

REQUEST FOR PROPOSALS (RFP) 3-2926

STATE AND FEDERAL-AID PROJECT PROGRAMMING



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

Key RFP Dates

| | |
|---------------------------------|--------------------------|
| Issue Date: | January 24, 2024 |
| Question Submittal Date: | January 31, 2024 |
| Proposal Submittal Date: | February 21, 2024 |
| Interview Date: | March 13, 2024 |

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January 24, 2024

NOTICE OF REQUEST FOR PROPOSALS (RFP)

RFP 3-2926: “STATE AND FEDERAL-AID PROJECT PROGRAMMING ”

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide state and federal-aid project programming, engineering, call for projects and project management support services. The budget for this project is \$375,000 for a three (3)-year term.

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.

Proposals must be submitted, electronically, through the following URL link: <http://www.octa.net/Proposal Upload Link>, at or before the deadline of 2:00 p.m. on February 21, 2024. The link has an upload file size limit of 80MB. Authority will not accept hard copy proposals for this RFP.

Offerors are instructed to click the upload link, select “**RFP 3-2926**” from the drop-down menu, and follow the instructions as prompted to upload the proposal. The upload link will expire at the submittal deadline and will not allow proposals to be uploaded.

Should Offerors encounter technical issues with uploading the proposals via the link provided, Offerors are required to contact the Contract Administrator prior to the submission deadline. Proposals and supplemental information to proposals received after the date and time specified above will be rejected.

Firms interested in obtaining a copy of this 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 3-2926, 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> |
|-------------------------|---|
| Professional Consulting | Consultant Services - General |
| | Consultant Services - Transit Planning |
| | Consultant Services - Transportation Planning |
| Professional Services | Engineering - General |

The Authority has established March 13, 2024, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS**A. EXAMINATION OF PROPOSAL DOCUMENTS**

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

B. ADDENDA

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

C. AUTHORITY CONTACT

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

Daniel Crymes, Senior Contract Administrator
Contracts Administration and Materials Management Department
Phone: 714.560. 5077
Email: dcrymes@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 (email) 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.

D. 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 must be put in writing and received via email at dcrymes@octa.net no later than 5:00 p.m., on January 31, 2024.
- b. Requests for clarifications, questions, and comments must be clearly labeled, "Written Questions RFP 3-2926," in the subject line of the email. 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 February 7, 2024. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via email.

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

Category:

Professional Consulting

Professional Services

Commodity:

Consultant Services - General

Consultant Services - Transit

Planning

Consultant Services -

Transportation Planning

Engineering - General

Inquiries received after 5:00 p.m. on January 31, 2024 will not be responded to.

E. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be submitted, electronically, through the following URL link: <http://www.octa.net/Proposal Upload Link>, at or before the deadline of **2:00 p.m. on February 21, 2024. The link has an upload file size limit of 80MB. Authority will not accept hard copy proposals for this RFP.**

Offerors are instructed to click the upload link, select “**RFP 3-2926**” from the drop-down menu, and follow the instructions as prompted to upload the proposal. The upload link will expire at the submittal deadline and will not allow proposals to be uploaded.

Should Offerors encounter technical issues with uploading the proposals via the link provided, Offerors are required to contact the Contract Administrator prior to the submission deadline. Proposals and supplemental information to proposals received after the date and time specified above will be rejected.

2. Acceptance of Proposals

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

F. PRE-CONTRACTUAL EXPENSES

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

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

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

G. JOINT OFFERS

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

H. TAXES

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

I. PROTEST PROCEDURES

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

J. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a time-and-expense contract with fully-burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A. The Agreement will be for a three (3)-year term.

K. CONFLICT OF INTEREST

All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships

or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

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

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

L. CODE OF CONDUCT

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

M. 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 Offeror for the disclosure of any materials or information submitted in response to the RFP or by failing to notify 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.

N. STATEMENT OF ECONOMIC INTERESTS

The awarded Offeror (including designated employees and subconsultants) may be required to file Statements of Economic Interests (Form 700) in accordance with the Political Reform Act (Government Code section 81000 et seq.). This applies to individuals who make, participate in making, or act in a staff capacity for making governmental decisions. The Authority determines which individuals are required to file a Form 700, and if such determination is made, the individuals must file Form 700s with the Authority's Clerk of the Board no later than thirty (30) days after the execution of the Agreement, annually thereafter for the duration of the Agreement, and within thirty (30) days of termination of the Agreement.

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. 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 Daniel Crymes, Senior Contract Administrator, and must, at a minimum, contain the following:

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

3. Technical Proposal

a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing

capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

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

b. Proposed Staffing and Project Organization

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

Offeror to:

- (1) Identify key personnel proposed to perform the work and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (2) Include staff with a registered Professional Engineer with working knowledge of transportation projects and demonstrates familiarity with state and federal funding program guidelines and requirements (including but not limited to Congestion Mitigation and Air Quality Improvement Program and Surface Transportation Block Grant Program).
- (3) 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.
- (5) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (6) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the work specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the work and specify who would perform them.
- (3) Identify methods that Offeror will use to ensure quality control, as well as budget and schedule control for the project.

- (4) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (5) 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 C), using the form entitled "Proposal Exceptions and/or Deviations" included in this RFP. This Proposal Exceptions and/or Deviations form (Exhibit F) must be included in the original proposal submitted by the Offeror. If no technical or contractual exceptions and/or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit the Proposal Exceptions and/or Deviations form (Exhibit F) or any technical and/or contractual exceptions after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

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

4. Cost and Price Proposal

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

The offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B) and furnish any narrative required to explain the prices quoted in the schedules.

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

5. Appendices

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

B. FORMS

1. Status of Past and Present Contracts Form

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update 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.

2. 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 25%**

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

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

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

 Reasonableness of hourly rates and expenses; competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established March 13, 2024, 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 Authority's management the Offeror whose proposal is most advantageous to the Authority.

C. AWARD

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

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

EXHIBIT A: SCOPE OF WORK

Scope of Work

State and Federal-Aid Project Programming, Engineering, Call for Projects and Project Management Support

Objective

The Orange County Transportation Authority (OCTA) requires a consultant (Consultant) to provide “on call” services to assist OCTA in administration of calls for projects, and project management for federal-aid projects. This includes preparing programming documents for federal-aid projects (Preliminary Environmental Study, Request for Authorization to Proceed, etc.) that shall meet California Department of Transportation (Caltrans) and Federal Highway Administration (FHWA) requirements. The services requested also include providing support for OCTA administered calls-for-projects including application eligibility reviews, engineering reviews, and project cost estimate reviews.

Background

OCTA periodically administers calls for projects using state or federal funds. The project applications received typically include detailed project information that needs to be thoroughly reviewed for eligibility, accuracy, and deliverability, such as project scopes, cost, and schedule. OCTA is seeking ongoing support for call for projects coordination, review of state and/or federal programming documentation, and general program management including semi-annual project status reviews, and project closeouts. In addition, services requested include the preparation of project nominations and supporting documentation for state, regional, and federal transportation funding programs.

General Requirements

Services shall be on an as needed basis, with no guarantee of usage. Consultant shall perform the following tasks:

1. Assist in development and presentation of workshops and related materials for calls-for-projects, assist in reviews of project submittals from applicant agencies in response to calls-for-projects, assist in preparation of Board of Directors (Board) items related to the calls, and work with local agencies on any requests received for changes to project scope, schedule or cost. The review of project submittals includes but is not limited to ensuring documentation is complete, scope, schedule and cost review, engineers estimate review, eligibility for project funding, ensure the projects meet the minimum requirements set forth in funding programs, and are accurately represented in the project application. Verification and quantitative analysis of information provided by applicant agencies shall be required.

2. Consultant shall include staff with a registered Professional Engineer with working knowledge of transportation projects and be thoroughly familiar with state and federal funding program guidelines and requirements (including but not limited to Congestion Mitigation and Air Quality Improvement Program and Surface Transportation Block Grant Program).
3. Assist in the preparation of Preliminary Environmental Study forms
4. Assist in preparation of preliminary engineering, right-of-way, and construction Request for Authorization submittals that shall receive Caltrans and FHWA approval with minimal resubmittal or supplemental submittals.
5. Consultant shall be thoroughly familiar with Caltrans and FHWA requirements and have recent experience preparing similar submittals and receiving timely approval of these documents.
6. Assist in the preparation of project nominations and supporting documentation for state, regional, and federal transportation funding programs as needed.
7. Assist local agencies in requests for project changes. This includes but is not limited to ensuring any changes to project scope, schedule or cost are consistent with the original project application and project funding, analyzing the impact of changes on the original project score, and assisting in preparation of Board items documenting approved changes.
8. Assist in project closeout. This includes but is not limited to ensuring documentation is complete, scope, schedule and costs are consistent with original project or any OCTA-approved amendments, reported costs are eligible for project funding, and site visit to verify the project was completed per the approved scope of work.

Work Plan

OCTA shall direct Consultant on when to start work and provide direction for preparation of programming documentation, project reviews, or technical support for project delivery and programming directly to local agencies.

Consultant shall include OCTA on correspondences between Consultant and any local agency Consultant is providing support to on behalf of OCTA.

Consultant shall provide status updates to OCTA via email on a bi-weekly basis for active/in progress requests.

Consultant shall inform OCTA of any issues identified in a timely manner.

Include status reports, summary reports of funding eligibility, prepared Preliminary Environmental Study and Request for Authorization forms, written feedback (via email) on draft programming forms.

Schedule

The contract is for “on-call” services, therefore, each project or service requested shall have a schedule discussed by the Consultant and OCTA prior to starting work.

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 OCTA to any course of action or enter into any contractual agreement on behalf of OCTA. 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 OCTA personnel, counsel, and management.

EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET
REQUEST FOR PROPOSALS (RFP) 3-2926

Enter below the proposed hourly rate(s) to perform the work described in the Scope of Work, Exhibit A. Prices shall include direct costs, indirect costs, taxes and profits. The Authority's intention is to award a time-and-expense price contract.

SCHEDULE I – HOURLY RATE SCHEDULE:

| | Fully-Burdened Hourly Rate(s) | | |
|----------------------------------|---|---|---|
| | | | |
| Labor | <u>Year 1</u> April 1, 2024 through March 31, 2025 | <u>Year 2</u> April 1, 2025 through March 31, 2026 | <u>Year 3</u> April 1, 2026 through March 31, 2027 |
| Project Manager | \$ | \$ | \$ |
| Staff Professional Engineer | \$ | \$ | \$ |
| Transportation Programming | \$ | \$ | \$ |
| Technical Writer/Researcher | \$ | \$ | \$ |
| Environmental Analyst - PES Prep | \$ | \$ | \$ |

FOR COST ANALYSIS PURPOSES:

- *Provide fully-burdened hourly rates for the above-designated job categories. The fully-burdened hourly rates will be included in the resulting agreement should your proposal be selected for contract award.*

OTHER LABOR CHARGES:

| Fully-Burdened Hourly Rate(s) | | | |
|-------------------------------|---|---|---|
| | | | |
| Job Function | <u>Year 1</u> April 1, 2024 through March 31, 2025 | <u>Year 2</u> April 1, 2025 through March 31, 2026 | <u>Year 3</u> April 1, 2025 through March 31, 2027 |
| | \$ | \$ | \$ |
| | \$ | \$ | \$ |
| | \$ | \$ | \$ |

SCHEDULE II ---- OTHER DIRECT COSTS SCHEDULE

| Type of ODC | | Quantity | Unit Rate | Budget Amount |
|---|--|----------|-----------|---------------|
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |
| 7. | | | | |
| 8. | | | | |
| <p><i>Additional ODC required and authorized by the Authority but not included in this Agreement will be reimbursed either (a) "At Cost" OR (b) up to the applicable Current Rate listed in this Schedule II, whichever is less.</i></p> <p><i>Supporting documentation must accompany invoice.</i></p> | | | | |

*Please note the following:

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

1. I acknowledge receipt of RFP 3-2926 and Addenda No.(s) _____
2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

FACSIMILE # _____

EMAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

NAME AND TITLE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

DATE SIGNED _____

EXHIBIT C: PROPOSED AGREEMENT

1 **PROPOSED AGREEMENT NO. C- 3-2926**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5
6 **THIS AGREEMENT** is effective this _____ day of _____, 2024 ("Effective Date"),
7 by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
8 Orange, California 92863-1584, a public corporation of the State of California (hereinafter referred to as
9 "AUTHORITY"), and , , , , (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to provide state and
12 federal-aid project programming, engineering, call for projects and project management support services;
13 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.

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

20 **ARTICLE 1. COMPLETE AGREEMENT**

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

26 B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's

EXHIBIT C

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 AUTHORITY by way of a written amendment to this Agreement and issued in accordance with the provisions of this Agreement.

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

Names**Functions**

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as

possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with such notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon execution by both parties, and shall continue in full force and effect through_____, unless earlier terminated or extended as provided in this Agreement.

ARTICLE 5. PAYMENT

A. For CONSULTANT's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provisions set forth in Article 6, AUTHORITY shall pay CONSULTANT on a time-and-expense basis in accordance with the following provisions.

B. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONSULTANT. CONSULTANT shall not charge AUTHORITY for driving time. Work completed shall be documented in a monthly progress report prepared by CONSULTANT, which shall accompany each invoice submitted by CONSULTANT. AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B, entitled "Price Summary Sheet," which is attached to and by this reference, incorporated in and made a part of this Agreement. These rates shall remain fixed for the term of this Agreement and are acknowledged to include CONSULTANT's overhead costs, general costs, administrative costs and profit. CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment until such time as CONSULTANT has documented to AUTHORITY'S satisfaction, that CONSULTANT has fully completed all work required. AUTHORITY's payment in full shall constitute AUTHORITY's final acceptance of CONSULTANT'S work.

C. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. CONSULTANT may also submit invoices electronically to AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. Each invoice

EXHIBIT C

1 shall be accompanied by the monthly progress report specified in paragraph B of this Article.
2 AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each
3 invoice. Each invoice shall include the following information:

- 4 1. Agreement No. C-3-2926;
- 5 2. Specify the effort for which the payment is being requested;
- 6 3. The time period covered by the invoice;
- 7 4. Labor (staff name, hours charged, hourly billing rate, current charges, and
8 cumulative charges) performed during the billing period;
- 9 5. Total monthly invoice (including project-to-date cumulative invoice amount);
- 10 6. Itemized expenses including support documentation incurred during the billing
11 period;
- 12 7. Monthly Progress Report;
- 13 8. Certification signed by the CONSULTANT or his/her designated alternate that a)
14 The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup
15 information included with the invoice is true, complete and correct in all material respects; c) All payments
16 due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to
17 subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The
18 invoice does not include any amount which CONSULTANT intends to withhold or retain from a
19 subcontractor or supplier unless so identified on the invoice.
- 20 9. Any other information as agreed or requested by AUTHORITY to substantiate the
21 validity of an invoice.

ARTICLE 6. MAXIMUM OBLIGATION

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

from, or due to termination of, this Agreement.

ARTICLE 7. 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: Daniel Crymes

Title:

Title: Senior Contract Administrator

Phone:

Phone: (714) 560 - 5077

Email:

Email: dcrymes@octa.net

ARTICLE 8. 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

1 defend and indemnify AUTHORITY in relation to any allegations made.

2 **ARTICLE 9. INSURANCE**

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

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

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

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

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

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

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

EXHIBIT C

1 C. CONSULTANT shall include on the face of the certificate of insurance the
2 Agreement No. C-3-2926 and, the Senior Contract Administrator's Name, Daniel Crymes.

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

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

9 **ARTICLE 10. ORDER OF PRECEDENCE**

10 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
11 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 3-2926;
12 (3) CONSULTANT's proposal dated _____; (4) all other documents, if any, cited herein
13 or incorporated by reference.

14 **ARTICLE 11. CHANGES**

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

23 **ARTICLE 12. DISPUTES**

24 A. Except as otherwise provided in this Agreement, when a dispute arises between
25 CONSULTANT and AUTHORITY, the project managers shall meet to resolve the issue. If project
26 managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts

EXHIBIT C

Administration and Materials Management (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMP, shall be the final and conclusive administrative decision.

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

ARTICLE 13. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONSULTANT written notice thereof. Upon said notice, AUTHORITY shall pay CONSULTANT its allowable costs incurred to date of termination and those allowable costs determined by AUTHORITY to be reasonably necessary to effect such termination. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under this Agreement.

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

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ARTICLE 14. INDEMNIFICATION

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

ARTICLE 15. ASSIGNMENTS AND SUBCONTRACTS

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

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. 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.

Subcontractor Name/Addresses**Subcontractor Functions**

ARTICLE 16. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, or other agents of AUTHORITY, such access to CONSULTANT's accounting books, records, payroll documents and facilities, as AUTHORITY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 15 of this Agreement. CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 17. CONFLICT OF INTEREST

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

B. If AUTHORITY determines that CONSULTANT, its employees, or subconsultants are subject to disclosure requirements under the Political Reform Act (Government Code section 81000 et seq.), CONSULTANT and its required employees and subconsultants shall complete and file Statements of Economic Interest (Form 700) with AUTHORITY's Clerk of the Board disclosing all required financial interests.

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ARTICLE 18. CODE OF CONDUCT

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

ARTICLE 19. PROHIBITION ON PROVIDING ADVOCACY SERVICES

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

ARTICLE 20. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 22. PROHIBITED INTERESTS

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

/

ARTICLE 23. OWNERSHIP OF REPORTS AND DOCUMENTS

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

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

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

ARTICLE 24. PATENT AND COPYRIGHT INFRINGEMENT

A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any

EXHIBIT C

1 presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages
2 finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of
3 the suit or claim and given authority, information and assistance at CONSULTANT's expense for the
4 defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results
5 from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes
6 upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination
7 with other material not provided by CONSULTANT when such use in combination infringes upon an
8 existing U.S. letters patent or copyright.

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

ARTICLE 25. FINISHED AND PRELIMINARY DATA

17
18 A. All of CONSULTANT's finished technical data, including but not limited to illustrations,
19 photographs, tapes, software, software design documents, including without limitation source code,
20 binary code, all media, technical documentation and user documentation, photoprints and other graphic
21 information required to be furnished under this Agreement, shall be AUTHORITY's property upon
22 payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction
23 except as elsewhere authorized in this Agreement. CONSULTANT further agrees that it shall have no
24 interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said data is subject
25 to the provisions of the Freedom of Information Act, 5 USC 552.

26 B. It is expressly understood that any title to preliminary technical data is not passed to

EXHIBIT C

1 AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,
2 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the
3 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given
4 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
5 AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 13, and a price shall be
6 negotiated for all preliminary data.

7 **ARTICLE 26. HEALTH AND SAFETY REQUIREMENT**

8 CONSULTANT shall comply with all the requirements set forth in Exhibit __, Level 1 Safety
9 Specifications.

10 **ARTICLE 27. LIMITATION ON GOVERNMENTAL DECISIONS**

11 CONSULTANT shall not make, participate in making, or use its position to influence any
12 governmental decisions as defined by the Political Reform Act, Government Code section 8100 et seq.,
13 and the implementing regulations in Title 2 of the California Code of Regulations section 18110 et seq.
14 CONSULTANT's personnel performing services under this Agreement shall not authorize or direct any
15 actions, votes, appoint any person, obligate, or commit AUTHORITY to any course of action or enter into
16 any contractual agreement on behalf of AUTHORITY. In addition, CONSULTANT's personnel shall not
17 provide information, an opinion, or a recommendation for the purpose of affecting a decision without
18 significant intervening substantive review by AUTHORITY personnel, counsel, and management.

19 **ARTICLE 28. FORCE MAJEURE**

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

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

Georgia Martinez
Department Manager, Contracts and Procurement

By: _____

James M. Donich
General Counsel

EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS FORM

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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

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

Name

Signature

Title

Date

EXHIBIT E: SAFETY SPECIFICATIONS

EXHIBIT F: 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:

| |
|--|
| |
| |
| |