

**REQUEST FOR PROPOSALS (RFP) 2-2855**

**DRAFT PROGRAM MANAGEMENT  
CONSULTANT SERVICES FOR CAPITAL  
PROGRAMS**



**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>October 24, 2022</b>
<b>Pre-Proposal Conference Date:</b>	<b>November 3, 2022</b>
<b>Question Submittal Date:</b>	<b>November 10, 2022</b>
<b>Proposal Submittal Date:</b>	<b>December 5, 2022</b>
<b>Interview Date:</b>	<b>January 23, 2023</b>

**FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT  
ADMINISTRATION FUNDED PROJECT**

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October 24, 2022

**NOTICE OF REQUEST FOR PROPOSALS**

**(RFP): 2-2855: "PROGRAM MANAGEMENT CONSULTANT SERVICES FOR CAPITAL PROGRAMS"**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

The Orange County Transportation Authority (Authority) invites proposals from qualified firms for Program Management Consultant Services for Capital Program.

**Please note that by submitting a Proposal, Offeror 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 Offerors agree to comply with all economic sanctions imposed by the State or U.S. Government.**

**Neither the consultant that is awarded this contract for program management consultant services, or its subconsultants, may actively oversee their own work as part of existing or future contracts with AUTHORITY's Highway and Rail Programs within the Capital Programs Division. Offerors are encouraged to seek AUTHORITY's evaluation, on a case-by-case basis, as to whether a conflict of interest exists.**

The Authority has set a **17%** Disadvantaged Business Enterprise (DBE) participation goal for this project.

Offerors are advised that by signing their proposal, they are certifying that they and their subconsultants are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

Offerors are advised that the Consultant's cost proposals and supporting documents for the project contract are subject to audit or review by the California Department of Transportation (Caltrans) or the Federal Highway

Administration (FHWA). Consultant's cost proposal is subject to a Financial Document Review (FDR) of the indirect cost rate (ICR) by the Caltrans Independent Office of Audits and Investigations (IOAI). IOAI will review the ICR financial documents to either accept or adjust the ICR prior to contract execution. The cost proposal shall be adjusted by the Consultant and approved by the Authority's Contract Administrator to conform to the IOAI recommendations. The Consultant agrees that the accepted/adjusted ICRs identified in the IOAI review shall be incorporated into Consultant's final cost proposal by this reference. Refusal by the Consultant to incorporate the IOAI or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

In response to Caltrans' audit/review requirements, Offeror and all their subconsultants will be required to submit, after award of contract, Caltrans' form titled "Certification of Indirect Costs and Financial Management System", a copy of which is attached to this RFP as Exhibit H. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

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: Marjorie Morris Threats, Principal Contracts  
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: Marjorie Morris Threats, Principal Contracts  
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.

Firms interested in obtaining a copy of this Request for Proposals (RFP) may do so by downloading the RFP from CAMM NET at <https://cammnet.octa.net>.

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 2-2855, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction Management Services
Professional Consulting	Consultant Services - Transportation Planning Architectural & Engineering Design Consulting Construction Consulting Consultant Services - General Environmental Consulting Traffic Planning Consulting
Professional Services	Architect Services, Professional Engineering - Architectural Engineering - Environmental Engineering - General Engineering - Right of Way Engineering - Structural Engineering - Traffic Engineering Drawings

A pre-proposal conference will be held via teleconference on November 3, 2022, at 9:00 a.m. Prospective Offerors may join or call-in using the following credentials:

- [Click here to join the meeting](#)
- OR Call-in Number: 916-550-9867
- Conference ID: 343774588#

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via

addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established **January 23, 2023**, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et. Seq. It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. Offerors must use the current wage schedules applicable at the time the work is in progress.

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

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

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

**SECTION I: INSTRUCTIONS TO OFFERORS**

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

A pre-proposal conference will be held via teleconference on **November 3, 2022**, at 9:00 a.m.. Prospective Offerors may join or call-in using the following credentials:

- [Click here to join the meeting](#)
- OR Call-in Number: 916-550-9867
- Conference ID: 343774588#

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

**B. EXAMINATION OF PROPOSAL DOCUMENTS**

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

**C. ADDENDA**

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

**D. AUTHORITY CONTACT**

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

Marjorie Morris Threats, Principal Contracts Administrator  
Contracts Administration and Materials Management Department  
600 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584  
Phone: 714.560. 5552, Fax: 714.560.5792  
Email: mthreats@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 shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any Offeror, subcontractor, lobbyist or agent hired by the Offeror that engages in such prohibited communications may result in disqualification of the Offeror at the sole discretion of the Authority.

## **E. CLARIFICATIONS**

### **1. Examination of Documents**

Should an Offeror require clarifications of this RFP, the Offeror shall notify the Authority in writing in accordance with Section 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, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and received via e-mail at [mthreats@octa.net](mailto:mthreats@octa.net) no later than 5:00 p.m., on November 10, 2022.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions RFP 2-2855" 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 November 18, 2022. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via email.

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

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction Management Services
Professional Consulting	Consultant Services - Transportation Planning Architectural & Engineering Design Consulting Construction Consulting Consultant Services - General Environmental Consulting Traffic Planning Consulting
Professional Services	Architect Services, Professional Engineering - Architectural Engineering - Environmental Engineering - General Engineering - Right of Way Engineering - Structural Engineering - Traffic Engineering Drawings

Inquiries received after 5:00 p.m. on November 10, 2022, will not be responded to.

## **F. SUBMISSION OF PROPOSALS**

### **1. Date and Time**

Proposals must be received in the Authority's office at or before 2:00 p.m. on December 5, 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: Marjorie Morris Threats, Principal Contracts 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: Marjorie Morris Threats, Principal Contract  
Administrator**

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

**3. Identification of Proposals**

Offeror shall submit one (1) original hard copy of its proposal in a sealed package, addressed as shown above in F.2. The outer envelope must show the Offeror's name and address and clearly marked as follows:  
(RFP 2-2855 Request for Proposals for Program Management Consultant Services for Capital Programs).

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.

**G. PRE-CONTRACTUAL EXPENSES**

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

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

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

**H. JOINT OFFERS**

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

**I. TAXES**

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

**J. PROTEST PROCEDURES**

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

**K. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be with fully burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A.

**L. CONFLICT OF INTEREST**

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

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

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

**M. PREVAILING WAGES**

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et.seq., and all applicable Federal requirements respecting prevailing wages.

It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. The Offeror to whom a contract for the work is awarded by the Authority shall comply with the provision of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the work is to be performed in accordance with, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code governing employment of apprentices.

Copies of the prevailing rates of per diem wages are on file at the Authority's principal office at 550 S. Main Street, Orange, CA 92868 and are available to any interested party on request.

**N. 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.

**O. DISADVANTAGED BUSINESS ENTERPRISE**

The Authority has established a Fourteen percent (14%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

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

- Consultant Proposal DBE Commitment Form (10-O1)
- DBE Letter of Acknowledgement and Commitment required from each proposed DBE firm listed on the "Consultant Proposal DBE Commitment Form (10-O1))."
- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the "Consultant Proposal DBE Commitment Form (10-O1))."
- Bidders List

**P. PRIME AND LOWER TIER DEBARMENT**

Offerors are advised that by signing their proposal, they are certifying that they and their subconsultants are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency.

**Q. CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM**

Offerors and all their subconsultants will be required to submit, after award of contract, Exhibit entitled " Certification of Indirect Costs and Financial Management System, " a copy of which is attached to this RFP. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

**R. OWNERSHIP OF RECORDS/PUBLIC RECORDS ACT**

All proposals and documents submitted in response to this RFP shall become the property of the Authority and a matter of public record pursuant to the California Public Records Act, Government Code sections 6250 et seq. (the "Act"). Offerors should familiarize themselves with the provisions of the Act requiring disclosure of public information. Offerors are discouraged from marking their proposal documents as "confidential" or "proprietary."

If a Proposal does include "confidential" or "proprietary" markings and the Authority receives a request pursuant to the Act, the Authority will endeavor (but cannot

guarantee) to notify the Offeror of such a request. In order to protect any information submitted within a Proposal, the Offeror must pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information. The Authority generally does not consider pricing information, subcontractor lists, or key personnel, including resumes, as being exempt from disclosure under the Act. In no event shall the Authority or any of its officers, directors, employees, agents, representatives, or consultants be liable to a Offeror for the disclosure of any materials or information submitted in response to the RFP or by failing to notify a Offeror of a request seeking its Proposal. The Authority reserves the right to make an independent decision to disclose records and material.

Notwithstanding the above, all information regarding proposal responses will be held as confidential until such time as the evaluation has been completed; an award has been made by the Board of Directors or Authority Staff, as appropriate; and the contract has been fully negotiated.

#### **S. PROHIBITION**

Neither the consultant that is awarded this contract for program management consultant services, or its subconsultants, may actively oversee their own work as part of existing or future contracts with AUTHORITY's Highway and Rail Programs within the Capital Programs Division. Offerors are encouraged to seek AUTHORITY's evaluation, on a case-by-case basis, as to whether a conflict of interest exists.

**SECTION II: PROPOSAL CONTENT**



## **SECTION II. PROPOSAL CONTENT**

### **A. PROPOSAL FORMAT AND CONTENT**

#### **1. Format**

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

#### **2. Letter of Transmittal**

The Letter of Transmittal shall be addressed to Marjorie Morris Threats, Principal Contracts 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 180 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 in the specified tasks 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) Indicate adequacy of labor resources utilizing a table projecting the resource-allocation to the project by individual task.
- (4) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (5) 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 tasks 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 tasks and specify who would perform them.

- (3) Furnish a project schedule for completing the tasks 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.

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 B), 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 B). 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

Offerors are asked to submit only the technical qualifications as requested in the RFP. **No cost proposal or work hours are to be included in this phase of the RFP process.** Upon completion of the initial evaluations and interviews, if conducted, the highest ranked Offeror will be asked to submit a detailed cost proposal and negotiations will commence based on both the cost and technical proposals.

#### 5. Appendices

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

### B. FORMS

#### 1. Campaign Contribution Disclosure Form

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

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

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

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

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

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not

limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

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

**3. 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. Disadvantaged Business Enterprise Solicitation Provisions – DBE Participation Listing Forms**

Offerors must complete the following forms:

- Consultant Proposal DBE Commitment Form (10-O1)
- DBE Letter of Acknowledgement and Commitment required from each proposed DBE firm listed on the Consultant Proposal DBE Commitment Form.

- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “Consultant Proposal DBE Commitment Form”).
- Bidders List

**7. Certification of Indirect Costs and Financial Management System**

This exhibit entitled “Certification of Indirect Costs and Financial Management System” (RFP Exhibit H) is to be completed by Offeror and all subconsultants after award of contract. As part of this certification, the prime and all subconsultants must show their financial system’s ability to segregate cost elements.

**8. Proposal Exceptions and/or Deviations 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 35%**  
  
 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 40%**  
  
 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 25%**  
  
 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 tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.

#### **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 **January 23, 2023**, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

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

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

**C. AWARD**

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

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

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

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

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

**D. NOTIFICATION OF AWARD AND DEBRIEFING**

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

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish

to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) business days of notification of the contract award.

**EXHIBIT A: SCOPE OF WORK**

## **SCOPE OF WORK**

### **PROGRAM MANAGEMENT CONSULTANT SERVICES FOR CAPITAL PROJECTS**

#### **1.0 BACKGROUND**

The Orange County Transportation Authority (AUTHORITY) is responsible for managing transportation projects in Orange County including projects associated with freeway, highway, grade crossing, rail and transit facilities. The AUTHORITY's management of these projects includes oversight of environmental clearance, engineering, right-of-way (ROW) acquisition, utility relocation, construction and project closeout activities. The projects include those funded by Renewed Measure M (OC Go), the half-cent sales tax program, state, and federal funding sources. The AUTHORITY is obligated to deliver these projects using the funds available and in a timely manner.

The AUTHORITY Board of Directors (BOARD) approved the OC Go Next 10 Delivery Plan (Next 10 Plan) on November 14, 2016, to set priorities and funding commitments over a ten-year period from fiscal year (FY) 2016-17 through FY 2025-26. This comprehensive and balanced plan was developed to ensure that the promises made in the 30-year OC Go Transportation Investment Plan (OC Go Plan) can continue to be delivered in concert with changes in economic conditions and revenue projections. The Next 10 Plan sets a course for accelerated delivery through FY 2029-30, and it also ensures that the entire OC Go Plan of projects and program commitments can be delivered through 2041. On December 13, 2021, the Board approved the 2021 Updated Next 10 Plan.

The AUTHORITY is a member of the Southern California Regional Rail Authority (SCRRA), a joint powers authority with five member agencies representing the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura. SCRRA operates Southern California's 5-county commuter rail system known as Metrolink. Metrolink was formed in 1991 with service beginning on the Orange County Line in 1994 and on the Inland Empire – Orange County Line in 1995. The third line serving Orange County operating via Fullerton is known as the 91/Perris Valley Line with service beginning in 2002, and then extended to Perris Valley in 2016.

The three lines serving Orange County provide a total of 54 weekday trains serving 11 Orange County stations located in Buena Park, Fullerton, Anaheim, Orange, Anaheim Canyon, Santa Ana, Tustin, Irvine, Laguna Niguel/ Mission Viejo, San Juan Capistrano and San Clemente. Total ridership for the three lines serving Orange County is over 40,000 riders per day. OCTA owns 47.2 miles of railroad

right of way in Orange County, known as the Orange/Olive subdivision, acquired from the Atchison, Topeka and Santa Fe Railway (now BNSF) through a Purchase and Sale Agreement and shared use agreements with adjacent southern California transportation agencies. OCTA's right of way extends from the Orange County border at San Diego to ½ mile before the Fullerton Station (Orange subdivision) and through the City of Orange to Placentia (Olive subdivision).

Orange County's Renewed Measure M2 includes Project R, High Frequency Metrolink Service, which is designed to build upon the successes of Metrolink and complement service expansion made possible through Measure M. Project R calls for infrastructure improvements, station improvements/increased parking capacity, and other capital projects needed to accommodate expanded Metrolink service.

## **2.0 GENERAL DESCRIPTION OF SERVICES**

The Program Management Consultant (CONSULTANT) shall assist the AUTHORITY staff by providing technical expertise in managing and overseeing its capital development projects.

### **2.1 Highway Programs Department**

The CONSULTANT shall assist the AUTHORITY's Highway Programs Department (HPD) in planning, monitoring, and controlling the overall capital development program. The CONSULTANT shall also provide the AUTHORITY additional project management staff to assist in managing individual projects. Under this scope of work, CONSULTANT shall assist AUTHORITY staff in environmental, engineering, right-of-way, utility relocation, construction, and project closeout matters.

The CONSULTANT's support shall be provided in the five areas listed below.

- Program Management
- Project Management
- Project Controls
- Right-of-Way Management
- Technical and Administrative Assistance

AUTHORITY will provide overall direction for the capital development program and assign its own staff to perform specific responsibilities. CONSULTANT shall assist AUTHORITY staff by providing specialized expertise as requested.

### **2.2 Regional Rail Department**

CONSULTANT shall assist AUTHORITY's Regional Rail staff by providing specialized expertise as required to effectively implement high frequency Metrolink services and complete all work associated with capital improvements, state of good repair projects, station improvements and parking expansion through construction. Consultant shall provide extensive document control, technical expertise on an as-needed basis, assistance in the oversight of project implementation, administration and schedule, and project controls. Consultant's support shall include, but not be limited to, the following:

- Project Management Assistance for Capital Improvements
- Project Study Reports, Environmental Review/Compliance, Design and Preliminary Engineering for Projects
- Support of Signal, Trackwork, Station Improvements as-needed
- Construction Management for Minor Capital Projects as Directed by the AUTHORITY
- Railroad, Member Agency and Other Consultant Coordination
- Utility Coordination
- City Coordination
- Preparation of Independent Cost Estimates/ Financial Plans
- Document Control
- Project Delivery Plans/ Schedule Monitoring
- Administrative Support and Reporting
- Contract Management and Development of Cooperative Agreements and Memorandum of Understanding (MOUs) with Cities and Review of Railroad Agreements
- Project Controls/Invoice Review
- Technical Assistance as-needed

CONSULTANT shall assist AUTHORITY's project managers and provide specialized technical expertise as-needed. CONSULTANT's area of expertise shall include technical oversight and knowledge of stations and parking expansion, trackwork and signal design, grade crossings and grade separation design and construction oversight, Federal Transit Administration (FTA) compliance, California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) compliance and knowledge of regional rail in Orange County and southern California. AUTHORITY will provide overall management and may contract directly with SCRRA for specialized railroad signal and trackwork.

### **3.0 SPECIFIC SCOPE OF SERVICES**

#### **3.1 Highway Programs Department**

##### **3.1.1 Program Management**

CONSULTANT shall assist AUTHORITY in the planning, management, and control of its capital development program. The areas of assistance may include, but not be limited to:

Program Planning: Assist in establishing the management policies and organizational structures needed to manage the overall program of projects. Assist in defining the scope, schedule, budget, and funding for projects included in the capital development program.

Support Continued Development of Policies and Procedures: Assist in preparing and updating policies, procedures, and reports required to manage the overall program of projects. Update Project Management policies and procedures for managing the overall capital development program and the individual projects.

Project Controls: Assist in planning, scheduling, and controlling project work. Establishing project schedules, budgets, monitor design consultants, contractors, Caltrans, and local agency efforts in support of these goals.

Cost Estimating: Assist in developing and/or reviewing cost estimates for capital projects. Establishing a standard for project cost estimating and maintain a history of recent unit price bids and other capital cost items.

Cost Control: Assist in maintaining current cost and funding budgets for each project and in evaluating and incorporating any cost or scope changes.

Progress Reporting: Assist in reporting progress of individual projects and provide an overall summary of the status of all projects in the program. Preparing monthly progress reports and publishing summaries of the overall status for the AUTHORITY under the program.

Quality Management: Assist in preparing/updating policies and procedures for the overall quality management program for the capital development program. Reviewing and auditing the quality assurance/quality control (QA/QC) efforts of consultants and contractors working for the AUTHORITY under the program.

### **3.1.2 Project Management**

The CONSULTANT shall assist the AUTHORITY in managing individual capital projects. CONSULTANT shall work with the AUTHORITY, other consultants, federal agencies and its agents, Caltrans, County of Orange, utility companies, various cities, and other stakeholders to develop and construct these projects. The areas of assistance may include, but are not limited to:



Project Management: Assist in providing personnel to act as project managers for individual projects. Performing project related functions including planning, monitoring, and overseeing Caltrans, local agency, and design consultant's and contractor's work. Monitoring and facilitating quality and efficient and timely completion of all project work. Coordinating design and construction reviews with other governmental agencies. Establishing project delivery plans and monitoring adherence to them.

Construction Management: Assist in monitoring construction activities being funded by the AUTHORITY and managed by the AUTHORITY, Caltrans, or other governmental agencies. Reviewing construction change orders for schedule and cost impacts. Reviewing and coordinating proposed construction changes that affect project scope, cost, or schedule. Coordinating and providing construction status and project information to the AUTHORITY, other public agencies, and public relations consultants.

Agency Coordination: Assist in coordinating projects with agencies such as Federal Highway Administration (FHWA), Caltrans, County of Orange, cities, utility companies, and other local agencies and stakeholders.

Contract Management: Assist in preparing and managing cooperative agreements and consultant and contractor agreements. Monitoring invoicing and payments required under these agreements.

Funding and Grant Support: Assist in preparing the Federal Authorization to Proceed (E-76) for individual projects being funded with federal funding sources with Caltrans and FHWA. The duties include preparing and completing the federal forms and supporting documentation for submittal to Caltrans. Coordinating with the Caltrans Local Assistance Engineer to process the necessary documents to comply with the federal requirements for approval of the E-76 application. Also, assisting the AUTHORITY with the allocation of State funding sources with the California Transportation Commission and Caltrans.

Requisition and Budget Support: Assist in reviewing and preparing requisitions in AUTHORITY'S systems for contracts, cooperative agreements, and amendments to agreements with consultants, Caltrans, and other local agencies. Coordinating with the Budget Department on budget related issues and Contracts Department on contract related issues. Assist in reviewing and preparing preliminary fiscal year budgets for various projects managed by HPD, including inputting the data in the AUTHORITY's budget system and coordinating with the AUTHORITY's Budget and Finance staff during the budget development process.

### **3.1.3 Technical and Administrative Assistance**

The CONSULTANT shall provide further technical assistance relating to environmental, engineering, right-of-way, utility relocation, and construction issues on the projects. CONSULTANT shall advise the AUTHORITY on technical matters and assist in the resolution of technical issues and problems. The technical assistance shall include reviews and audits of work done by other consultants. CONSULTANT shall also provide administrative assistance related to document management, project invoicing and payments, and other general administrative activities. The areas of assistance may include, but not be limited to:

Engineering: Assist in analyzing issues related to the design of freeways, highways, roadways, maintenance facilities and transit projects. The CONSULTANT shall have knowledge of traffic engineering, route alignment, roadway and structure design, hydraulic analysis, surveying, geotechnical analysis, and related design standards and specifications.

Construction Planning: Assist in the review of construction phasing and staging plans to improve coordination between projects and minimize overall construction durations. Reviewing specific construction performance requirements for lane and ramp closures and for coordination with adjacent projects.

Schedule Delay and Claims Review: Assist in providing technical expertise for evaluating contractor requests for time extensions and/or schedule delay cost impacts. This shall involve the review and analysis of contractor Critical Path Method schedules, determination of possible delay impacts, and a review and analysis of possible entitlement. Providing technical assistance related to the review of construction change orders and potential claims. Services may include change order price analysis, claims evaluation, risk assessment, and productivity analysis.

Document Control: Assist in keeping accurate records of correspondence, reports, and other project related documents. Maintaining a list of drawings and reports for all projects. Administering the flow of documents and communications between the AUTHORITY staff, design consultants, contractors, Caltrans, and local agencies. Maintaining project files for individual projects.

Project Closeout: Assist in the closeout of ongoing projects including support of agency acceptance for all project phases including design, construction, right-of-way, and utilities.

Administration of Contract Payments: Assist in reviewing consultant, contractor, Caltrans, and local agency invoices for compliance with the contract or cooperative

agreement terms. Reviewing invoices for accuracy and consistency with accepted accounting practices.

Land Surveying: Provide land and boundary surveys as needed to supplement and support various freeway, highway, roadway, maintenance facility and transit projects.

Right of Way Engineering: Prepare and review legal descriptions and plat maps as needed to supplement and support various freeway, highway, roadway, maintenance facility and transit projects.

Other Expertise: Assist in providing other as-needed engineering, technical, and administrative expertise for capital development projects.

### **3.2 Regional Rail Department**

#### **3.2.1 Project Management Assistance for Capital Improvements**

CONSULTANT shall assist Authority's Regional Rail staff in implementing projects in support of high frequency Metrolink service including:

- Project management activities, collaborative practices and problem solving.
- Oversee SCRRA and/or other design consultant's and contractor's work.
- Research and summarization as requested.
- On-going project management direction and coordination.
- Write and maintain project management plans.
- Write and maintain construction management plans.
- Write and maintain quality management plans.
- Support in coordination, monitoring and documentation.
- Support in utilities/ coordination with utility companies.
- Assist in coordination of projects with agencies such as FTA, Federal Railroad Administration (FRA), Federal Highway Administration (FHWA), California Public Utilities Commission (CPUC), Caltrans, County of Orange, railroads and other agencies and stakeholders.
- Maintain and foster relationships with SCRRA, railroads, utility companies, SCRRA Member Agencies, Cities and other consultants.

#### **3.2.2 Technical Oversight and Support As-needed**

CONSULTANT shall provide technical assistance on an as-needed basis. This work is anticipated to be performed primarily on an as-needed basis but may be performed by CONSULTANT staff as directed by Authority. As necessary, support

in technical areas will be specifically requested and identified by the AUTHORITY's project manager. Activities include, but are not limited to:

### **3.2.2.1 Technical Oversight**

Assist in the oversight of design and construction of infrastructure projects, station and parking expansion projects including pedestrian grade separated crossings, etc.

- Monitor and oversee SCRRA and other consultant's work, including performing design reviews.
- Assure quality and efficient/timely completion of all project components.
- Coordinate environmental and design review by other governmental agencies and private companies.

### **3.2.2.2 Technical Support**

Provide as-needed engineering and technical expertise in all major elements of architecture and engineering (civil, structural, electrical, traffic, mechanical, hydrology, utilities, and others) as they pertain to design of parking structures, station improvements and infrastructure projects.

- Provide expertise in preparing requirements for entry into preliminary engineering and final design, including necessary progress reporting.
- Provide environmental review for projects as necessary for NEPA/CEQA compliance.
- Prepare Project Study Reports to address purpose and need, and project alternatives.
- Prepare Independent Cost Estimates and financial plans.
- Perform design and preliminary engineering for Authority-led projects.
- Provide expertise to support obtaining various project permits.
- Provide expertise to support project concerns related to biological, historical, paleontological, archeological, contaminated and/or hazardous waste, noise, vibration, and others.
- Establish project delivery plans and monitor adherence to plans.
- Perform construction management for minor capital projects as directed by the Authority.
- Advise Authority staff in technical matters and assist in the resolution of technical issues and problems.
- Provide railroad operations and engineering expertise.
- Freight railroad and utility coordination and agreement preparation assistance.
- Right of Way engineering support.
- Risk analysis support.

- Preparation of graphics and visual aids.
- Specialized studies as assigned.
- Operations simulation and analysis.
- Strategic security management planning and design.
- Other technical expertise as needed.

### **3.2.3 Document Control, Schedule Monitoring, Administrative Support, Contract Management, Project Controls**

#### **3.2.3.1 Document Control**

CONSULTANT shall provide day-to-day document control support to Authority's project manager as follows:

- Create, manage and maintain a document control system and database per Authority's procedures. All incoming and outgoing items shall be logged, filed and distributed. Other document control activities include the logging and storage of archival information, security of controlled documents, and electronic file maintenance.
- Keep accurate records of correspondence, reports, drawings, deliverables and other project related documents and communications between AUTHORITY, SCRRA, Cities, other consultants and stakeholders. Maintain project file documents.

#### **3.2.3.2 Administration Support and Contract Management**

CONSULTANT shall provide day-to-day administrative support and contract management to Authority's project manager as follows:

- Assist in the preparation of reports and correspondence.
- Data processing and preparation of databases, spreadsheets, agendas, meeting reports, and assist in drafting PowerPoint presentations.
- Assist Authority staff in preparing cooperative agreements and MOUs with SCRRA or other agencies, and other consultant agreements, amendments, and scopes of work.
- Support in procurements of other consultants, including assistance with project delivery methods and contract administration.
- Assist in reviewing SCCRA, other consultants, or local agency invoices for compliance with contract or cooperative agreement provisions, including review for accuracy and consistency.
- Assist in administering payments, and other associated general administrative duties as assigned.

#### **3.2.3.3 Project Controls and Schedule Monitoring**

Manage and maintain current cost estimates for each project and evaluate and incorporate cost or project scope changes.

- Provide expertise and state of the art knowledge of information technology practices as related to project controls.
- Assist the Authority's project manager with scheduling, budgeting, cost control, change management, quality control and document control.
- Prepare project status reports.
- Monitor the Quality Assurance/ Quality Control (QA/QC) program established by other consultants and SCRRA, including establishing an overall program standard of quality and monitoring its adherence.
- Assist in establishing and maintaining implementation schedule, and monitor individual project schedules.
- Assist in establishing project budgets and monitoring cost estimating by SCRRA and other consultants. Develop and review cost estimates for capital projects and studies. Monitor and update source of funds for each project. Manage and maintain current cost estimates for each improvement and evaluate any cost or project scope changes.

### **3.3 Real Property Department**

#### **3.3.1 Right of Way Management**

The CONSULTANT shall assist the AUTHORITY in supporting the Real Property Department with right-of-way management and support services.

Program Management: Assist AUTHORITY staff in the management and coordination of the delivery of real estate and right of way as an integrated member of the Program Management Team.

Project Management: Assist in the management and oversight of services performed by AUTHORITY's Right of Way Consultants in accordance with the On-Call R/W Services Contract. Providing recommendations and information to AUTHORITY related to right of way planning; right of way management; project policies; budgeting, scheduling, appraisal services; property acquisition; relocation assistance, title and escrow, property management, utility coordination; right of way engineering; environmental assessment and remediation; condemnation; certification; among other related issues.

Coordination: Assist in participating in various project meetings and coordinating with AUTHORITY, design team, consultants, vendors, local agencies and cities, and oversight agencies.

Reporting: Assist in preparing monthly status reports and tracking status of project changes and schedule. Meeting regularly with AUTHORITY staff and consultants to update status.

Project Controls: Assist in monitoring project schedule, cost issues and contingency status.

#### **4.0 STAFFING AND LEVEL OF SUPPORT**

##### **4.1 Highway Programs Department**

###### **4.1.2 Program and Project Management Services**

The CONSULTANT shall assign staff to provide program and project management assistance to the AUTHORITY on a full-time and part-time basis. The CONSULTANT shall work directly with the HPD staff.

CONSULTANT shall initially assign eight (8) full-time individuals and one (1) part-time individual to provide project management assistance. These individuals shall provide services in the following positions:

- 6 Full Time Project Managers (6 FTE), including 1 focused on managing and coordinating utility relocations
- 1 Part Time Project Manager (1/2 FTE)
- 1 Project Control Manager/Specialist (1 FTE)
- 1 Project Administrator (1 FTE)

Project Manager: The Project Manager shall work with direction from the AUTHORITY's Program Manager in overseeing and monitoring the development of freeway, highway, facility or transit projects. The Project Manager shall develop and monitor project budgets and schedules, review construction cost estimates, and represent the AUTHORITY at meetings with other consultants, contractors, other local agencies, and the public. The Project Manager must have at least ten years of related experience, with a degree in engineering, and a professional registration as a Civil Engineer is preferred.

Utility Relocation Manager/Coordinator: The Utility Relocation Coordinator must have experience in coordinating and negotiating with utility company owners to address utility relocation issues relating to transportation projects, including development of utility relocation plans and coordination of utility relocations through design and construction. The Utility Relocation Coordinator must have at

least five years of utility relocation experience in the transportation area, with a degree in a related field preferred.

Project Controls Manager / Specialist: The Project Controls Specialist must have experience in scheduling and monitoring projects, reviewing and tracking project budgets and costs, cost estimating, analyzing contract changes, and in preparing project status reports. The Project Controls Manager and Specialist must have at least ten and six years of experience, respectively, in project controls, with a degree in a related field is preferred.

Project Administrator: The Project Administrator must have experience in performing project support tasks, including maintaining contract files, interpreting contract payment terms and methods, reviewing and processing consultant and contractor invoices, with a degree in a related field is preferred.

#### **4.1.3 Technical and Administrative Services**

The CONSULTANT shall provide technical assistance on an “as-needed” basis. This work may be performed by the CONSULTANT staff assigned to the AUTHORITY’s office or by others working out of the CONSULTANT’s office. Support in the technical areas will be specifically requested and identified by the AUTHORITY when it is needed.

### **4.2 Regional Rail Department**

#### **4.2.1 Program and Project Management Service**

The CONSULTANT shall assign staff to provide management, technical, and administrative assistance to the AUTHORITY on a full time and part time basis.

All CONSULTANT staff shall work with AUTHORITY’s Project Manager, as well as with SCRRA, Cities, member agencies and other consultants.

The level of effort required by the CONSULTANT under this contract is anticipated to be the full time equivalent (FTE) of four persons per year. It is anticipated that a half time project manager shall be required to support the AUTHORITY’s Project Manager and manage the contract; in addition, a full time document controls person and a full time project controls person are expected to support the AUTHORITY’s Project Manager day-to-day. Technical expertise from various engineering disciplines will be required on an as-needed basis (equivalent to 1 ½ FTE). The level of effort will be re-evaluated periodically to assure that the appropriate level of support is maintained. AUTHORITY will have sole discretion in defining and making changes in positions and tasks assigned to Consultant during the term of this Agreement.



CONSULTANT shall initially assign 4 full-time equivalent individuals to provide Rail Department assistance. These individuals shall provide service in the following positions:

- Project Manager (1/2 FTE)
- Project Controls (1 FTE)
- Document Controls/Contract Management/Administrative Support (1 FTE)
- Technical Support and Oversight (1 ½ FTE)

Project Manager: The project manager shall oversee and monitor the development of rail and rail facilities projects. The project manager will develop and monitor project budgets and schedules, review construction cost estimates, monitor compliance with the requirements of funding agencies, and represent the AUTHORITY at meetings with other consultants, contractors, other agencies, and the public. The project manager should have at least ten years of related experience in management of FTA funded projects, knowledge of FTA / FRA / CPUC rules, regulations and requirements, knowledge of the SCRRA regional rail system. The project manager should have a degree in engineering and a professional registration as a Civil Engineer.

Project Controls Specialist: The project controls specialist shall have experience in scheduling and monitoring projects, reviewing and tracking project budgets and costs, cost estimating, analyzing contract changes, and in preparing project status reports. The project controls specialist shall have at least six years of experience in project controls, with a degree in a related area preferred.

Project Administrator / Document Controls: The project administrator / document controls position shall have experience performing project support tasks including maintaining contract files, interpreting contract payment terms and methods, reviewing and processing other consultant and contractor invoices, and interfacing with accounting personnel and systems. The project administrator shall have at least five years of related experience.

#### **4.3 Real Property Department**

##### **4.3.1 Right-of-Way Management Services**

The CONSULTANT shall assign staff to provide right-of-way management assistance to the AUTHORITY on a full-time and part-time basis. The full-time individuals shall work directly with Real Property and HPD staff.

CONSULTANT shall initially assign 4 full-time individuals to provide right-of-way management assistance. These individuals shall provide service in the following positions:

- 2 Right of Way Program/Project Managers
- 1 ROW Controls Specialist
- 1 Right-of-Way Agent

Right-of-way Program / Project Manager: The Right of Way Program and Project Manager must have experience in managing and implementing project delivery in accordance with Caltrans ROW Manual. This shall include a firm knowledge of eminent domain regulations, overseeing a right of way delivery program and the right-of-way closeout process

Right-of-Way Agent: The Right-of-Way Agent must have experience in performing technical reviews of right-of-way elements of cooperative agreements, leases, licenses, and joint development agreements; procuring and overseeing right-of-way services provided by government agency staff, primarily Caltrans and the County of Orange, as well as provide consultants; maintaining records, including computer data bases, maps, legal descriptions, and other documents; preparation of escrow instructions, leases, licenses, deeds, and other documents; and developing excess land disposition strategies for the agency's surplus land on freeways and railroad corridors for sale or lease. The Right-of-Way Agent must have at least three years of professional right-of-way experience in the transportation area, with a degree in a related field preferred.

Controls Specialist: The ROW Controls Specialist must have experience in monitoring project ROW delivery, reviewing and tracking right-of-way budgets and costs, accruals, and preparing project status reports.

## **5.0 TOTAL LEVEL OF SUPPORT**

The level of effort required by the PMC under this contract is estimated to be the equivalent of 16.5 persons per year. The level of effort will be re-evaluated periodically to assure that the appropriate level of support is maintained. AUTHORITY shall have sole discretion in defining and making changes in positions and tasks assigned to CONSULTANT during any re-evaluations.

## **6.0 DELIVERABLES**

CONSULTANT shall submit deliverables pertinent to tasks assigned by the AUTHORITY's Project Manager. It is anticipated that the deliverables may include, but are not limited to:

- Designs/ Other consultant reviews
- Project management plans
- Cost estimates
- Railroad/utility agreements
- Project status reports
- Procurement and contract management documents
- Document control logs
- Graphics and visuals
- Cooperative Agreements
- Project delivery plans
- Project schedules
- Risk analysis documentation
- Technical reports and studies
- QA/QC monitoring reports
- Cooperative agreements/  
Memorandums of Understanding
- Project closeouts
- Other to be determined

Specific deliverables will be further defined during the term of the Agreement.

## **7.0 SCHEDULE OF PERFORMANCE**

The duration of CONSULTANT's contract shall be for a 5 -year period. Personnel assigned to the contract on a full-time basis shall remain on the contract for the duration of the contract, or until the FTE position is no longer needed.

## **8.0 CONFLICT OF INTEREST PROHIBITION**

Neither the CONSULTANT that is awarded this contract for program management consultant services, or its subconsultants, may actively oversee their own work as part of existing or future contracts with AUTHORITY's Highway and Rail Programs within the Capital Programs Division. Offerors are encouraged to seek AUTHORITY's evaluation, on a case-by-case basis, as to whether a conflict of interest exists.

## **9.0 LIMITATION ON GOVERNMENTAL DECISIONS**

Nothing contained in this scope of work permits CONSULTANT's personnel to authorize or direct any actions, votes, appoint any person, obligate, or commit AUTHORITY to any course of action or enter into any contractual agreement on behalf of AUTHORITY. In addition, CONSULTANT's personnel shall not provide information, an opinion, or a recommendation for the purpose of affecting a decision without significant intervening substantive review by AUTHORITY personnel, counsel, and management.

## **10.0 MATERIAL AND SERVICES PROVIDED BY CONSULTANT**

The CONSULTANT shall provide office space, furniture, computers, administrative software, telephones, office supplies, and printing services to individuals assigned under this contract, including any full time consultants that may be assigned to integrated project offices (IPOs) and field offices. In addition, any special equipment, software, or supplies required by these individuals shall be provided by the CONSULTANT.

**EXHIBIT B: PROPOSED AGREEMENT**

1 **PROPOSED AGREEMENT NO. C-2-2855**

2  
3 **BETWEEN**

4 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

5 **AND**

6  
7 **THIS AGREEMENT** is effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"),  
8 by and between the Orange County Transportation Authority, 550 South Main Street, PO Box 14184,  
9 Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as  
10 "AUTHORITY"), and , , , (hereinafter referred to as "CONSULTANT").

11 **WITNESSETH:**

12 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT for Program Management  
13 Consultant Services for Capital Projects in Highway and Rail Programs; and

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

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

17 **WHEREAS**, CONSULTANT wishes to perform these services; and

18 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Agreement on \_\_\_\_\_;

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

21 **ARTICLE 1. COMPLETE AGREEMENT**

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

B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance or to future performance of such terms or conditions and CONSULTANT's obligation in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized representative of the AUTHORITY by way of a written amendment to this Agreement and issue in accordance with the provisions of this Agreement CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by AUTHORITY.

**ARTICLE 2. AUTHORITY DESIGNEE**

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

**ARTICLE 3. SCOPE OF WORK**

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

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

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

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

1 /

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

8 **ARTICLE 4. TERM OF AGREEMENT**

9 A. This Agreement shall go into effect on \_\_\_\_\_, contingent upon approval by  
10 AUTHORITY, and CONSULTANT shall commence after notification to proceed by AUTHORITY's  
11 Contract Administrator. This Agreement shall end on \_\_\_\_\_, unless extended by amendment to  
12 the Agreement, or terminated as provided hereunder.

13 B. CONSULTANT is advised that any recommendation for contract award is not binding on  
14 AUTHORITY until the Agreement is fully executed and approved by AUTHORITY.

15 **ARTICLE 5. ALLOWABLE COSTS AND PAYMENT**

16 A. For CONSULTANT's full and complete performance of its obligations under this  
17 Agreement and subject to the maximum cumulative payment obligation provision set forth in Article 7  
18 "Maximum Obligation" AUTHORITY shall pay CONSULTANT on a specified rates of compensation basis  
19 in accordance with the following provisions.

20 B. CONSULTANT shall not commence performance of work or services until this Agreement  
21 has been approved by AUTHORITY and notification to proceed has been issued by AUTHORITY. No  
22 payment will be made prior to approval of any work, or for any work performed prior to approval of this  
23 Agreement.

24 C. The method of payment for the following items shall be at the rate specified for each item,  
25 as described in this Article. The specified rate shall include full compensation to the CONSULTANT for  
26



1 the item as described, including but not limited to, any repairs, maintenance, or insurance, and no further  
2 compensation will be allowed therefore.

3 D. The specified rate to be paid for field vehicle expense for CONSULTANT's field personnel  
4 shall be \$1,100/month/vehicle, and shall include all vehicle expenses such as fuel, insurance, operation  
5 and maintenance, and safety equipment. This rate shall be for a fully equipped vehicle, with radio and  
6 flashing yellow light (if needed), as specified in Exhibit B of this Agreement. The specified rates to be paid  
7 for other field equipment, if needed, shall be paid at cost, as listed in Exhibit B of this Agreement.

8 E. The method of payment for this Agreement will be on a specified rates basis which  
9 includes, in addition to equipment rental costs (not including vehicles as provided above), labor costs,  
10 employee benefits, prevailing wages, equipment-rental costs, travel, overhead and other direct costs  
11 incurred by the CONSULTANT in performance of the work. These rates are not adjustable for the  
12 performance period set forth in this Agreement. The overhead rate established for this Agreement is  
13 extended through the term of this specific Agreement. The CONSULTANT will not be reimbursed for  
14 actual costs that exceed the contract's maximum obligation which includes estimated wage rates,  
15 employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B,  
16 unless additional reimbursement is provided for, by contract amendment. In no event, will the  
17 CONSULTANT be reimbursed for overhead costs that exceed AUTHORITY approved overhead rate set  
18 forth in Exhibit B. In the event the AUTHORITY determines that changed work from that specified in  
19 Exhibit A, Scope of Work, is required; the actual costs reimbursed by AUTHORITY may be adjusted by  
20 Agreement amendment to accommodate the changed work. The maximum total cost of this Agreement  
21 shall not be exceeded unless authorized by Agreement amendment.

22 F. For each full hour of labor satisfactorily performed by CONSULTANT's personnel under  
23 this Agreement, AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B,  
24 entitled "Schedule of Fees," which is attached to and by this reference, incorporated in and made a part  
25 of this Agreement. These rates shall remain fixed for the term of this Agreement. Furthermore,  
26 AUTHORITY shall reimburse CONSULTANT, at cost with supporting documentation provided, for the

1 actual costs of the estimated expenses shown in Exhibit B, which are directly incurred by its personnel in  
2 the performance of work under this Agreement. The AUTHORITY will not reimburse CONSULTANT for  
3 local meals except for those authorized for traveling personnel in the attached Exhibit B.

4 G. For classifications added to the Exhibit B, "Classification Labor Rates" Schedule through  
5 Amendments, raw billing ranges must be based on current year's actual salaries, and the corresponding  
6 fully burdened ranges must be provided by CONSULTANT.

7 H. CONSULTANT agrees that billing for personnel under the Exhibit B, "Classification Labor  
8 Rates" Schedule is to be used on a temporary basis, limited to a maximum period of six (6) continuous  
9 months for each personnel working under the "Classification Labor Rates" Schedule. Personnel working  
10 or proposed to work on a continuous basis for a period of more than six (6) continuous months are not  
11 considered temporary and must be added as named personnel with a specific hourly billing rate.

12 I. CONSULTANT agrees that all personnel billing under the labor schedules in Exhibit B,  
13 are subject to the annual escalation rate allowable under this Agreement. This is the maximum escalation  
14 rate that AUTHORITY will reimburse CONSULTANT for named personnel and classifications.

15 J. CONSULTANT agrees that personnel proposed to work and bill under any of the labor  
16 schedules in Exhibit B must be approved in writing by the AUTHORITY Project Manager prior to start of  
17 work.

18 K. For personnel subject to prevailing wage rates as described in the California Labor Code,  
19 all salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

20 L. Reimbursement for transportation and subsistence costs shall not exceed the rates  
21 specified in Exhibit B, without prior approval from AUTHORITY's Program Manager.

22 M. As partial security against CONSULTANT's failure to satisfactorily fulfill all its obligations  
23 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice  
24 submitted for payment by CONSULTANT, and shall make prompt and regular incremental acceptances  
25 of portions/milestones, as determined by AUTHORITY, of the Agreement work, and pay retainage to  
26 CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all

1 monies withheld in retention from a subconsultant within thirty (30) calendar days after receiving payment  
2 for work satisfactorily completed and accepted including incremental acceptances of portions/milestones  
3 of the Agreement work by the AUTHORITY. CONSULTANT shall invoice AUTHORITY for the release of  
4 the retention in accordance with this Article.

5 N. Final acceptance shall occur only when AUTHORITY makes the final release of the  
6 retention described in Paragraph N.

7 O. All retained funds shall be released by AUTHORITY and shall be paid to CONSULTANT  
8 within sixty (60) calendar days of payment of final invoice, unless AUTHORITY elects to audit  
9 CONSULTANT's records in accordance with Article 17 entitled "Audit and Inspection of Records", of this  
10 Agreement. If AUTHORITY elects to audit, retained funds shall be paid to CONSULTANT within thirty  
11 (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such  
12 audit. During the term of the Agreement, at its sole discretion, AUTHORITY reserves the right to release  
13 all or a portion of the retained amount based on CONSULTANT's satisfactory completion of certain  
14 portions/milestones. CONSULTANT shall invoice AUTHORITY for the release of the retention in  
15 accordance with this Article.

16 P. The prime consultant, or subconsultant, shall return all monies withheld in retention from  
17 a subconsultant within thirty (30) days after receiving payment for work satisfactorily completed and  
18 accepted. Any subcontract entered into as a result of this Agreement shall contain all of the provisions  
19 of this section. Federal law, CFR Title 49, Part 26.29, requires that any delay or postponement of payment  
20 over thirty (30) days may take place only for good cause and with the AUTHORITY's prior written  
21 approval. Any violation of this provision shall subject the violating prime consultant or subconsultant to  
22 the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions  
23 Code. These requirements shall not be construed to limit or impair any contractual, administrative, or  
24 judicial remedies, otherwise available to the prime consultant or subconsultant in the event of a dispute  
25 involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or  
26 noncompliance by a subconsultant. This provision applies to both DBE and non-DBE CONSULTANT

1 and subconsultants.

2 Q. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments  
3 corresponding to the specified labor rates and actual other direct costs expended by CONSULTANT.  
4 Work completed shall be documented in a monthly progress report prepared by CONSULTANT, which  
5 shall accompany each invoice submitted by CONSULTANT.

6 R. The CONSULTANT will be paid, less any retention amount withheld, as promptly as fiscal  
7 procedures will permit upon receipt by the AUTHORITY's Accounts Payable office of itemized invoices  
8 in duplicate. Invoices shall be submitted no later than 30 days after the performance of the work for which  
9 the CONSULTANT is billing. Invoices shall detail the work performed on each task as applicable. Invoices  
10 shall comply with the approved Price Proposal and shall reference this Agreement number and project  
11 title. Final invoice must contain the final cost and all credits due the AUTHORITY including any equipment  
12 purchased under the provisions of Article 46 Consultant Purchased Equipment of this Agreement. The  
13 final invoice should be submitted to the AUTHORITY within 60-calendar days after completion of the  
14 CONSULTANT's work.

15 S. CONSULTANT shall also furnish such other information as may be requested by  
16 AUTHORITY to substantiate the validity of an invoice, including a current payroll register and/or an offer  
17 of employment for personnel performing work under the classifications which are subject to pay ranges  
18 listed in Exhibit B, "Classifications Labor Rates" Schedule, in order to receive reimbursement for hours  
19 worked. Reimbursement for labor hours incurred by personnel designated by a classification, shall be  
20 made after AUTHORITY's review of the actual personnel's pay register, and verification that the actual  
21 pay falls within the specified range for that classification. If an actual pay rate exceeds the maximum of  
22 the range, CONSULTANT will be reimbursed at the maximum of the range. At its sole discretion,  
23 AUTHORITY may decline to make full payment for any work until such time as CONSULTANT has  
24 documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all work required.  
25 AUTHORITY's payment in full for any work completed shall not constitute AUTHORITY's final acceptance  
26 of CONSULTANT's work under such task.

T. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office or may be emailed to VendorInvoices@octa.net. Each invoice shall be accompanied by the monthly progress report specified in paragraph N of this Article. Invoices shall be submitted no later than 30-calendar days after the performance of work for which CONSULTANT is billing. AUTHORITY shall remit payment, less retention amount, within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-2-2855;
2. Specific work for which payment is being requested;
3. The time period covered by the invoice;
4. Labor performed during the billing period (staff name, hours charged, hourly billing rate, current charges and cumulative charges, and pay registers for staff using classifications);
5. Itemized expenses including supporting documentation incurred during the billing period;
6. Total monthly invoice (including project to-date cumulative invoice amount); and retention amount withheld by AUTHORITY for the time period covered by the invoice;
7. Monthly Progress Report;
8. Weekly certified payroll for personnel subject to prevailing wage requirements;
9. Certificate signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.
10. Any other information as agreed or otherwise requested by AUTHORITY to

1 substantiate the validity of an invoice.

2 U. Invoices shall follow the format stipulated for the Cost Proposal and shall reference  
3 this Agreement number and project title. Invoices shall include all reimbursable costs/expenditures to  
4 satisfy Caltrans' Local Assistance Procedures Manual (LAPM), Chapter 5 Accounting/Invoices.

5 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

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

10 B. "CONSULTANT or subconsultant agrees to pay each subconsultant under this Agreement for  
11 satisfactory performance of its Agreement no later than seven (7) days for construction contracts and  
12 fifteen (15) days for consultant contracts from the receipt of each progress payment CONSULTANT  
13 receives from AUTHORITY on account of the work performed by the subconsultant. CONSULTANT  
14 agrees further to return retainage payments to each subconsultant within seven (7) days for construction  
15 contracts and fifteen (15) days for consultant contracts after receiving payment for work satisfactorily  
16 completed and accepted including incremental acceptances of portions of the Agreement work by  
17 AUTHORITY. Any delay or postponement of payment from the above referenced time frame may take  
18 place only for good cause and with AUTHORITY's prior written approval." CONSULTANT agrees further  
19 to return retainage payments on construction-related contracts to each subcontractor within seven (7)  
20 days after receiving payment for work satisfactorily completed and accepted including incremental  
21 acceptances of portions of the Agreement work by AUTHORITY. CONSULTANT shall incorporate this  
22 clause verbatim, set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or  
23 other source agreements issued to both DBE and non-DBE firms. In the event that there is a dispute over  
24 all or any portion of the amount due on a progress payment from CONSULTANT or subconsultant to a  
25 subconsultant, CONSULTANT or subconsultant may withhold no more than 150 percent of the disputed  
26 amount.

C. Any violation of these provisions shall subject the violating CONSULTANT to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code and Section 10262 of the California Public Contract Code for construction contracts, and Section 3321 of the California Civil Code for consultant contracts. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT; deficient subcontract performance or noncompliance by a subconsultant.

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

**ARTICLE 7. MAXIMUM OBLIGATION**

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

**ARTICLE 8. NOTICES**

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

TO CONSULTANT:

TO AUTHORITY:

Orange County Transportation Authority

550 SOUTH MAIN STREET

P.O. BOX 14184

, ORANGE, CA 92863-1584  
ATTENTION: ATTENTION: Marjorie Morris-Threats  
Title: Title: Principal Contract Administrator  
Phone: Phone: (714) 560 - 5552  
Email: Email: mthreats@octa.net  
Copy: Rose Casey  
Title: Director, Highways Programs  
Phone: (714) 560-5729  
Email: [rcasey@octa.net](mailto:rcasey@octa.net)

**ARTICLE 9. INDEPENDENT CONTRACTOR**

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

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

**ARTICLE 10. INSURANCE**

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

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



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

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

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

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

10 5. Professional Liability with minimum limits of \$1,000,000 only if the CONSULTANT is  
11 required by contract or law to be licensed or specially certified and AUTHORITY is relying on performance  
12 based on that specialty license or certification.

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

21 C. CONSULTANT shall include on the face of the certificate of insurance the Agreement Number  
22 **C-2-2855** and, the Contract Administrator's Name, Marjorie Morris-Threats.

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

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

3 **ARTICLE 11. ORDER OF PRECEDENCE**

4 To the extent there are any conflicts or inconsistency arising between any provisions or  
5 documents incorporated in this Agreement, the order of precedence for conflict resolution in descending  
6 order shall be as follows: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of  
7 RFP 2-2855; (3) CONSULTANT's technical proposal dated \_\_\_\_\_, CONSULTANT's cost proposal  
8 dated \_\_\_\_\_ and final cost proposal dated \_\_\_\_\_, and (4) all other documents, if any, cited herein or  
9 incorporated by reference.

10 **ARTICLE 12. CHANGES**

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

19 B. This Agreement may be amended or modified only by mutual written agreement of the  
20 parties.

21 C. CONSULTANT shall only commence work covered by an amendment after the  
22 amendment is executed and notification to proceed has been provided by AUTHORITY's Contract  
23 Administrator.

24 **ARTICLE 13. DISPUTES**

25 A. Except as otherwise provided in this Agreement, when a dispute arises between  
26 CONSULTANT and AUTHORITY, the project managers shall meet to resolve the issue. If project

1 managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts  
2 Administration and Materials Management (CAMP), who shall reduce the decision to writing and mail or  
3 otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMP, shall be the  
4 final and conclusive administrative decision.

5 B. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with  
6 the performance of this Agreement and in accordance with the decision of AUTHORITY's Director,  
7 CAMP. Nothing in this Agreement, however, shall be construed as making final the decision of any  
8 AUTHORITY official or representative on a question of law, which questions shall be settled in  
9 accordance with the laws of the State of California.

10 **ARTICLE 14. TERMINATION**

11 A. AUTHORITY reserves the right to terminate this Agreement upon thirty (30) calendar days  
12 written notice to CONSULTANT of intent to terminate, with effective date of termination and the reasons  
13 for termination stated in the notice, in accordance with the provisions of the FAR referenced above and  
14 Article 8 "Notices", herein. Upon receipt of said notification, CONSULTANT agrees to comply with all  
15 applicable provisions of the FAR pertaining to termination for convenience.

16 B. Upon termination, AUTHORITY shall be entitled to all work, including but not limited to,  
17 reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed  
18 to that date, whether completed or not.

19 C. AUTHORITY may temporarily suspend this Agreement, at no additional cost to AUTHORITY,  
20 provided that CONSULTANT is given written notice of temporary suspension. If AUTHORITY gives such  
21 notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this  
22 Agreement. A temporary suspension may be issued concurrent with the notice of termination.

23 D. AUTHORITY may terminate this Agreement with CONSULTANT should CONSULTANT fail  
24 to perform the covenants herein contained at the time and in the manner herein provided. In the event of  
25 such termination, AUTHORITY may proceed with the work in any manner deemed proper by  
26 AUTHORITY. If AUTHORITY terminates this Agreement with CONSULTANT, AUTHORITY shall pay

1 CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost  
2 of completion to AUTHORITY exceeds the funds remaining in the Agreement, in which case the overage  
3 shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall  
4 be paid to CONSULTANT upon demand. Said termination shall be construed in accordance with the  
5 provisions of the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 49, of the Federal  
6 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination  
7 for convenience.

8 E. AUTHORITY may terminate this Agreement for CONSULTANT's default if a federal or state  
9 proceeding for the relief of debtors is undertaken by or against CONSULTANT, or if CONSULTANT  
10 makes an assignment for the benefit of creditors, or for cause if CONSULTANT fails to perform in  
11 accordance with the scope of work or breaches any term(s) or violates any provision(s) of this Agreement  
12 and does not cure such breach or violation within ten (10) calendar days after written notice thereof by  
13 AUTHORITY. CONSULTANT shall be liable for any and all reasonable costs incurred by AUTHORITY  
14 as a result of such default or breach including, but not limited to, reprocurement costs of the same or  
15 similar services defaulted by CONSULTANT under this Agreement. Such termination shall comply with  
16 CFR Title 48, Chapter 1, Part 49, of the FAR.

17 **ARTICLE 15. INDEMNIFICATION**

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

25 B. "Notwithstanding the foregoing, to the extent that CONSULTANT'S duty to indemnify arises  
26 out of a claim to which Civil Code section 2782.8 would apply, CONSULTANT shall indemnify and defend

the Indemnitees to the maximum extent permitted by Civil Code section 2782.8.”

**ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

A. Nothing contained in this Agreement or otherwise, shall create any contractual relation between AUTHORITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to AUTHORITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT’s obligation to pay its subconsultant(s) is an independent obligation from AUTHORITY’s obligation to make payments to the CONSULTANT.

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

C. The CONSULTANT shall perform the work contemplated with resources available within its own organization; and no portion of the work pertinent to this Agreement shall be subcontracted without written authorization by AUTHORITY’s Contract Administrator, except that, which is expressly identified in the approved Cost Proposal.

D. CONSULTANT shall pay its subconsultants within seven (7) calendar days from receipt of each payment made to CONSULTANT by AUTHORITY.

E. All subcontracts entered into as a result of this Agreement, shall contain all of the provisions stipulated in this entire Agreement to be applicable to subconsultants unless otherwise noted.

F. Any substitution or addition of subconsultant(s) must be approved in writing by the AUTHORITY’s Contract Administrator, in advance of assigning work to a substitute subconsultant(s).

G. AUTHORITY hereby consents to CONSULTANT’s subcontracting of portions of the Scope of Work to the parties identified below for the functions described below. CONSULTANT shall include in the

subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

/

<u>Subcontractor Name/Address</u>	<u>Subcontractor Amounts</u>

**ARTICLE 17. AUDIT AND INSPECTION OF RECORDS**

A. CONSULTANT and any subconsultant shall permit AUTHORITY, the State, and the FHWA if federal participating funds are used in this Agreement, to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement.

B. For the purpose of determining compliance with the Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and AUTHORITY shall maintain and make available for inspection all books, documents, papers, accounting records, Independent certified public accountant (CPA) Audited Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the CONSULTANT and Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. AUTHORITY, or other agents of AUTHORITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, payroll documents, facilities and documents of CONSULTANT, subconsultants, and the CONSULTANT's

1 Independent (CPA), that are pertinent to the Agreement for audits, examinations, workpaper review,  
2 excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

3 C. CONSULTANT shall maintain such books, records, data and documents in accordance with  
4 generally accepted accounting principles and the CFR, Title 48, Chapter 1, Part 31 of the Federal  
5 Acquisition Regulation System (FAR) and shall clearly identify and make such items readily accessible  
6 to such parties during CONSULTANT's performance hereunder.

7 D. AUTHORITY's right to audit books and records directly related to this Agreement shall also  
8 extend to all first-tier subcontractors performing work identified in Article 16 "Assignments and  
9 Subcontracts" of this Agreement, and such language must be included in CONSULTANT's agreements  
10 with its subcontractors.

11 **ARTICLE 18. AUDIT REVIEW PROCEDURES**

12 A. Any dispute concerning a question of fact arising under an interim or post audit of this  
13 Agreement that is not disposed of by agreement, shall be reviewed by AUTHORITY's Internal Audit.

14 B. Not later than 30 days after issuance of the final audit report, CONSULTANT may request a  
15 review by AUTHORITY's Internal Audit of unresolved audit issues. The request for review will be  
16 submitted in writing.

17 C. Neither the pendency of a dispute nor its consideration by AUTHORITY will excuse  
18 CONSULTANT from full and timely performance, in accordance with the terms of this Agreement.

19 D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are subject  
20 to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an ICR Audit,  
21 or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost proposal and  
22 ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR, Part 31  
23 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is  
24 CONSULTANT's responsibility to ensure federal, state, or local government officials are allowed full  
25 access to the CPA's work papers including making copies as necessary. The Agreement, cost proposal,  
26 and ICR shall be adjusted by CONSULTANT and approved by AUTHORITY's Contract Administrator to

1 conform to the audit or review recommendations. CONSULTANT agrees that individual terms of costs  
2 identified in the audit report shall be incorporated into the Agreement by this reference if directed by  
3 AUTHORITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review  
4 recommendations, or to ensure that the federal, state or local governments have access to CPA work  
5 papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and  
6 disallowance of prior reimbursed costs.

7 E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by The  
8 California Department of Transportation's Independent office of Audit and Investigation (IOAI). IOAI, at  
9 its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal  
10 shall be adjusted by the CONSULTANT and approved by the AUTHORITY's Contract Administrator to  
11 conform to the Work Paper Review recommendations included in the management letter or audit  
12 recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work  
13 Paper Review recommendations included in the management letter or audit recommendations included  
14 in the audit report will be considered a breach of the Agreement terms and cause for termination of the  
15 Agreement and disallowance of prior reimbursed costs.

16 1. During IOAI review of the ICR audit work papers created by the CONSULTANT's  
17 independent CPA, IOAI will work with the CPA and/or CONSULTANT toward a resolution of issues that  
18 arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely  
19 manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval  
20 letter, AUTHORITY will reimburse the CONSULTANT at a provisional ICR until a FAR compliant ICR  
21 {e.g. 48 CFR, part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting  
22 Standards), if applicable; in accordance with procedures and guidelines of the American Association  
23 of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures  
24 and guidelines} is received and approved by IOAI. Accepted rates will be as follows:

25 a. If the proposed rate is less than 150% - the accepted rate reimbursed will be 90%  
26 of the proposed rate.



b. If the proposed rate is between 150% and 200% - the accepted rate will be 85% of the proposed rate.

c. If the proposed rate is greater than 200% - the accepted rate will be 75% of the proposed rate.

2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require CONSULTANT to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the CONSULTANT's and/or the independent CPA's revisions.

3. If the CONSULTANT fails to comply with the provisions of this Section E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

4. CONSULTANT may submit to AUTHORITY final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA-audited ICR; (2) all work under this Agreement has been completed to the satisfaction of AUTHORITY; and, (3) IOAI has issued its final ICR review letter. The Consultant must submit its final invoice to the AUTHORITY, no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Agreement and all other Agreements executed between AUTHORITY and the CONSULTANT, either as a prime or subconsultant, with the same fiscal period ICR.

#### **ARTICLE 19. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

A. CONSULTANT agrees that the CFR, Title 48, Chapter 1, Part 31, Contract Cost Principles and Procedures, shall be used to determine the cost allowability of individual terms of costs.

B. CONSULTANT also agrees to comply with Federal procedures in accordance with CFR, Title 2, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

1 C. Any costs for which payment has been made to CONSULTANT that are determined by  
2 subsequent audit to be unallowable under CFR Title 48, Part 31 or CFR Title 2, Part 200, are subject to  
3 repayment by CONSULTANT to AUTHORITY.

4 D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of  
5 Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements,  
6 Cost Principles, and Audit Requirements for Federal Awards shall apply.

7 **ARTICLE 20. FEDERAL, STATE AND LOCAL LAWS**

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

11 **ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY**

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

19 **ARTICLE 22. PROHIBITED INTERESTS**

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

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

25 **ARTICLE 23. OWNERSHIP OF REPORTS AND DOCUMENTS**

26 A. The originals of all letters, documents, reports and other products and data produced under

1 this Agreement shall be delivered to, and become the property of AUTHORITY, and CONSULTANT shall  
2 have no property right therein whatsoever. Copies may be made for CONSULTANT's records but shall  
3 not be furnished to others without written authorization from AUTHORITY. Immediately upon termination,  
4 AUTHORITY shall be entitled to, and CONSULTANT shall deliver to AUTHORITY, reports,  
5 investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that  
6 date, whether completed or not, and other such materials as may have been prepared or accumulated  
7 to date by CONSULTANT in performing this Agreement which is not CONSULTANT's privileged  
8 information, as defined by law, or CONSULTANT's personnel information, along with all other property  
9 belonging exclusively to City which is in CONSULTANT's possession. Publication of the information  
10 derived from work performed or data obtained in connection with services rendered under this Agreement  
11 must be approved in writing by AUTHORITY.

12 B. Additionally, it is agreed that such deliverables shall be deemed works made for hire.  
13 CONSULTANT acknowledges and agrees that the work (and all rights therein, including without limitation,  
14 copyright) belongs to and shall be the sole and exclusive property of AUTHORITY without restriction or  
15 limitation upon its use or dissemination by AUTHORITY.

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

26 D. No copies, sketches, computer graphics or graphs, including graphic art work, are to be

1 released by CONSULTANT to any other person or agency except after prior written approval by  
2 AUTHORITY, except as necessary for the performance of services under this Agreement. All press  
3 releases, including graphic display information to be published in newspapers, magazines, etc., are to be  
4 handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

5 E. Applicable patent rights provisions regarding rights to inventions shall be included in the  
6 Agreements as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for  
7 federal-aid contracts).

8 F. AUTHORITY may permit copyrighting reports or other agreement products. If copyrights are  
9 permitted, the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and  
10 irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for  
11 government purposes.

12 **ARTICLE 24. PATENT AND COPYRIGHT INFRINGEMENT**

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

25 B. CONSULTANT shall have sole control of the defense of any such claim or suit and all  
26 negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY

1 under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to  
2 cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at  
3 CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim,  
4 CONSULTANT, at no expense to AUTHORITY, shall obtain for AUTHORITY the right to use and sell  
5 said item, or shall substitute an equivalent item acceptable to AUTHORITY and extend this patent and  
6 copyright indemnity thereto.

7 **ARTICLE 25. DESIGN WITHIN FUNDING LIMITATIONS**

8 A. In order to ensure the accuracy of the construction budget for the benefit of the public works  
9 bidders and AUTHORITY's budget process, CONSULTANT shall accomplish the design services  
10 required under this Agreement so as to permit the award of a contract, for the construction of the facilities  
11 designed at a price that does not exceed the estimated construction contract price as set forth by  
12 AUTHORITY. When bids or proposals for the construction contract are received that exceed the  
13 estimated price, CONSULTANT shall perform such redesign and other services as are necessary to  
14 permit contract award within the funding limitation. These additional services shall be performed at no  
15 increase in the price for which the services were specified. However, CONSULTANT shall not be required  
16 to perform such additional services at no cost to AUTHORITY if the unfavorable bids or proposals are the  
17 result of conditions beyond its reasonable control.

18 B. CONSULTANT will promptly advise AUTHORITY if it finds that the project being designed will  
19 exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these  
20 limitations. Upon receipt of such information, AUTHORITY will review CONSULTANT's revised estimate  
21 of construction cost. AUTHORITY may, if it determines that the estimated construction contract price is  
22 so low that award of a construction contract not in excess of such estimate is improbable, authorize a  
23 change in scope or materials as required to reduce the estimated construction cost to an amount within  
24 the estimated construction contract price set forth by AUTHORITY, or AUTHORITY may adjust such  
25 estimated construction contract price. When bids or proposals are not solicited or are unreasonably  
26 delayed, AUTHORITY shall prepare an estimate of constructing the design submitted and such estimate

1 shall be used in lieu of bids or proposals to determine compliance within the funding limitation.

2 **ARTICLE 26. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

3 All design and engineering work furnished by CONSULTANT shall be performed by or under the  
4 supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the  
5 State of California, by personnel who are careful, skilled, experienced and competent in their respective  
6 trades or professions, who are professionally qualified to perform the work in accordance with the  
7 Agreement documents and who shall assume professional responsibility for the accuracy and  
8 completeness of the design documents and construction documents prepared or checked by them.

9 **ARTICLE 27. FINISHED AND PRELIMINARY DATA**

10 A. Upon completion of all work under this Agreement, ownership and title to all reports,  
11 documents, plans, specifications, and estimates, including, but not limited to, illustrations, photographs,  
12 tapes, software, software design documents, including without limitation source code, binary code, all  
13 media, technical documentation and user documentation, photoprints and other graphic information  
14 required to be furnished under this Agreement, will automatically be vested in AUTHORITY and no further  
15 agreement will be necessary to transfer ownership to AUTHORITY.

16 B. It is understood and agreed that all calculations, drawings and specifications, whether in hard  
17 copy or machine-readable form, are intended for one-time use in the construction of the project for which  
18 this Agreement has been entered into.

19 C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with  
20 the modification, or misuse by AUTHORITY of the machine-readable information and data provided by  
21 CONSULTANT under this Agreement. Further, CONSULTANT is not liable for claims, liabilities, or losses  
22 arising out of, or connected with any use by AUTHORITY of the project documentation on other projects,  
23 or for the completion of this project by others, except only as such use as may be authorized in writing by  
24 CONSULTANT.

25 D. It is expressly understood that any title to preliminary technical data is not passed to  
26 AUTHORITY, but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,

1 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the  
2 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given  
3 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to  
4 AUTHORITY, if CONSULTANT causes AUTHORITY to exercise Article 14 "Termination", and a price  
5 shall be negotiated for all preliminary data.

6 E. All subcontracts entered into as a result of this Agreement shall contain all of the provisions  
7 of this Article.

8 **ARTICLE 28. STATE PREVAILING WAGE RATES**

9 A. CONSULTANT shall comply with the State of California's General Prevailing Wage Rate  
10 requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local  
11 laws and ordinances applicable to the work.

12 B. When prevailing wages apply to the services described in the scope of work, transportation  
13 and subsistence costs shall be reimbursed at the minimum rates set by the Department of Industrial  
14 Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

15 C. CONSULTANT warrants that all mechanics, laborers, journeypersons, workpersons,  
16 craftspersons or apprentices employed by CONSULTANT or subconsultant at any tier for any work  
17 hereunder, shall be paid unconditionally and not less often than once a week and without any subsequent  
18 deduction or rebate on any account (except such payroll deductions as are permitted or required by  
19 federal, state or local law, regulation or ordinance), the full amounts due at the time of payment, computed  
20 at a wage rate and per diem rate not less than the aggregate of the highest of the two basic hourly rates  
21 and rates of payments, contributions or costs for any fringe benefits contained in the current general  
22 prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial  
23 Relations of the State of California, (as set forth in the Labor Code, commencing at Section 1770 et. seq.),  
24 or as established by the Secretary of Labor (as set forth in the Davis-Bacon Act, 40 U.S.C. 267a, et. seq.),  
25 regardless of any contractual relationship which may be alleged to exist between CONSULTANT or  
26 subconsultant and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or

1 apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on  
2 file at AUTHORITY's offices and will be made available to CONSULTANT upon request. CONSULTANT  
3 shall post a copy thereof at each job site at which work hereunder is performed.

4 D. In addition to the foregoing, CONSULTANT agrees to comply with all other provisions of the  
5 California Labor Code, which is incorporated herein by reference, pertaining to workers performing work  
6 hereunder including, but not limited to, those provisions for work hours, payroll records and  
7 apprenticeship employment and regulation program.

8 E. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public  
9 works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public  
10 works, shall contain all of the provisions of this Article. CONSULTANT agrees to insert or cause to be  
11 inserted the preceding clause in all subcontracts which provide for workers to perform work hereunder  
12 regardless of the subcontractor tier.

13 **ARTICLE 29. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

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

16 A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under  
17 penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt,  
18 complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title  
19 2, California Code of Regulations, Section 8103.

20 B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not  
21 deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin,  
22 ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex,  
23 gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor  
24 shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for  
25 employment because of race, religious creed, color, national origin, ancestry, physical disability, mental  
26 disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender



1 expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants  
2 shall ensure that the evaluation and treatment of their employees and applicants for employment are free  
3 from such discrimination and harassment.

4 C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment  
5 and Housing Act (Government Code Section 12990 et seq.), the applicable regulations promulgated there  
6 under (Title 2 of the California Code of Regulations (CCR) Section 11000 et seq.), the provisions of  
7 Government Code Sections 11135-11139.5, and the regulations or standards adopted by AUTHORITY  
8 to implement such article. The applicable regulations of the Fair Employment and Housing Commission  
9 implementing Government Code Section 12990 (a-f), set forth in 2 CCR Section 8100-8504, are  
10 incorporated into this Agreement by reference and made a part hereof as if set forth in full.

11 D. CONSULTANT shall permit access by representatives of the Department of Fair Employment  
12 and Housing (Department) and the AUTHORITY upon reasonable notice at any time during the normal  
13 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records,  
14 accounts, and all other sources of information and its facilities as said Department or AUTHORITY shall  
15 require to ascertain compliance with this clause.

16 E. CONSULTANT and its subconsultants shall give written notice of their obligations under this  
17 clause to labor organizations with which they have a collective bargaining or other Agreement.

18 F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause  
19 in all subcontracts to perform work under this Agreement.

20 G. CONSULTANT, with regard to the work performed under this Agreement, shall act in  
21 accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.). Title VI provides  
22 that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which  
23 no person in the United States shall, on the basis of race, color, national origin, religion, sex, age,  
24 disability, be excluded from participation in, denied benefits of or subject to discrimination under any  
25 program or activity by the recipients of federal assistance or their assignees and successors in interest.

26 H. CONSULTANT shall comply with regulations relative to nondiscrimination in federally-

1 assisted programs of the U.S. Department of Transportation (49 CFR Part 21 – Effectuation of Title VI of  
2 the 1964 Civil Rights Act). Specifically, CONSULTANT shall not participate either directly or indirectly in  
3 the discrimination prohibited by 49 CFR Section 21.5, including employment practices and the selection  
4 and retention of subconsultants.

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

13 **ARTICLE 30. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**  
14 **CONSULTANT CONTRACTS**

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

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

25 CONSULTANT agrees to include these requirements in all subcontracts at any tier.

26 B. In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business

1 Enterprises in Department of Transportation Financial Assistance Programs,” AUTHORITY has  
2 established a \_\_\_\_\_ (\_\_\_%) percent Disadvantaged Business Enterprise (DBE) participation goal for the  
3 services required in this Agreement.

4 C. At the time of contract execution, the CONSULTANT committed to utilize one or more  
5 Disadvantaged Business Enterprise (DBE) Firms in the performance of this DOT-assisted contract.  
6 CONSULTANT agrees to enter into agreements with the DBE subconsultants listed on Attachment  
7 “Consultant Contract DBE Commitment Caltrans Exhibit 10-O2” and ensure they perform work and/or  
8 supply materials in accordance with original commitments. No changes to CONSULTANT’s DBE  
9 commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

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

15 E. If there is a DBE goal and/or DBE commitment on the Agreement, CONSULTANT must  
16 complete and submit within the specified timelines, DBE documentation electronically through an  
17 AUTHORITY-approved electronic reporting system.

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

22 **ARTICLE 31. PRIVACY ACT**

23 A. CONSULTANT shall comply with, and assures the compliance of its employees with, the  
24 information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a.  
25 Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government  
26 before the CONSULTANT or its employees operate a system of records on behalf of the Federal

1 Government. CONSULTANT understands that the requirements of the Privacy Act, including the civil and  
2 criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply  
3 with the terms of the Privacy Act may result in termination of the underlying Agreement.

4 B. CONSULTANT agrees to include this requirement in all its subcontracts at any tier.

5 **ARTICLE 32. CONFLICT OF INTEREST**

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

14 **ARTICLE 33. CODE OF CONDUCT**

15 A. CONSULTANT agrees to comply with the AUTHORITY's Code of Conduct as it relates to  
16 Third-Party contracts which is hereby referenced and by this reference is incorporated herein.

17 B. CONSULTANT agrees to include these requirements in all of its subcontracts.

18 **ARTICLE 34. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

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

23 **ARTICLE 35. INCORPORATION OF FEDERAL TERMS**

24 All contractual provisions required by United States Department of Transportation (USDOT),  
25 including the Federal Highway Administration (FHWA), whether or not expressly set forth in this  
26 document, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all

1 federally mandated terms shall be deemed to control in the event of a conflict with other provisions  
2 contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse  
3 to comply with any requests, which would cause AUTHORITY to be in violation of the USDOT or FHWA  
4 terms and conditions.

5 /

6 **ARTICLE 36. FEDERAL CHANGES**

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

12 **ARTICLE 37. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

13 A. AUTHORITY and CONSULTANT acknowledge and agree that, notwithstanding any  
14 concurrence by the Federal Government in or approval of the solicitation or award of the underlying  
15 Agreement, absent the express written consent by the Federal Government, the Federal Government is  
16 not a party to this Agreement and shall not be subject to any obligations or liabilities to the AUTHORITY,  
17 CONSULTANT, or any other party (whether or not a party to this Agreement) pertaining to any matter  
18 resulting from the underlying Agreement.

19 B. CONSULTANT agrees to include these requirements in all of its subcontracts.

20 **ARTICLE 38. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**  
21 **RELATED ACTS**

22 A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act  
23 of 1986, as amended, 31 U.S.C. §§3801 et seq., and USDOT regulations, "Program Fraud Civil  
24 Remedies," CFR, Title 49, Part 31, apply to its actions pertaining to this project. Accordingly, by signing  
25 this Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has  
26 made, it makes, it may make, or may cause to be made, pertaining to the underlying Agreement or the

1 FTA assisted project for which this Agreement's work is being performed. CONSULTANT also  
2 acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement,  
3 submission, or certification, the Federal Government reserves the right to impose penalties set forth in  
4 the Program Fraud Civil Remedies Act of 1986 against the CONSULTANT to the extent the Federal  
5 Government deems appropriate.

6 B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious,  
7 or fraudulent claim, statement, submission, or certification to the Federal Government under an  
8 agreement connected with a project that is financed in whole or part with Federal assistance awarded by  
9 FTA, under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the  
10 penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. against the CONSULTANT, to the extent  
11 the Federal Government deems appropriate.

12 C. CONSULTANT agrees to include this requirement in all of its subcontracts.

13 **ARTICLE 39. RECYCLED PRODUCTS**

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

18 B. CONSULTANT agrees to include this requirement in all of its subcontracts.

19 **ARTICLE 40. ENERGY CONSERVATION REQUIREMENTS**

20 If the maximum cumulative payment obligation of this Agreement exceeds \$150,000,  
21 CONSULTANT shall comply with mandatory standards and policies relating to energy efficiency, which  
22 are contained in the state energy conservation plan issued in compliance with the Energy Policy  
23 Conservation Act.

24 **ARTICLE 41. CLEAN AIR**

25 A. CONSULTANT shall comply with all applicable standards, orders or regulations issued  
26 pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT shall report each

1 violation to AUTHORITY, who will in turn, report each violation as required to assure notification to  
2 USDOT and the appropriate Environmental Protection Agency (EPA) Regional Office.

3 B. CONSULTANT agrees to include this requirement in each subcontract exceeding \$150,000.

4 **ARTICLE 42. CLEAN WATER REQUIREMENTS**

5 A. If the maximum cumulative payment obligation of this Agreement exceeds \$150,000,  
6 CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the  
7 Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. CONSULTANT shall  
8 report any violations of use of prohibited facilities to the USDOT and US EPA.

9 B. CONSULTANT agrees to include this requirement in each subcontract exceeding \$150,000.

10 **ARTICLE 43. CONTINGENT FEE**

11 CONSULTANT warrants, by execution of this Agreement that no person or selling agency has  
12 been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding,  
13 for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona  
14 fide established commercial or selling agencies maintained by CONSULTANT for the purpose of  
15 securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this  
16 Agreement without liability; pay only for the value of the work actually performed, or in its discretion to  
17 deduct from the contract price or consideration, or otherwise recover the full amount of such  
18 commission, percentage, brokerage, or contingent fee.

19 **ARTICLE 44. DEBARMENT AND SUSPENSION CERTIFICATION**

20 A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of  
21 perjury under the laws of the State of California, that CONSULTANT or any person associated therewith  
22 in the capacity of owner, partner, director, officer or manager:

23 1. Is not currently under suspension, debarment, voluntary exclusion, or determination  
24 of ineligibility by any federal agency;

25 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by  
26 any federal agency within the past three (3) years;

3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

B. Any exceptions to this certification must be disclosed in writing to the AUTHORITY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and the dates of agency action.

C. Exceptions to the Federal Government Excluded Parties List System maintained by the General Services Administration are to be determined by the Federal Highway Administration.

**ARTICLE 45. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING**

A. CONSULTANT certifies to the best of his or her knowledge and belief that:

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any local, State or Federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding or making of this Agreement, or with the extension, continuation, renewal, amendment, or modification of this 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 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 Agreement, CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

B. This certification is a material representation of fact upon which reliance was 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 U.S. Code Title 31 Section 1352,. Any person who fails to file



1 the required certification shall be subject to a civil penalty of not less than ten thousand (\$10,000) dollars  
2 and not more than one hundred thousand (\$100,000) Dollars for each such failure.

3 C. CONSULTANT also agrees by signing this document that he or she shall require that the  
4 language of this certification be included in all lower-tier subcontracts, which exceed one hundred  
5 thousand (\$100,000) dollars, and that all such sub recipients shall certify and disclose accordingly.

6 **ARTICLE 46. FUNDING REQUIREMENTS**

7 A. It is mutually understood between the parties that this Agreement may have been written  
8 before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties,  
9 in order to avoid program and fiscal delays that would occur if the Agreement were executed after that  
10 determination was made.

11 B. This Agreement is valid and enforceable only if sufficient funds are made available to  
12 AUTHORITY for the purpose of this Agreement. In addition, this Agreement is subject to any additional  
13 restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or  
14 AUTHORITY governing board that may affect the provisions, terms, or funding of this Agreement in any  
15 manner.

16 C. It is mutually agreed that if sufficient funds are not appropriated, this Agreement may be  
17 amended to reflect any reduction in funds.

18 D. AUTHORITY has the option to terminate the Agreement pursuant to Article 14 Termination,  
19 or by mutual agreement to amend the Agreement to reflect any reduction of funds.

20 **ARTICLE 47. EQUIPMENT PURCHASE**

21 A. Prior authorization, in writing, by AUTHORITY's Project Manager shall be required before  
22 CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding five thousand  
23 (\$5,000.00) Dollars for supplies, equipment or CONSULTANT services. CONSULTANT shall provide an  
24 evaluation of the necessity or desirability of incurring such costs.

25 B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost  
26 Proposal and exceeding five thousand (\$5,000.00) Dollars prior authorization by AUTHORITY's Project

1 Manager; three (3) competitive quotations must be submitted with the request, or the absence of bidding  
2 must be adequately justified.

3 C. Any equipment purchased as a result of this Agreement is subject to the following:

4 1. "CONSULTANT shall maintain an inventory of all nonexpendable property.  
5 Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost  
6 of \$5,000.00 or more. If the purchased equipment needs replacement and is sold or traded in,  
7 AUTHORITY shall receive a proper refund or credit at the conclusion of this Agreement, or if the  
8 Agreement is terminated, CONSULTANT may either keep the equipment and credit AUTHORITY in  
9 an amount equal to the its fair market value, or sell such equipment at the best price obtainable at a  
10 public or private sale, in accordance with established AUTHORITY procedures; and credit  
11 AUTHORITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment,  
12 fair market value shall be determined at CONSULTANT's expense, on the basis of a competent  
13 independent appraisal of such equipment. Appraisals shall be obtained from an appraiser agreeable  
14 to both AUTHORITY and CONSULTANT. If it is determined to sell the equipment, the terms and  
15 conditions of such sale must be approved in advance by AUTHORITY.

16 2. Regulation CFR, Title 2, Part 200 requires a credit to Federal funds when  
17 participating equipment with a fair market value greater than five thousand (\$5,000.00) Dollars is  
18 credited to the project.

19 **ARTICLE 48. HEALTH AND SAFETY REQUIREMENTS**

20 A. CONSULTANT shall comply with all the requirements set forth in Exhibit G, Level 1 Safety  
21 Specifications. As used therein, "Contractor" shall mean "Consultant" and Subcontractor" shall mean  
22 "Sub-consultant."

23 B. CONSULTANT agrees to include this requirement in all of its subcontracts.

24 **ARTICLE 49. CONFIDENTIALITY OF DATA**

25 A. All financial, statistical, personal, technical, or other data and information relative to the  
26 AUTHORITY's operations, which are designated confidential by the AUTHORITY and made available to

1 the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from  
2 unauthorized use and disclosure.

3 B. Permission to disclose information on one occasion, or public meeting held by the  
4 AUTHORITY relating to the Agreement, shall not authorize the CONSULTANT to further disclose such  
5 information or disseminate the same on any other occasion.

6 C. CONSULTANT shall not comment publicly to the press or any other media regarding the  
7 Agreement or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff,  
8 CONSULTANT's own personnel involved in the performance of this Agreement, at public hearings, or in  
9 response to questions from a Legislative committee.

10 D. CONSULTANT shall not issue any news release or public relations item of any nature,  
11 whatsoever, regarding work performed or to be performed under this Agreement without prior review of  
12 the contents thereof by the AUTHORITY, and receipt of the AUTHORITY's written permission.

13 **ARTICLE 50. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

14 CONSULTANT warrants that this Agreement was not obtained or secured through rebates,  
15 kickbacks or other unlawful consideration, either promised or paid to any AUTHORITY employee. For  
16 breach or violation of this warranty, AUTHORITY shall have the right in its discretion, to terminate the  
17 Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the  
18 Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful  
19 consideration.

20 **ARTICLE 51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

21 In accordance with Public Contract Code Section 10296, CONSULTANT hereby states under  
22 penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court  
23 has been issued against CONSULTANT within the immediately preceding two-year period because  
24 of CONSULTANT's failure to comply with an order of a federal court that orders CONSULTANT to comply  
25 with an order of the National Labor Relations Board.

26 **ARTICLE 52. EVALUATION OF CONSULTANT**

CONSULTANT's performance will be evaluated by AUTHORITY. A copy of the evaluation will be sent to CONSULTANT for comments. The evaluation together with any comments shall be retained as part of the Agreement record.

**ARTICLE 53. 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.

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 equipment or services used by the entity that excludes the need to include an internal or third-party audit.

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

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

**B. Prohibition**

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

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

1 unless an exception at paragraph (C) of this Article applies or the covered telecommunication  
2 equipment or services are covered by a waiver described in FAR section 4.2104. This prohibition applies  
3 to the use of covered telecommunications equipment or services, regardless of whether that use is in  
4 performance of work under a federally-funded contract.

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

6 1. A service that connects to the facilities of a third-party, such as backhaul, roaming,  
7 or interconnection arrangements; or

8 2. Telecommunications equipment that cannot route or redirect user data traffic or permit  
9 visibility into any user data or packets that such equipment transmits or otherwise handles.

10 D. Reporting Requirement

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

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

- 24 a) Within one (1) business day from the date of such identification or  
25 notification: the contract number; the order number(s), if applicable;  
26 supplier name; supplier unique entity identifier (if known); supplier

Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

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

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

#### **ARTICLE 54. TITLE VI ASSURANCES**

The U.S. Department of Transportation Order No. 1050.2A requires all federal-aid Department of Transportation contracts between AUTHORITY and CONSULTANT to contain Appendices A and E of the Title VI Assurances. Appendices B, C, and D are to be included in contracts, if applicable. During the performance of this Agreement, CONSULTANT shall comply with the Title VI Assurances set forth in Appendices A through E, herein. Any references to "consultant" or "contractor" in this Article shall also mean "CONSULTANT" as defined under this Agreement. CONSULTANT shall include these Title VI Assurances in all subcontracts to perform work under this Agreement.

#### **APPENDIX A**

A. During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:



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

5           2. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the  
6 AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or  
7 disability in the selection and retention of sub-applicants, including procurements of materials and leases  
8 of equipment. CONSULTANT shall not participate either directly or indirectly in the discrimination  
9 prohibited by Section 21.5 of the Regulations, including employment practices when the agreement  
10 covers a program set forth in Appendix B of the Regulations.

11           3. Solicitations of Sub-agreements, Including Procurement of Materials and Equipment: In all  
12 solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed  
13 under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-  
14 applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this  
15 Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national  
16 origin.

17           4. Information and Reports: CONSULTANT shall provide all information and reports required by  
18 the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records,  
19 accounts, other sources of information, and its facilities as may be determined by the recipient or FHWA  
20 to be pertinent to ascertain compliance with such Regulations or directives. Where any information  
21 required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this  
22 information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth  
23 what efforts CONSULTANT has made to obtain the information.

24           5. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the  
25 nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as  
26 it or the FHWA may determine to be appropriate, including but not limited to:

1 a) withholding of payments to CONSULTANT under the Agreement within a reasonable  
2 period of time, not to exceed 90 days; and/or

3 b) cancellation, termination or suspension of the Agreement, in whole or in part.

4 6. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1)  
5 through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless  
6 exempt by the Regulations, or directives issued pursuant thereto.

7 B. CONSULTANT shall take such action with respect to any sub-agreement or procurement  
8 as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for  
9 noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is  
10 threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT  
11 may request the recipient enter into such litigation to protect the interests of the State, and, in addition,  
12 CONSULTANT may request the United States to enter into such litigation to protect the interests of the  
13 United States.

## 14 APPENDIX E

15  
16 During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in  
17 interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following  
18 nondiscrimination statutes and authorities, including, but not limited to:

### 19 Pertinent Non-Discrimination Authorities:

20 • Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits  
21 discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

22 • The Uniform Relocation Assistance and Real Property of Acquisition Policies Act of 1970, (42  
23 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired  
24 because of Federal or Federal-aid programs and projects);

25 • Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis  
26 of sex;

1           • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits  
2 discrimination on the basis of disability); and 49 CFR Part 27;

3           • The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits  
4 discrimination on the basis of age);

5           • Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended,  
6 (prohibits discrimination based on race, creed, color, national origin, or sex);

7           • The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and  
8 applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section  
9 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to  
10 include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors,  
11 whether such programs or activities are Federally funded or not);

12           • Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis  
13 of disability in the operation of public entities, public and private transportation systems, places of public  
14 accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by  
15 Department of Transportation regulations 49 C.F.R. parts 37 and 38;

16           • The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits  
17 discrimination on the basis of race, color, national origin, and sex);

18           • Executive Order 12898, Federal Actions to Address Environmental Justice in Minority  
19 Populations and Low-Income Populations, which ensures discrimination against minority populations by  
20 discouraging programs, policies, and activities with disproportionately high and adverse human health or  
21 environmental effects on minority and low-income populations;

22           • Executive Order 13166, Improving Access to Services for Persons with Limited English  
23 Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because  
24 of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps  
25 to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);  
26

• Title IX of the Education Amendments of 1972, as amended which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

**ARTICLE 55. NOTICE TO AUTHORITY AND FTA OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

CONSULTANT shall report to AUTHORITY and FTA any current or prospective legal matter that may affect the Federal Government, including a major dispute, default, breach, litigation, or naming the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interest in the federal award, any underlying agreements, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. In addition, CONSULTANT shall promptly notify AUTHORITY, FTA, and the U.S. DOT Inspector General of any knowledge of potential fraud, waste, or abuse occurring on the Project. This includes knowledge that any person or entity, including CONSULTANT, has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. "Knowledge," as used in this Article, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative agency; a criminal indictment or civil complaint; or probable cause that could support a criminal indictment, or any other credible information in the possession of the CONSULTANT. CONSULTANT agrees to include these requirements in all subcontracts at any tier.

**ARTICLE 56. FLY AMERICA REQUIREMENT**

CONSULTANT agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for the U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter

1 of necessity, as defined by the Fly America Act. CONSULTANT shall submit, if a foreign air carrier was  
2 used, an appropriate certification or memorandum adequately explaining why service by a U.S. carrier  
3 was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a  
4 certificate of compliance with the Fly America requirements. CONSULTANT agrees to include the  
5 requirements of this section in all subcontracts that may involve international air transportation.

6 **ARTICLE 57. SEISMIC SAFETY REQUIREMENTS**

7 CONSULTANT agrees that any new building or addition to an existing building will be designed  
8 and constructed in accordance with the standards for Seismic Safety required in Department of  
9 Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent  
10 required by the regulation. CONSULTANT also agrees to ensure that all work performed under this  
11 contract including work performed by a subcontractor is in compliance with the standards required by the  
12 Seismic Safety Regulations and the certification of compliance issued on the project.

13 **ARTICLE 58. LIMITATION ON GOVERNMENTAL DECISIONS**

14 CONSULTANT shall not make, participate in making, or use its position to influence any  
15 governmental decisions as defined by the Political Reform Act, Government Code section 81000 et  
16 seq., and the implementing regulations in Title 2 of the California Code of Regulations section 18110  
17 et seq. CONSULTANT's personnel performing services under this Agreement shall not authorize or  
18 direct any actions, votes, appoint any person, obligate, or commit AUTHORITY to any course of action  
19 or enter into any contractual agreement on behalf of AUTHORITY. In addition, CONSULTANT's  
20 personnel shall not provide information, an opinion, or a recommendation for the purpose of affecting  
21 a decision without significant intervening substantive review by AUTHORITY personnel, counsel, and  
22 management.

23 **ARTICLE 59. PROHIBITION**

24 Neither the consultant that is awarded this contract for program management consultant  
25 services, or its subconsultants, may actively oversee their own work as part of existing or future  
26 contracts with AUTHORITY's Highway and Rail Programs within the Capital Programs Division.

1 Offerors are encouraged to seek AUTHORITY's evaluation, on a case-by-case basis, as to whether  
2 a conflict of interest exists.

3 **ARTICLE 60. FORCE MAJEURE**

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

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1           **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-2-2855 to be  
2 executed as of the date of the last signature below.

3           **CONSULTANT**

4           **ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

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

7 Darrell E. Johnson  
8 Chief Executive Officer

9           **APPROVED AS TO FORM:**

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

11 James M. Donich  
12 General Counsel

13           **APPROVED:**

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

15 James G. Beil, P.E.  
16 Executive Director, Capital Programs

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

### I. DBE Participation

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

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

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

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

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

### II. DBE Policy and Applicability

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

The project is subject to these stipulated regulations and AUTHORITY's DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR, Part 26, in the performance of



agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of AUTHORITY to:

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

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

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

### III. AUTHORITY's DBE Policy Implementation Directives

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise ("DBE") Program exists to ensure participation, equitable competition, and assistance to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY's analysis of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Agencies' 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, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong”;
  - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka”;
  - vi. Women; and
  - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- c) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
4. **“Owned and Controlled”** means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
5. **“Manufacturer”** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CONSULTANT.
6. **“Regular Dealer”** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Agreement are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
7. **“Fraud”** includes a firm that does not meet the eligibility criteria of being a certified

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

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

a) 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.

b) Economic Disadvantage

1. The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

2. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

Form/Electronic Submittal	Frequency of Submission	Process for Submission:
Monthly DBE Attainment and Subconsultant Prompt Payment Verification Report	Monthly by the 10 <sup>th</sup> of each month	Enter data and submit via ECAT to AUTHORITY
(CALTRANS) Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments	After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month	Submit to Caltrans by e-mail: <a href="mailto:business.support.unit@dot.ca.gov">business.support.unit@dot.ca.gov</a> and copy 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
(CALTRANS) Exhibit 17-F: Final Report-Utilization of Disadvantaged Business	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY

Enterprises (DBE) and First-Tier Subcontractors		
(CALTRANS) Exhibit 17-O: Disadvantaged Business Enterprises (DBE) Certification Status Change	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY

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

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

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

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

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

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

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

Pertinent payment details include:

- Invoice Number
- Invoice Amount
- Payment Amount
- Invoice Date
- Check Number
- Date of Payment

- Corresponding Prime Invoice (associated to subconsultants' invoice)
- Retention
- Disputed or Withheld invoice amounts

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

After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10th of the following month, CONSULTANT shall complete and email the "Exhibit 9- F: Disadvantaged Business Enterprise Running Tally of Payments" to Caltrans by e-mail (business.support.unit@dot.ca.gov) with a copy uploaded to the AUTHORITY via ECAT. The Exhibit 9-F can be completed on-line and downloaded via ECAT, for submission to Caltrans, after CONSULTANT's submission of the monthly reporting data captured above.

#### **B. DBE Subcontract Agreements**

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

#### **C. Additional DBE Firms**

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

CONSULTANT must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of

the written confirmation). This supporting documentation is a required upload by ECAT when submitting a Request to Add.

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

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the CONSULTANT obtains AUTHORITY's written consent. CONSULTANT shall not terminate, decrease or substitute a listed DBE for convenience and perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, another DBE firm or obtain materials from other sources without prior written authorization from AUTHORITY. CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE on the (Caltrans) Exhibit 10-O2 Consultant Contract DBE Commitment form, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY. This includes partial terminations.

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

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

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



termination (inclusive of decreases to commitment values and substitutions) of a DBE firm.

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

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

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

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

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

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

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

**E. On-Going Good Faith Efforts Post-Award**

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

- a. Negotiating in good faith to attempt to finalize and execute a subconsultant agreement with the DBEs committed to;
- b. Continuing to provide assistance to DBE firms in obtaining bonding, lines of credit, etc.
- c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting AUTHORITY approval to substitute the DBE.
- d. Paying all firms (DBEs and non-DBEs) in a timely manner, as listed in the contract specifications;
- e. Alerting AUTHORITY in a timely manner of any problems anticipated in attaining the DBE participation committed to in the proposal;
- f. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of AUTHORITY.

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

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

- d. Effectively using the services of available minority/women community organizations; minority/women contractors' 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 (Exhibit 17-F)**

Upon completion of the project, CONSULTANT must electronically designate their last Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Report as final to facilitate reporting and capturing DBE attainments and prompt release of retention to all subconsultants.

CONSULTANT must electronically submit an Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors (F-PDF) to AUTHORITY 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.

The Exhibit 17-F can be completed on-line and downloaded via ECAT, for submission to Caltrans, upon CONSULTANT's submission of the Final Monthly DBE Attainment Summary and Subconsultant Prompt Payment Verification Report.

**G. Disadvantaged Business Enterprises Certification Status Change (Exhibit 17-O)**

If a DBE Subconsultant is decertified during the life of the project, the decertified subconsultant must notify the CONSULTANT in writing with the date of decertification and last date of work on the project while still certified. Within ten (10) days of receipt of decertification documentation, CONSULTANT must electronically furnish the written documentation to AUTHORITY via ECAT. Upon completion of the project, "Exhibit 17-O: Disadvantaged Business Enterprises Certification Status Change" must be signed and certified correct by the CONSULTANT indicating each DBE's existing certification status utilizing ECAT. The Exhibit 17-O can be completed on-line and submitted to the Authority via ECAT.

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

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

AUTHORITY requires CONSULTANT to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by AUTHORITY, unless otherwise provided by applicable record retention requirements for CONSULTANT'S agreement, whichever is longer. These records will be made available for inspection upon request in accordance with Article 17 entitled "Audit and Inspection of Records", of this Agreement. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

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

**V. DBE Eligibility and Commercially Useful Function Standards**

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

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 bid/proposal submission. A listing of DBEs certified by the CUCP is available at the link to the CUCP web site, which can be accessed at:

<https://ucp.dot.ca.gov/licenseForm.htm>

1. A DBE may participate as a prime CONSULTANT, Subconsultant, joint venture partner, vendor of material or supplies, or as a trucking company.
2. 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.
3. 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.
4. A DBE must perform a commercially useful function in accordance with 49 CFR Part 26.55 (i.e. must be responsible for the execution of a distinct element of the work, and must carry out its responsibility by actually performing, managing, and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

**VI. DBE Crediting Provisions**

- A. When a DBE is proposed to participate in the Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If CONSULTANT is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.

1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONSULTANT'S DBE attainment.
2. CONSULTANT is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
  - a) Sixty percent (60%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a regular dealer; or
  - b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward CONSULTANT'S DBE attainment, provided that the fee or commission is reasonable and not excessive, as compared with fees or commissions customarily allowed for similar work including:
  - a) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Agreement;
  - b) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves), when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
  - c) Fees and commissions charged for providing any insurance specifically required in the performance of the Agreement.
4. If the CONSULTANT listed a non-certified, 1st tier Subconsultant to perform work on this Agreement, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the Agreement. If a DBE CONSULTANT performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
5. CONSULTANT is advised not to report the participation of DBE(s) toward the CONSULTANT'S DBE attainment until the amount being claimed has been paid to the DBE.

**VII. DBE “Frauds” and “Fronts”**

Only legitimate DBEs are eligible to participate as DBEs in the AUTHORITY’s U.S. DOT-assisted contracts. CONSULTANT is cautioned against knowingly and willfully using “fronts.” The use of “fronts” and “pass through” subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or 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 7<sup>th</sup> Floor, Washington, DC 20590.

**VIII. Dispute Resolution**

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

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

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

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

**A. Informal Meetings**

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

**B. 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 his/her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

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

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

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

#### **IX. Administrative Remedies and Enforcement**

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

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

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

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

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

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

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and is subject to administrative remedies including withholding 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 C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**Information Sheet**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**IMPORTANT NOTICE**

**Basic Provisions of Government Code Section 84308**

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: \_\_\_\_\_ RFP Title: \_\_\_\_\_

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

**If no**, please sign and date below.

**If yes**, please provide the following information:

Prime Contractor Firm Name: \_\_\_\_\_

Contributor or Contributor Firm's Name: \_\_\_\_\_

Contributor or Contributor Firm's Address: \_\_\_\_\_

Is Contributor:

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

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

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

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Contributor

\_\_\_\_\_  
Print Firm Name

\_\_\_\_\_  
Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY  
AND AFFILIATED AGENCIES**

**Board of Directors**

**Mark A. Murphy, Chairman**

**Gene Hernandez, Vice Chairman**

**Lisa A. Bartlett, Director**

**Doug Chaffee, Director**

**Barbara Delgleize, Director**

**Andrew Do, Director**

**Katrina Foley, Director**

**Brian Goodell, Director**

**Patrick Harper, Director**

**Michael Hennessey, Director**

**Steve Jones, Director**

**Fred Jung, Director**

**Joseph Muller, Director**

**Tam Nguyen, Director**

**Vicente Sarmiento, Director**

**Donald P. Wagner, Director**

**EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS**

**STATUS OF PAST AND PRESENT CONTRACTS FORM**

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

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

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

<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**

To assist offerors in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs are ready, willing and able to compete for subcontracting opportunities on this project. The DBE Goal for this contract is **17%**.

**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 consultants to subcontract portions of work that they might, otherwise, perform with their own work forces. Race-neutral participation also includes any time a DBE obtains a Prime Contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

In conjunction with the race-neutral measures listed above, the Authority will implement race-conscious measures through the use of contract goals and good faith efforts. When a contract-specific goal is assigned to a project, 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 Exhibit (form) with their proposal:

- Consultant Proposal DBE Commitment Form (10-O1) - Exhibit E-1

To be a responsible and responsive offeror, the offeror must submit a DBE Letter of Acknowledgement and Commitment for each DBE firm listed on the DBE Participation Commitment Form to the Authority at time of Proposal.

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) - Exhibit E-2
- DBE Information - Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the Consultant Proposal DBE Commitment Form) -Exhibit E-3
- Bidders List - Exhibit E-4

Required Forms	Submission
<b>Consultant Proposal DBE Commitment Form (10-O1)</b>	Required at time of proposal
<b>DBE Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the Consultant Proposal DBE 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>DBE Information – Good Faith Efforts</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 “Consultant Proposal DBE Commitment Form – Caltrans Form 10-O1” (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 percentage of the work to be performed or provided by the DBE;
- 4.1.5 The percentage 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 **DBE 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(s) and scope of work listed on the Consultant Proposal DBE Commitment Form (10-O1). The DBE Letter of Acknowledgement and Commitment and the amount(s) and scope reflected on the Consultant Proposal DBE Commitment Form (10-O1) 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 “DBE Information - Good Faith Efforts” (Exhibit E-3)

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

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

If the offeror has met the DBE goal based on the participation of DBEs listed on the offeror’s “Consultant Proposal DBE Commitment Form 10-O1”, it is at the offeror’s discretion (i.e. this is not mandatory) to submit “DBE Information – Good Faith Efforts,” form. However, the submission of good faith efforts documentation can protect the offeror’s eligibility for award of the contract if the Authority determines that the offeror failed to meet the goal for various reasons (e.g. a DBE firm was not certified at proposal submission or the offeror made a mathematical error). Submittal of only the “DBE Information – Good Faith Efforts,” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made; therefore, the offeror is encouraged to attach additional information and supporting documents as necessary.

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



For further guidance, refer to instructions on Exhibit E-3 “DBE Information – Good Faith Efforts,” form and the United States Department of Transportation’s (“U.S. DOT”) DBE Program, Appendix A of Title 49 CFR Part 26 - “Guidance Concerning Good Faith Efforts,” and the DBE Section of the Authority’s Pre-Proposal Power Point.

#### **4.3 “Bidders List” (Exhibit E-4)**

The Authority is required by Regulations to create and maintain a “Bidders List,” of all firms proposing or quoting on the Authority’s U.S. DOT-assisted contracts for use in calculating the Authority’s DBE goal(s). 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.

**EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT**

1. Local Agency: \_\_\_\_\_ 2. Contract DBE Goal: \_\_\_\_\_  
 3. Project Description: \_\_\_\_\_  
 4. Project Location: \_\_\_\_\_  
 5. Consultant's Name: \_\_\_\_\_ 6. Prime Certified DBE: ☐

7. Description of Work, Service, or Materials Supplied	8. DBE Certification Number	9. DBE Contact Information	10. DBE %
<b>Local Agency to Complete this Section</b>		<b>11. TOTAL CLAIMED DBE PARTICIPATION</b>	<b>%</b>
17. Local Agency Contract Number: _____ 18. Federal-Aid Project Number: _____ 19. Proposed Contract Execution Date: _____ 20. Consultant's Ranking after Evaluation: _____  Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			
21. Local Agency Representative's Signature _____	22. Date _____	12. Preparer's Signature _____	13. Date _____
23. Local Agency Representative's Name _____	24. Phone _____	14. Preparer's Name _____	15. Phone _____
25. Local Agency Representative's Title _____		16. Preparer's Title _____	

DISTRIBUTION: Original – Included with consultant's proposal to local agency.

## INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

### CONSULTANT SECTION

- 1. Local Agency** - Enter the name of the local or regional agency that is funding the contract.
- 2. Contract DBE Goal** - Enter the contract DBE goal percentage as it appears on the project advertisement.
- 3. Project Location** - Enter the project location as it appears on the project advertisement.
- 4. Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
- 5. Consultant's Name** - Enter the consultant's firm name.
- 6. Prime Certified DBE** - Check box if prime contractor is a certified DBE.
- 7. Description of Work, Services, or Materials Supplied** - Enter description of work, services, or materials to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
- 8. DBE Certification Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened.
- 9. DBE Contact Information** - Enter the name, address, and phone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and phone number, if the prime is a DBE.
- 10. DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
- 11. Total Claimed DBE Participation %** - Enter the total DBE participation claimed. If the total % claimed is less than item "Contract DBE Goal," an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H DBE Information - Good Faith Efforts of the LAPM).
- 12. Preparer's Signature** - The person completing the DBE commitment form on behalf of the consultant's firm must sign their name.
- 13. Date** - Enter the date the DBE commitment form is signed by the consultant's preparer.
- 14. Preparer's Name** - Enter the name of the person preparing and signing the consultant's DBE commitment form.
- 15. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 16. Preparer's Title** - Enter the position/title of the person signing the consultant's DBE commitment form.

### LOCAL AGENCY SECTION

- 17. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 18. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 19. Proposed Contract Execution Date** - Enter the proposed contract execution date.
- 20. Consultant's Ranking after Evaluation** - Enter consultant's ranking after all submittals/consultants are evaluated. Use this as a quick comparison for evaluating most qualified consultant.
- 21. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 22. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 23. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 24. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 25. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

**DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT**

1. RFP NO.: \_\_\_\_\_

2. Project Name/Description: \_\_\_\_\_

3. Offeror: \_\_\_\_\_

**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 Offeror 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 offeror 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 offeror 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

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. **Offeror'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 offeror does not receive award of the prime contract, any and all representations in the letter of Acknowledgment and Commitment shall be null and void**



## DBE INFORMATION - GOOD FAITH EFFORTS

RFP No: \_\_\_\_\_ Proposal Due Date \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

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

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


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


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


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


**NOTE:** USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS.





## Bidders List

The Department of Transportation requires the Authority to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, 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	Consultant 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:							

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

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

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

**EXHIBIT 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 other were recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
6. Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:
  - a. An individual who is appointed to a position in the Government under title 5, United States code, including a position under a temporary appointment.
  - b. A member of the uniformed services, as defined in the subsection

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

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

## B. PROHIBITIONS

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

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

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

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

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

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

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

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

b. Professional and technical services

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

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

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

- (2) For purposes of paragraph C.3.a.(1) of this clause, professional and technical services shall be limited to advise and analysis directly applying any professional or technical discipline. For

example, drafting of a legal document accompanying a bid or proposal is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (4) Only those services expressly authorized by paragraph C.3.a.(1) and (2) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

c. Disclosure

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



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

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

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

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

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

d. Agreement

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

e. Penalties

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

Approved by  
OMB  
003480045

## **INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES**

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address city, state, and zip code of the prime Federal recipient. Include Congressional District.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency, name if known. For example, Department of Transportation, United State Coast Guard.
7. Enter the Federal program name for description of the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/ proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a.). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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

**DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET**

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

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**EXHIBIT G: SAFETY SPECIFICATIONS**

## LEVEL 2 STANDARD HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

### PART I – 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, and bus yard safety rules as well as all federal, state, and local regulations pertaining to scope of work 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 reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

#### C. INJURY AND 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.

#### D. 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.

#### E. HAZARD COMMUNICATION PROGRAM

- 1. 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 products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- 2. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.



**F. STORM WATER POLLUTION PREVENTION PLAN**

1. 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.

**G. DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE**

1. 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.
2. 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, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
3. The Contractor's HSE Representative is subject to acceptance by the Authority Project Manager, and the HSEC Department. All contact information of the HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager, upon request, within 72 hours.
4. The Contractor's HSE Representative shall hold a current certification from the Board of Certified Safety Professionals (BCSP) and have five years of demonstrated construction/scope experience enforcing HSE compliance on construction, industrial or similar project scopes. The designated HSE Representative shall participate in any required HSE related submittals. The Authority reserves the right to allow for an exception and to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.
5. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
6. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the Project.

## **H. SCOPE PLANNING**

Prior to any scope work activity or task, the Contractor shall evaluate the hazards of the scope of work and the work environment to ensure proper control measures are identified for employee public and property protection measures to prevent incidents. This evaluation shall be implemented by developing a written site specific Job Hazard Analysis (JHA) or similar tool designed for planning the work to prevent incidents. The plan shall be provided to the Authority's Project Manager, upon request, within 72 hours.

## **I. ORIENTATION**

1. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 or 3 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation/lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.
2. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

## **J. TRAFFIC & PARKING**

The Contractor shall ensure that all Contractor vehicles, including those of their subcontractors, suppliers, vendors and employees are parked in designated parking areas, personal vehicles shall be parked in the employee parking lot, work vehicles required in the maintenance area of a bus base shall be identified by company name and/or logo, covered by the company insurance, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots. Vehicles without appropriate company name and logo are considered personal vehicles and not allowed in the maintenance area of the bus base.

## **K. GENERAL PROVISIONS**

1. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
2. The Contractor shall immediately notify the Authority's Project Manager whenever local, state or federal regulatory agency personnel are identified as being onsite.

3. The Authority HSEC 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 pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
4. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
5. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who work on Authority property in the recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
6. California Code of Regulations (CCR) Title 8 Standards are minimum requirements, and each Contractor is encouraged to exceed minimum requirements. When the Contractor safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of the public and workers.

## **1.2 ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.

- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.

### **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 property.
- 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 a written incident investigation report shall be submitted to 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, Investigative photos of the existing conditions and area around the injury/incident scene, 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 PERSONAL PROTECTIVE EQUIPMENT

Contractors, and all associated subcontractors, vendors and suppliers are required to provide their own personal protective equipment (PPE), including eye, head, foot, and hand protection, respirators, reflective safety vests, and all other PPE required to perform their work safely on Authority projects.

#### 1.5 LANGUAGE REQUIREMENTS

The Contractor for safety reasons shall ensure employees that do not read, or understand English, shall have a bilingual supervisor or foreman when on the Authority property or projects.

**1.6 WARNING SIGNS AND DEVICES**

The Contractor shall provide signs, signals, and/or warning devices to be visible when and where a hazard exists. Signs, signals, and/or warning devices shall be removed when the hazard no longer exists.

**1.7 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. Board of Certified Safety Professionals (BCSP)
- F. OCTA Yard Safety Rules

**END OF SECTION**

**EXHIBIT H: CERTIFICATION OF INDIRECT COSTS AND FINANCIAL  
MANAGEMENT SYSTEM**



# Inspector General

California Department of Transportation

## Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: \_\_\_\_\_

**Important:** Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

### Indirect Cost Rate (ICR):

Combined Rate: \_\_\_\_\_ Or

Home Office Rate: \_\_\_\_\_ and Field Office Rate (if applicable): \_\_\_\_\_

Facilities Capital Cost of Money (if applicable): \_\_\_\_\_

**Fiscal Period:**\* \_\_\_\_\_

\* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

### Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\)](#); and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;



- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

### Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

### All A&E Contract Information:

- Total participation amount \_\_\_\_\_ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is \_\_\_\_\_
- Years of consultant's experience with 48 CFR Part 31 is \_\_\_\_\_
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit ☐

Local Govt ICR Audit ☐

Caltrans ICR Audit ☐

CPA ICR Audit ☐

Federal Govt ICR Audit ☐

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

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

Title:\*\*: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Phone\*\*.: \_\_\_\_\_

Email\*\*.: \_\_\_\_\_

\*\*An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency's invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.

**EXHIBIT I: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

**PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

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

Offeror:\_\_\_\_\_

RFP No.:\_\_\_\_\_ RFP Title: \_\_\_\_\_

Deviation or Exception No. : \_\_\_\_\_

Check one:

- Scope of Work (Technical) \_\_\_\_\_
- Proposed Agreement (Contractual) \_\_\_\_\_

Reference Section/Exhibit: \_\_\_\_\_ Page/Article No.\_\_\_\_\_

Complete Description of Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Rationale for Requesting Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Area Below Reserved for Authority Use Only:

\_\_\_\_\_

\_\_\_\_\_