creative concept for the videos shall need to be developed. The videos can be produced in multiple independent chapters, which can be viewed at once or a la cart. An animated and branded bumper may be developed for the opening and closing of each video.

## **Goals**

Contractor shall produce broadcast-quality videos to achieve the following goals during the course of the contract:

- Develop a highly creative, compelling and engaging video concept.

- Complete each state of pre-production, production, post-production and distribution on time and on budget.
- Produce extremely high quality and cost-effective videos that communicates with the right target audience, encourages viewer engagement and attracts a large number of video views.

## **PROJECT MANAGEMENT**

OCTA's Principal Marketing Specialist will be the key contact and project manager and will direct Contractor's work effort. The project manager will form, and/or be part of, an internal project team to assist in providing project direction. All jobs performed by Contractor shall need a cost estimate and the Marketing Specialist, Principal's approval before commencing work. Contractor shall be responsible for responding to OCTA requests for services within 48-hours

Contractor shall appoint a designated project manager to be the primary liaison with OCTA for day-to-day development activities. Contractor's project manager shall manage written communications via e-mail or any other OCTA available online tool. The project manager shall have the authority to make commitments and decisions that are binding to Contractor.

**EXHIBIT B: COST AND PRICE FORM**

**PRICE SUMMARY SHEET**

**REQUEST FOR PROPOSALS (RFP) 2-2640**

Enter below the proposed hourly rate(s) to perform work described in the Scope of Work, Exhibit A. Prices shall be fully-burdened rates to include hourly rate, general and administration, overhead and profit for each job function and provide the cost for the description that your firm's job function best fits.

**Firm Name:** \_\_\_\_\_

**SCHEDULE I  
HOURLY RATE SCHEDULE**

Effective for a one (1) year initial term and one (1), two (2)-year option term.

**Key Personnel**

<b>Job Function</b>	<b>Name</b>	<b>Fully-Burdened Hourly Rates Initial Term Effective - 10/31/23</b>	<b>Fully-Burdened Hourly Rates Option Term 1<sup>st</sup> Yr. 11/1/23 – 10/31/24</b>	<b>Fully-Burdened Hourly Rates Option Term 2<sup>nd</sup> Yr. 11/1/24 – 10/31/25</b>
Pre-Production				
Director				
Pre-Production Support				
Producer				
Production Support				
Video Finishing				

Each proposed hourly rate for the respective Job Function will be weighed according to the percentages specified in the "Evaluation Weight" column in the table below:

<b>Job Function</b>	<b>Evaluation Weights</b>
Pre-Production	17%
Director	13%
Pre-Production Support	21%
Producer	15%
Production Support	21%
Video Finishing	13%

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

**Other Labor Charges:**

Job Function:	Fully-Burdened Hourly Rates Initial Term Effective - 10/31/23	Fully-Burdened Hourly Rates Option Term 11/1/23 – 10/31/24	Fully-Burdened Hourly Rates Initial Term 11/1/24 - 10/31/253

**SCHEDULE II  
OTHER DIRECT COSTS SCHEDULE (ODC)**

Type of ODC	Quantity	Unit Rate	Budget Amount

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.

Supporting documentation must accompany invoice.

Additional sheets may be included.

Please note the following:

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

1. I acknowledge receipt of 2-2640 and Addenda No.(s)\_\_\_\_\_.
2. This offer shall remain firm for \_\_\_\_\_ days from the date of proposal.  
(Minimum of 120)

COMPANY NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

\_\_\_\_\_

TELEPHONE \_\_\_\_\_

FACSIMILE # \_\_\_\_\_

EMAIL 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-2-2640**

**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") and, , , , (hereinafter referred to as "CONTRACTOR").

**WITNESSETH:**

**WHEREAS**, AUTHORITY requires assistance from CONTRACTOR to provide 405 Express Lanes video services; and

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

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

**WHEREAS**, CONTRACTOR wishes to perform these services; and

**NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's performance of any terms or conditions of this Agreement shall not be construed as a waiver or



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relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

<b><u>Names</u></b>	<b><u>Functions</u></b>

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONTRACTOR, 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 CONTRACTOR, 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 CONTRACTOR is not provided with prior notice by the departing employee. AUTHORITY shall respond to CONTRACTOR within seven (7) calendar days following

receipt of these qualifications concerning acceptance of the candidate for replacement.

**ARTICLE 4. TERM OF AGREEMENT**

This Agreement shall commence upon the effective date of this Agreement, and shall continue in full force and effect through October 31, 2023, unless earlier terminated or extended as provided in this Agreement.

A. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement for an additional twenty-four (24) months commencing November 1, 2023, and continuing through October 31, 2025 ("Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A and at the rates set forth in Article 5, Payment."

AUTHORITY's election to extend this Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or CONTRACTOR's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extending from commencement through October 31, 2025, which period encompasses the Initial Term and Option Term.

**ARTICLE 5. PAYMENT**

A. For CONTRACTOR'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 CONTRACTOR on a time-and-expense basis in accordance with the following provisions.

B. CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONTRACTOR. Drive time may not be charged to AUTHORITY. Work completed shall be documented in a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. AUTHORITY shall pay CONTRACTOR 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 CONTRACTOR's overhead costs, general costs, administrative costs and profit. CONTRACTOR shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY

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may decline to make full payment until such time as CONTRACTOR has documented to AUTHORITY's satisfaction, that CONTRACTOR has fully completed all work required. AUTHORITY's payment in full shall constitute AUTHORITY's final acceptance of CONTRACTOR's work.

C. Invoices shall be submitted by CONTRACTOR on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. CONTRACTOR may also submit invoices electronically to AUTHORITY's Accounts Payable Department at [vendorinvoices@octa.net](mailto: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-2-2640;
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 CONTRACTOR or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup 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 CONTRACTOR 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. "CONTRACTOR 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 CONTRACTOR receives from AUTHORITY on account of the work performed by the subconsultant. CONTRACTOR 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." CONTRACTOR 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 CONTRACTOR or subconsultant to a subconsultant, CONTRACTOR or subconsultant may withhold no more than 150 percent of the disputed amount.

C. Any violation of these provisions shall subject the violating CONTRACTOR to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions 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 CONTRACTOR or subconsultant in the event of a dispute involving late payment or nonpayment by CONTRACTOR; 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 CONTRACTOR mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONTRACTOR's profit) shall be \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) which shall include all amounts payable to CONTRACTOR 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:

To CONTRACTOR:

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 CONTRACTOR**

A. CONTRACTOR's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONTRACTOR's personnel performing services under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of AUTHORITY. CONTRACTOR shall pay all wages, salaries and

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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 CONTRACTOR'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, CONTRACTOR shall defend and indemnify AUTHORITY in relation to any allegations made.

**ARTICLE 10. INSURANCE**

A. CONTRACTOR 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. CONTRACTOR shall provide the following insurance coverage:

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

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

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

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

B. Proof of such coverage, in the form of a certificate of insurance and an insurance policy blanket additional insured endorsement, designating the AUTHORITY, its officers, directors and employees as additional insureds on general liability and automobile liability, as required by Agreement. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of the Agreement and prior to commencement of any work. Such insurance shall be

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1 primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.  
2 Furthermore, AUTHORITY reserves the right to request certified copies or review all related insurance  
3 policies, in response to a related loss.

4 C. CONTRACTOR shall include on the face of the certificate of insurance the Agreement  
5 Number C-2-2640 and, the Senior Contract Administrator's Name, Yvette Crowder.

6 D. CONTRACTOR shall also include in each subcontract, the stipulation that subconsultants  
7 shall maintain insurance coverage in the amounts required of CONTRACTOR as provided in the  
8 Agreement. Subconsultants will be required to include AUTHORITY as additional insureds on the  
9 Commercial General Liability, and Auto Liability insurance policies.

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

12 **ARTICLE 11. ORDER OF PRECEDENCE**

13 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:  
14 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of  
15 RFP 2-2640, (3) CONTRACTOR's cost proposal dated \_\_\_\_\_; and (4) all other documents, if any,  
16 cited herein or incorporated by reference.

17 **ARTICLE 12. CHANGES**

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

26 B. CONTRACTOR 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 CONTRACTOR 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 (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMP, shall be the final and conclusive administrative decision.

B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMP. 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 CONTRACTOR written notice thereof. Upon termination, AUTHORITY shall pay CONTRACTOR 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 CONTRACTOR in accordance with the provisions of the FAR referenced above and Article 8, herein. Upon receipt of said notification, CONTRACTOR 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



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1 receipt of such notice, CONTRACTOR shall immediately cease work, unless the notice from  
2 AUTHORITY provides otherwise. Upon receipt of the notice from AUTHORITY, CONTRACTOR shall  
3 submit an invoice for work and/or services performed prior to the date of termination. AUTHORITY shall  
4 pay CONTRACTOR for work and/or services satisfactorily provided up to the date of termination in  
5 compliance with this Agreement. Thereafter, CONTRACTOR shall have no further claims against  
6 AUTHORITY under this Agreement. AUTHORITY shall not be liable for any claim of lost profits or  
7 damages for such termination.

8 **ARTICLE 15. INDEMNIFICATION**

9 A. CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, its  
10 officers, directors, employees and agents (indemnities) from and against any and all claims (including  
11 attorneys' fees and reasonable expenses for litigation or settlement) for any loss or  
12 damages, bodily injuries, including death, damage to or loss of use of property caused by the negligent  
13 acts, omissions or willful misconduct by CONTRACTOR, its officers, directors, employees, agents,  
14 subconsultants or suppliers in connection with or arising out of the performance of this Agreement.

15 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

<u>Subcontractor Name/Addresses</u>	<u>Subcontractor Function</u>

**ARTICLE 17. ACCESS TO RECORDS AND REPORTS**

CONTRACTOR 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 CONTRACTOR's accounting books, records, payroll documents and facilities of the CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR 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**

CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONTRACTOR is unable, or potentially unable to render impartial assistance or advice to the AUTHORITY; CONTRACTOR's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the CONTRACTOR has an unfair competitive advantage. CONTRACTOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONTRACTOR. CONTRACTOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONTRACTOR. 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**

CONTRACTOR 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. CONTRACTOR agrees to include these requirements in all of its subcontracts.

**ARTICLE 20. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

CONTRACTOR 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.

**ARTICLE 21. FEDERAL, STATE AND LOCAL LAWS**

CONTRACTOR 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, CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR 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, CONTRACTOR, for itself, its assignees and successors in interest agree as follows:

A. Compliance with Regulations: CONTRACTOR shall comply with the Regulations relative to

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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: CONTRACTOR, 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 CONTRACTOR 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.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the CONTRACTOR 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 CONTRACTOR of the CONTRACTOR's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

D. Information and Reports: CONTRACTOR 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 CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this information the CONTRACTOR 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 CONTRACTOR'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:

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1. Withholding of payments to the CONTRACTOR under the Agreement until the CONTRACTOR 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 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 CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the CONTRACTOR 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 CONTRACTOR from future proposing as non-responsible.

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I. Incorporation of Provisions: CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONTRACTOR may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

**ARTICLE 24. PROHIBITED INTERESTS**

A. CONTRACTOR 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 25. RACE-NEUTRAL DBE CONTRACT PROVISIONS FOR DOT-ASSISTED CONSULTANT CONTRACTS**

If CONSULTANT committed to utilize DBE(s) in the performance of this DOT-assisted contract, CONSULTANT further agrees to ensure that DBE subcontractors listed on the "Race-Neutral DBE Participation Commitment Form Attachment A-1," perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the AUTHORITY prior to the CONSULTANT effectuating any changes to its race-neutral DBE participation commitment(s). CONSULTANT shall comply with all the requirements set forth in Attachment A titled, "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR FTA ASSISTED CONTRACTS", which is attached to and, by this reference, incorporated in and made a part of this Agreement.

**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 CONTRACTOR'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 CONTRACTOR 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. CONTRACTOR shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONTRACTOR, which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry shall be deemed confidential. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR and AUTHORITY.

**ARTICLE 27. PATENT AND COPYRIGHT INFRINGEMENT**

A. In lieu of any other warranty by AUTHORITY or CONTRACTOR against patent or copyright infringement, statutory or otherwise, it is agreed that CONTRACTOR 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

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upon any presently existing U.S. letters patent or copyright and CONTRACTOR shall pay all costs and damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in writing of the suit or claim and given authority, information and assistance at CONTRACTOR's expense for the defense of same. However, CONTRACTOR 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 CONTRACTOR when such use in combination infringes upon an existing U.S. letters patent or copyright.

B. CONTRACTOR shall have sole control of the defense of any such claim or suit and all negotiations for settlement thereof. CONTRACTOR shall not be obligated to indemnify AUTHORITY under any settlement made without CONTRACTOR'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 CONTRACTOR's expense. If the use or sale of said item is enjoined as a result of such suit or claim, CONTRACTOR, 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 CONTRACTOR'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 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. CONTRACTOR 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



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AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONTRACTOR 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 CONTRACTOR causes AUTHORITY to exercise Article 12, and a price shall be negotiated for all preliminary data.

**ARTICLE 29. COVENANT AGAINST CONTINGENT FEES**

CONTRACTOR 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**

CONTRACTORS 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 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**

CONTRACTOR shall comply with all the requirements set forth in Exhibit \_\_\_, titled "Level 1 SAFETY SPECIFICATIONS." As used therein, "Contractor" shall mean "Consultant," and "Subcontractor" shall mean "Sub-consultant."

**ARTICLE 32. PRIVACY ACT**

CONTRACTOR 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, CONTRACTOR agrees to obtain the express consent of the Federal Government before the CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR 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. CONTRACTOR 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.

**ARTICLE 34. FEDERAL CHANGES**

CONTRACTOR 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. CONTRACTOR's failure to comply shall constitute a material breach of contract.

**ARTICLE 35. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

AUTHORITY and CONTRACTOR acknowledge and agree that, notwithstanding any

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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, CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the underlying Agreement. CONTRACTOR agrees to include these requirements in all of its subcontracts.

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

A. CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR to the extent the Federal Government deems appropriate.

B. CONTRACTOR 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 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 CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

**ARTICLE 37. RECYCLED PRODUCTS**

CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource

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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. CONTRACTOR agrees to include this requirement in all of its subcontracts.

**ARTICLE 38. ENERGY CONSERVATION REQUIREMENTS**

CONTRACTOR 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**

CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR agrees to include this requirement in all of its subcontracts.

**ARTICLE 40. CLEAN WATER REQUIREMENTS**

CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR agrees to include this requirement in all of its subcontracts.

**ARTICLE 41. DEBARMENT AND SUSPENSION**

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

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**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 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.

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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 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

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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. CONTRACTOR 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 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is notified of such by a subcontractor at any tier or by any other source, CONTRACTOR 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, CONTRACTOR shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, CONTRACTOR 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. CONTRACTOR 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 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



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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, CONTRACTOR 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. CONTRACTOR 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**

CONTRACTOR 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, CONTRACTOR shall promptly notify AUTHORITY, FTA, and the U.S. DOT Inspector General of any knowledge of potential fraud, waste, or abuse occurring on the Project. This includes knowledge that any person or entity, including CONTRACTOR, 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

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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 CONTRACTOR. CONTRACTOR 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.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-2-2640 to be executed as of the date of the last signature below.

**CONTRACTOR**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Georgia Martinez  
Department Manager

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

James M. Donich  
General Counsel

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

### I. DBE Participation

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

CONTRACTOR 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). CONTRACTOR's submitted "DBE Participation Commitment Form," executed subcontracts and/or purchase orders, as well as on-going DBE documentation will be utilized to monitor CONTRACTOR's DBE commitment. Unless otherwise directed and/or approved in writing by AUTHORITY prior, CONTRACTOR must not effectuate any changes to its DBE participation commitment.

CONTRACTOR 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 CONTRACTOR'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, CONTRACTOR 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. CONTRACTOR 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.

CONTRACTOR 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 CONTRACTOR.
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)**

CONTRACTOR 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 <sup>th</sup> 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 CONTRACTOR'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.

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

If there is not a DBE goal and no DBE commitment has been made by CONTRACTOR, CONTRACTOR 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 CONTRACTOR from AUTHORITY and the amount(s) paid to lower-tier subconsultants during the Month. CONTRACTOR to submit pertinent payment details for any firm (DBE and Non-DBE) to whom they have reported a payment within the reporting period. CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR'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, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR. 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 CONTRACTOR must be validated by affected firm, prior to the 10<sup>th</sup> 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**

CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR identifies additional DBE subconsultants not previously identified by CONTRACTOR for DBE participation under the Agreement, CONTRACTOR 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 CONTRACTOR'S DBE participation until approved by AUTHORITY.

CONTRACTOR 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**

CONTRACTOR shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the CONTRACTOR obtains AUTHORITY's written consent. CONTRACTOR 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. CONTRACTOR 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.

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR.
3. Listed DBE firm fails or refuses to meet the CONTRACTOR'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, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR of the reasons, if any, why it objects to the proposed termination of its contract and why AUTHORITY should not approve CONTRACTOR'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 CONTRACTOR to the DBE regarding the request.
3. Responses from the DBEs to CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR. The substitute DBE must be certified as a DBE within the appropriate NAICS categories at the time of request for substitution.

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR indicating each DBE's existing certification status utilizing ECAT.

If there are no changes, CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 CONTRACTOR's DBE attainment.
  2. CONTRACTOR 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 CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
5. CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR'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. CONTRACTOR 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](mailto: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 CONTRACTORS violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

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

CONTRACTOR 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.

CONTRACTOR 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 CONTRACTOR with coordination of informal meeting requests to assist in the resolution of disputes between CONTRACTOR and subconsultant. AUTHORITY's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR and AUTHORITY. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

**IX. Administrative Remedies and Enforcement**

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR from future proposing as non-responsible.

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

CONTRACTOR 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 CONTRACTOR'S right to appeal. If CONTRACTOR 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 CONTRACTOR'S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONTRACTOR, 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: STATUS OF PAST AND PRESENT CONTRACTS FORM**

**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.

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

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 E: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**REQUIREMENTS AND FORMS**

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

**1.0 DBE Goal**

Although no DBE Goal has been established for this contract, offerors are encouraged to afford DBEs every opportunity to compete for and participate on this U.S. DOT-assisted contract.
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**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.

Offerors 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 Contractors 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, offerors 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**

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

- DBE Participation Commitment Form

Offeror 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
<b>DBE Participation Commitment Form</b>	Required at time of proposal
<b>Letter of Acknowledgement and Commitment (required from each DBE firm listed on the DBE Participation Commitment Form)</b>	Required no later than 4:00 p.m. on the 2 <sup>nd</sup> business day after the proposal due date
<b>Bidders List</b>	Required no later than 4:00 p.m. on the 2 <sup>nd</sup> business day after the proposal due date

**4.1 “DBE Participation Commitment Form” (Exhibit E-1) required at time of Proposal.** The Offeror 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 offeror shall also submit, for each DBE to perform under this Agreement, a **Letter of Acknowledgement and Commitment (Exhibit E-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 “Bidders List” (Exhibit E-3)**

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). Offerors 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 offeror.

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.

**Offeror to Complete this Section**

1. RFP No.: \_\_\_\_\_
2. Project Name/Description: \_\_\_\_\_
3. Prime Offeror Name: \_\_\_\_\_
4. Contract DBE Goal %: \_\_\_\_\_
5. Offeror'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 offeror 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 Offeror's Total Proposal Price**

\_\_\_\_\_ %

Offeror Assurance: The offeror 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

**Offeror 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 Offeror Name** - Enter the offeror's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Offeror's Total Proposal Price** - Enter the offeror'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 Offeror's Total Price** - Enter the corresponding percentage of the total eligible DBE participation that the offeror is counting towards the offeror's DBE goal commitment (Formula: Item (11) Total Dollar Value (\$) of Eligible DBE Participation / Item (5) Offeror's Total Price = Offeror'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 offeror.
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 offeror.
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 offeror.
18. **Email Address** - Enter the email address of the authorized person signing the form on behalf of the offeror.

**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. Offerors are to verify that listed subcontractors 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**



## 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, proposal 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 offeror is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary offeror, 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	Contractor License No.	DBE (Y/N)	Phone:	Annual Gross Receipts
	NAICS/WCC			DIR Reg Number	DBE Certification ID	E-mail:	
Prime Offeror:							<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:							

SubContractor Name and Location	Type of Work/Services/Materials Provided:	Agreement Amount	Percentage of Bid Item Sub-consulted	Contractor 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
Contact Name:							
Address:							

**RFP 2-2640**  
**EXHIBIT E-3**

							Age of Firm: _____yrs.
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SubContractor Name and Location	Type of Work/Services/Materials Provided:	Agreement Amount	Percentage of Bid Item Sub-consulted	Contractor 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.
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**NOTE:** USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS TO THE BIDDERS LIST REQUIREMENTS.

**EXHIBIT F: 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 CONTRACTOR 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 Contractor 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 Contractor 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 Contractor 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 Contractor 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 Contractor. The prime Contractor 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 Contractor.

d. Agreement

The Contractor 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) Contractors may relay 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

<b>1. Type of Federal Action:</b> <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	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material changes  For Material Change Only: year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____		<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____
<b>6. Federal Department/Agency:</b>		<b>7. Federal Program Name/Description:</b>  CFDA number, if applicable: _____
<b>8. Federal Action Number, if known:</b>		<b>9. Award Amount, if known:</b>  \$ _____
<b>10. a. Name and Address of Lobbying Entity</b> (if individual, last name, first name, MI)		<b>b. Individuals Performing Services (including address if different from No 10a)</b> (last name, first name, MI):
(attach Continuation Sheet(s) SF - LLL - A if necessary)		
<b>11. Amount of Payment (check all that apply):</b>  \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned		<b>13. Type of Payment (check all that apply):</b> <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: _____
<b>12. Forum of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify      nature: _____ value: _____		
<b>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:</b>   (attach Continuation Sheet(s) SF-LLL-A if necessary)		
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>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.</b>		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.
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**DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET**

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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**EXHIBIT G: 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.

**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.

**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.
  - 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 H: 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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

Rationale for Requesting Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Area Below Reserved for Authority Use Only:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_