

REQUEST FOR PROPOSALS (RFP) 6-1302

BUS STOP SOLAR LIGHTING AND INSTALLATION PROJECT



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

Key RFP Dates

Issue Date:	July 18, 2016
Pre-Proposal Conference Date:	July 26, 2016
Question Submittal Date:	July 28, 2016
Proposal Submittal Date:	August 19, 2016
Interview Date:	September 8, 2016

**FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT
#CA-90-Z027 and #CA-90-Z174**

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July 18, 2016

NOTICE OF REQUEST FOR PROPOSALS

(RFP): 6-1302: "BUS STOP SOLAR LIGHTING AND INSTALLATION PROJECT"

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified Contractors to manufacture and install solar lighting units at selected bus stops throughout Orange County.

The FTA 5307 Grant Funds amount is \$406,642.00.

The Authority has set a 6% Disadvantaged Business Enterprise (DBE) participation goal for this project.

Proposals must be received in the Authority's office at or before 2:00 p.m. on August 19, 2016.

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: Susan M Rosenkranz, Senior Buyer**

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: Susan M Rosenkranz, Senior Buyer**

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

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 6-1302, firms and subcontractors must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction - Electrical Installation
Marketing, Advertising & Media Services	Advertising - Outdoor Billboard, etc.
Facility; Equipment, Supplies	Electrical Supplies Electronic Supplies
Buses; Parts, Components, Vehicles	Bus Parts - Electronic Signs

A pre-proposal conference will be held on July 26, 2016, at 8:30 a.m. at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 101. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established September 8, 2016, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held on July 26, 2016, at 8:30 a.m. the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 101. 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

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:

Susan M Rosenkranz, Senior Buyer
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560. 5610, Fax: 714.560.5792
Email: srosenkranz@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 proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or Contractor involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the

proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on July 28, 2016.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: srosenkranz@octa.net

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than August 3, 2016. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Susan M Rosenkranz, Senior Buyer.

To receive email notification of Authority responses when they are posted on CAMM NET, firms and subcontractor's 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 - Electrical Installation
Marketing, Advertising & Media Services	Advertising - Outdoor Billboard, etc.
Facility; Equipment, Supplies	Electrical Supplies
	Electronic Supplies
Buses; Parts, Components, Vehicles	Bus Parts - Electronic Signs

Inquiries received after 5:00 p.m. on July 28, 2016, will not receive a response.

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 August 19, 2016.

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: Susan M Rosenkranz, Senior Buyer**

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: Susan M Rosenkranz, Senior Buyer**

Firms must obtain a visitor badge from the receptionist in the lobby of the 600 Building prior to delivering any information to CAMM.

3. Identification of Proposals

Offeror shall submit an **original and five (5) copies** 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 with RFP number. In addition to the above, Proposers shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a CD or DVD.

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 postpone proposal openings for its own convenience.
- d. 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.

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. CODE OF CONDUCT

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

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

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

A process has been established by 49 CFR Part 29, as a means to ensure that debarred, suspended, or voluntarily excluded persons or firms do not participate in Federally assisted projects. A person or firm that is unable to provide a positive certification as required by the solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

O. DISADVANTAGED BUSINESS ENTERPRISE

The Authority has established a six percent (6%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12 point font, double-spaced and submitted on 8½" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11" x 17" 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 Susan M Rosenkranz, Senior Buyer and must, at a minimum, contain the following:

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

3. Technical Proposal

- a. Qualifications, of the Firm, Staffing and Project Organization

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

Offeror to:

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

- (8) 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.
- (9) Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- (10) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (11) 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.

b. 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.

c. Exceptions/Deviations

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

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

4. Cost and Price Proposal

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

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

5. Appendices

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

B. FORMS

1. Campaign Contribution Disclosure Form

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards 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. Offeror is required to submit only one copy of the completed form(s) as part of its proposal and it should be included in only the original proposal. The prime CONTRACTOR, subcontractors, lobbyists and agents are required to report all campaign contributions from the proposal submittal date up and until the Board of Directors makes a selection, which is currently scheduled for October 24, 2016.

2. Status of Past and Present Contracts Form

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

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

3. Disadvantaged Business Enterprise Program and Forms

Offeror shall complete Exhibit F-1, Exhibit F-2 and F-3, per the instructions set forth in “Disadvantaged Business Enterprise”, (DBE) provisions for DOT-Assisted Contracts”.

4. Restrictions on Lobbying Form

As a recipient of federal funds, the Authority is required to certify compliance with the influencing restrictions and efforts of Offeror to influence federal officials regarding specific procurements in excess of \$1,000,000.00 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes, under Exhibit G, the following: a certification form entitled “Certification of Restrictions on Lobbying,” the office of Management and Budget (OMB) Standard Form LLL entitled “Disclosure of Lobbying Activities,” and a document entitled “Limitation on Payments to Influence Certain Federal Transactions.”

The Offeror to this solicitation will be required to complete and submit to the Authority in their proposal, the certification form entitled “Certification of Restrictions on Lobbying” whether or not any lobbying efforts took place. If the Offeror did engage in lobbying activities, then OMB Standard Form LLL “Disclosure of Lobbying Activities” must also be completed and submitted to the Authority.

5. Buy America Form

Pursuant to 49 CFR Part 661, as amended by Section 337 of the Surface Transportation and Uniform Relocation Act of 1987, no federal funds authorized by the Urban Mass Transportation Act of 1964, as amended; 23 USC 103 (e)(4); and Section 14 of the National Capital Transportation Act of 1969 as amended; and which were obligated by the Federal Transit Administration (FTA) after January 6, 1983 shall be obligated by the Authority unless steel and manufacturers’ products used in such articles are produced in the United States.

A consultant providing articles that do not meet the above provision must submit a written request to the Authority, which may be forwarded, to FTA. FTA shall review the request for waiver and FTA may grant such a waiver if FTA determines that:

1. The application of the domestic preference requirements would be inconsistent with the public interest; Materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

2. The inclusion of a domestic item or domestic material will increase the cost of the contract for the item or material by more than 25 percent.

FTA may grant a waiver in the case of the procurement of buses and other rolling stock (including train control, communications and traction power equipment), if the cost of components and subcomponents of such items which are produced in the United States is more than 60 percent for contracts entered into after April 1, 1992 with any supplier or contractor or any successor in interest or assignee which complied with the requirements of Section 165(b)(3) of the Surface Transportation Assistance Act of 1982 prior to April 2, 1987.

To determine costs of components or subcomponents for compliance with the Buy America Requirements, the Proposer is referred to the Federal Register, Volume 56, No. 6, Dated January 9, 1991.

In order to demonstrate compliance with the Buy America Requirements, Proposer shall complete the Certificates of Compliance/Noncompliance, Exhibit J, included in this RFP. Failure to complete the appropriate certificate shall render a Proposer non-responsive to this solicitation and will result in the rejection of the bid.

6. Safety Specifications

Offerors shall comply with Safety Specifications Level 3 as included in this RFP as Exhibit H, during the term of the awarded Agreement.

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, Staffing and Project Organization 40%

Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.

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, Staffing and Project Organization" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.

2. Work Plan 20%

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.

3. Cost and Price 40%

Reasonableness of the total price as well as the individual tasks; 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 September 8, 2016, 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, 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 Transit 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 decision to the full Board of Directors for final action.

C. AWARD

The Authority will evaluate the proposals received and will submit, with approval of the Transit Committee, the proposal considered to be the most competitive to the Authority's Board of Directors, for consideration and selection. The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

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

EXHIBIT A: SCOPE OF WORK

SCOPE OF WORK
Bus Stop Solar Lighting Project

1.0 Objective:

The Orange County Transportation Authority (OCTA) is seeking the services of a firm to manufacture and install solar lighting units at selected bus stop locations within OCTA's service area. OCTA intends to procure up to 750 compatible replacement solar batteries and hardware and 630 solar lighting units.

2.0 Background:

OCTA manages a countywide network of local, community, rail-connector, and express bus routes, providing service to approximately 48 million passengers per year. OCTA operates approximately 77 individual bus routes providing service to all of Orange County, as well as several cities in Los Angeles County.

Within the last decade, approximately 1000 solar lights have been placed at OCTA bus stops along heavy utilized routes on the county's major transit corridors. These solar lights enhance passenger safety at the bus stops and have been well received by both the general public and the operations staff, which in turn has generated numerous requests for additional lighting. With this success, OCTA has decided to expand the solar lighting project and will be purchasing additional lights that will be placed at pre-determined locations along all routes within Orange County.

3.0 Contractor Qualifications & Requirements:

- 3.1 The Contractor must be ready to start production immediately at the time of issuing the "Notice to Proceed", and have a proven track record in the public transit industry.
- 3.2 The Contractor shall have facilities capable of fabricating, packing, and delivering a minimum of 90 solar lighting units per month.
- 3.3 Within 30 days of receiving the "Notice to Proceed", the Contractor will fabricate and deliver to OCTA a minimum of two (2) solar lighting units for inspection and final approval.
- 3.4 The Contractor will provide upon award a detailed operation and maintenance manual clearly identifying the correct procedure for installing, repairing, and performing preventative maintenance on each unit. This manual will include a detailed parts list, complete with re-ordering instructions.
- 3.5 The Contractor will be required to provide upon award documentation and/or test results demonstrating that their solar lighting units will withstand long-term exposure to climactic extremes, sunlight, precipitation, tampering, vandalism, or other

environmental elements as outlined in section 5.2. This information should be provided within the Contractor's initial RFP proposal.

- 3.6 The Contractor, or designated Sub-Contractor must possess a current C46, and/or C61/D42, D34 contractor's license prior to award of contract.
- 3.7 The Contractor will be required to install a minimum of 90 solar lighting units within three (3) weeks of the manufacture date.
- 3.8 The Contractor may also be required to obtain a business license/permit from one or more jurisdictions, prior to installing the solar lighting units. All costs and/or fees associated with obtaining the business license/permit will be bore solely by the Contractor.

4.0 Manufacturing Specifications:

- 4.1 The solar lighting units will consist of a main housing component (down-light, battery, solar panel(s), bus signal beacon, and mother-board), a push button assembly (used to activate both the down-light and bus signal beacon), and a wire harness connecting the main housing component to the push button assembly. Each of the above components will be modular in nature and inter-changeable, and designed to be mounted on a 10 to 12 foot high square Unistrut post.
- 4.2 All materials used in the fabrication of the solar lighting units will be subject to inspection at the manufacturer's place of business. OCTA personnel shall have reasonable access to the facilities during all the times the solar lighting units are under fabrication. OCTA reserves the right to conduct final inspection of the finished product prior to delivery.
- 4.3 Upon request, the Contractor may be required to furnish OCTA with the following information:
 - a) A detailed description of the quality control program. This will include the following:
 - Type, method, and frequency of quality tests and checks.
 - Method of recording quality control data.
 - Method for final inspection before shipment to OCTA.
 - Identification of all personnel responsible for quality control.

5.0 Materials and Construction Specifications:

- 5.1 All units or parts shall conform in materials, design, or workmanship to the best practice in the industry and all parts shall be new. Any one unit or part furnished shall be an exact duplicate in manufacture, design and construction to the other units or parts of the same type.

- 5.2 The main housing component (head assembly) and all exposed parts on the push button assembly shall be constructed from metal, cast aluminum, injection-molded polycarbonate high impact plastic, or equivalent material(s).

All materials used in the construction of each unit is required to withstand long-term exposure to climactic extremes, sunlight, precipitation, tampering, vandalism, or other environmental elements.

As noted in Section 3.5, the Contractor will provide OCTA with all documentation and/or test results demonstrating that their solar lighting units meet the above specification.

- 5.3 All exposed surfaces shall be free from sharp corners, rough edges, burrs, pinch points, or other features that could cause injury to the installation staff or to the general public. All visible components will show no signs of distress, distortion, or damage incurred during the manufacturing process.
- 5.4 All exposed surfaces of head assembly and the push button assembly shall be either painted, powder coated, or otherwise finished with an outdoor grade PMS 424 gray color.
- 5.5 The Contractor will supply a minimum of one (1) bottle (a minimum of 2 ounces) of touch up paint matching the outdoor grade PMS 424 gray paint for every 25 solar lighting units ordered.
- 5.6 The main housing component and push button assembly shall be designed and constructed to ensure that they can be mounted on a standard Unistrut square sign post. There will be no exception to this requirement (the outside post dimension is 1.75" square.).
- 5.7 All mounting hardware will be included with each unit. If a non-standard tool or tools are required for installation, the manufacturer will supply one (1) tool for every 50 solar lighting units ordered.
- 5.8 All mounting hardware for the head assembly and the push button assembly will be stainless steel and designed to minimize tampering or vandalism.
- 5.9 When mounted on a standard Unistrut square post, the head assembly unit will not extend more than six (6) inches (+/-1") above the top of the OCTA sign post to maintain a low or stream-line profile. Other than the 1" variance mentioned above, there will be no exception to this requirement.
- 5.10 The "down light" on the head assembly will be designed so it can easily be rotated 90, 180, or 270 degrees on the sign post while the bus "signal beacon" remains in a fix position, facing on-coming traffic.

- 5.11 The wire harness extending from the main housing component to the push button assembly shall be flexible, double insulated, inter-changeable, and a minimum of eight (8) feet long.
- 5.12 Each unit will be designed and constructed to ensure that batteries, solar panels, push button switches, LED lights, mother-boards, or other components can be replaced in the field by the OCTA maintenance personnel to minimize down time.
- 5.13 Each solar lighting unit will be required to operate in temperatures ranging between 32°F to 125°F.
- 5.14 Each solar light battery will be self-contained, maintenance free, and warranted for a minimum of five (5) years from date of delivery.
- 5.15 The down-light shall be constructed using high intensity Light Emitting Diodes (LED), with a minimum output of three (3) foot candle of light and shall illuminate an area of approximately 16 square feet at ground level when mounted on top of a standard 10 foot high post.
- 5.16 The default activation time for the “down-light” will be pre-set at five (5) minute cycles.
- 5.17 A fully charged battery should provide a minimum of 36 - five (5) minute cycles, for a total of three (3) hours of activation time per day
- 5.18 Down-lights will be designed so they cannot be activated during normal daylight hours to conserve power and the life of each battery.
- 5.19 The bus “signal beacon” shall be designed and constructed using high intensity Light Emitting Diodes (LED). When activated the bus “signal beacon” will operate 24 hours per day and will be visible up to a minimum of 1/4 of a mile.
- 5.20 The default activation time for the bus “signal beacon” will be set at two (2) minute per cycle.
- 5.21 The push button switches shall be constructed of stainless steel metal, two (2) inches in diameter conforming to current ADA requirements. There will be no exception to this requirement.
- 5.22 The maximum width for the push button assembly will be no wider than seven (7) inches and between four (4) and six (6) inches in height.
- 5.23 The push button housing will be mounted in a horizontal position just below OCTA’s informational signage, and the push button switches will be placed horizontally (side-by-side) on the housing assembly.

- 5.24 The push button on the left hand side of the housing assembly will control the “down light”, while the button on the right hand side will control the bus “signal beacon”.
- 5.25 The word “LIGHT” will be embossed in bold, block style, black lettering, above the left push button switch. The word “LIGHT” will be spelled out and stenciled in standard Braille just below the embossed lettering.
- 5.26 The word “BUS SIGNAL” will be embossed in bold, block style, black lettering, above the right push button switch. The word “BUS SIGNAL” will be spelled out and stenciled in standard Braille just below the embossed lettering.
- 5.27 The push button assembly switches shall be easily identifiable at night with a self-illuminating light either on, or around the push button switches.
- 5.28 The color of the push button switches will be a contrasting color to that of the push button housing assembly (see section 5.4) to allow for easy recognition for persons with limited or impaired visibility.
- 5.29 Each solar light will be designed to allow a maintenance crew the ability to perform a diagnostic field check on each unit during daylight hours, to ensure that the operating system, including the charge of the battery, “down light”, and bus “signal beacon” are functioning properly. This feature will be designed so the diagnostic test can be performed from ground level without the use of a ladder or special tools.
- 5.30 Both the main housing component and the push button assembly will be stamped with a control or serial number, the manufacturer’s name or initials, along with the month and year the unit was manufactured.

6.0 Installation of Solar Lights:

- 6.1 At each proposed solar light location, any non-standard sign post will be replaced with a new ten (10) foot square Unistrut post. Non-standard posts may include U-Channel, wood, or round metal posts.
- 6.2 At location where the post has been replaced, the Contractor will side mount the bus stop sign and re-mount all informational cassettes, three or four-sided cassette brackets, or transit tube(s) at the proper height on each post. Mounting specifications will be provided to the Contractor prior to installing the solar lights.
- 6.3 At locations where the post has been replaced, the Contractor will be required to patch or place concrete around the base of each new post. The concrete patch will have a smooth finish and be level with the existing grade of the sidewalk.

- 6.4 The installation process involves mounting an individual solar light on top of an existing ten (10) or twelve (12) foot square Unistrut sign post, and the push button assembly below the OCTA informational sign. The Contractor will be required to remove the existing top-mounted bus stop sign and then side mount it just below the new solar light unit. Any city signs will be removed and then re-mounted as needed.
- 6.5 When re-mounting the bus stop sign and/or any other city signs, they will be placed in such a manner so they are completely visible to on-coming traffic.
- 6.6 When mounting or re-mounting the bus stop sign and/or city signs, a seven (7) foot vertical clearance will be maintained at all times between the bottom of lowest sign and ground level.
- 6.7 When installing solar lights, the Contractor must use reasonable care to ensure the safety of the general public and/or passengers waiting at the bus stop. The Contractor will be required to block off the work area with either 18" high orange safety cones or with bright yellow barrier tape.
- 6.8 Whenever possible, the Contractor must park behind the bus zone and not interfere with on-street bus operations when working at a bus stop.
- 6.9 The Contractor will be required to provide the following:
 - 6.9.1 Proper contractor's license and permits (see section 3.6 & 3.8).
 - 6.9.2 A labor force to perform all required work (see section 3.7).
 - 6.9.3 Each maintenance vehicle will be equipped with either a two-way radio or cellular telephones.
 - 6.9.4 Each maintenance vehicle will be equipped with both a strobe light and an arrow stick or light bar. Both warning devices will be prominently displayed on top of each vehicle and must be in compliance with all laws and regulations.
 - 6.9.5 Hand tools, power tools, or other equipment required to perform the solar light installations.
 - 6.9.6 18" high orange safety cones or bright yellow barrier tape to isolate the work area from the general public and/or waiting passengers.
- 6.10 The Contractor will document and provide OCTA with a detailed list of each location where a solar light was placed, along with the corresponding serial number for each light.

EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET

REQUEST FOR PROPOSALS (RFP) 6-1302

The prices identified below are for each of the work phases described in the Scope of Work, Exhibit A. Prices include direct costs, indirect costs and profit. These are estimated quantities, no guaranteed usage.

Initial Term 11/1/16 – 10/31/19

Solar Lighting Supply and Installation

Up to Quantity	Solar Light Price	Installation Charge	Tax	Extended Price
480	\$_____/Ea	\$_____/Ea	\$_____/Ea	\$_____

Compatible Solar Batteries & Hardware

Up to Quantity	Battery Price	Hardware Charge	Tax	Extended Price
550	\$_____/Ea	\$_____/Ea	\$_____/Ea	\$_____

Miscellaneous Charges

A. Installation Kits (Provide a detailed listing)	\$_____
B. Special Tools (Provide a detailed listing)	\$_____

Option Year Term 11/1/19 – 10/31/21

Solar Lighting Supply and Installation

Up to Quantity	Solar Light Price	Installation Charge	Tax	Extended Price
150	\$_____/Ea	\$_____/Ea	\$_____/Ea	\$_____

Compatible Solar Batteries & Hardware

Up to Quantity	Battery Price	Hardware Charge	Tax	Extended Price
200	\$_____/Ea	\$_____/Ea	\$_____/Ea	\$_____

Miscellaneous Charges

A. Installation Kits (Provide a detailed listing) \$_____

B. Special Tools (Provide a detailed listing) \$_____

1. I acknowledge receipt of **RFP 6-1302** and Addenda No(s)._____

2. This offer shall remain firm for _____ days from the date of proposal.
(Minimum of 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

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-6-1302**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5
6 **THIS AGREEMENT** is effective as of this _____ day of _____, 2016, by
7 and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
8 Orange, CA 92863-1584, a public corporation of the state of California (hereinafter referred to as
9 "AUTHORITY"), and (hereinafter referred to as "CONTRACTOR").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONTRACTOR to manufacture and install
12 solar lighting at selected bus stops throughout Orange County; and

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

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

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

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

19 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

6 **ARTICLE 2. AUTHORITY DESIGNEE**

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

9 **ARTICLE 3. SCOPE OF WORK**

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

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

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

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

24 D. Should the services of any key person become no longer available to CONTRACTOR, the
25 resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as
26 soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent

1 key person, unless CONTRACTOR is not provided with prior notice by the departing employee.
2 AUTHORITY shall respond to CONTRACTOR within seven (7) calendar days following receipt of these
3 qualifications concerning acceptance of the candidate for replacement.

4 **ARTICLE 4. TERM OF AGREEMENT**

5 This Agreement shall commence upon the effective date of this Agreement, and shall continue in
6 full force and effect through, completion of all installations, unless earlier terminated or extended as
7 provided in this Agreement.

8 **ARTICLE 5. PAYMENT**

9 A. For CONTRACTOR's full and complete performance of its obligations under this Agreement,
10 and subject to the maximum cumulative payment obligation provisions set forth in Article 7, AUTHORITY
11 shall pay CONTRACTOR on a unit price basis in accordance with Exhibit B entitled "Price Summary
12 Sheet", and with the following provisions.

13 B. CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding to
14 the work actually completed by CONTRACTOR. Percentage of work completed shall be documented in
15 a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted
16 by CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by
17 AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to
18 make full payment for any task listed in paragraph B of this Article until such time as CONTRACTOR has
19 documented to AUTHORITY's satisfaction, that CONTRACTOR has fully completed all work required
20 under the task. AUTHORITY's payment in full for any task completed shall not constitute AUTHORITY's
21 final acceptance of CONTRACTOR's work under such task; final acceptance shall occur only when
22 AUTHORITY's release of the retention described in paragraph D.

23 C. As partial security against CONTRACTOR's failure to satisfactorily fulfill all of its obligations
24 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice submitted
25 for payment by CONTRACTOR. All retained funds shall be released by AUTHORITY and shall be paid
26 to CONTRACTOR within sixty (60) days of payment of final invoice, unless AUTHORITY elects to audit

1 CONTRACTOR's records in accordance with Article 17 of this Agreement. If AUTHORITY elects to audit,
2 retained funds shall be paid to CONTRACTOR within thirty (30) calendar days of completion of such audit
3 in an amount reflecting any adjustment required by such audit. CONTRACTOR agrees to release
4 SUBCONTRACTOR retention within thirty (30) calendar days after the SUBCONTRACTORs work is
5 satisfactory completed. These prompt payment provisions are required to be incorporated in all
6 subcontract agreements issued by CONTRACTOR. During the term of the Agreement, at its sole
7 discretion, AUTHORITY reserves the right to release all or a portion of the retained amount based on
8 CONTRACTOR'S satisfactory completion of certain milestones. CONTRACTOR shall invoice
9 AUTHORITY for the release of the retention in accordance with ARTICLE 5.

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

- 16 1. Agreement No. C-;
- 17 2. Specify the Solar Light installation location for which payment is being requested;
- 18 3. The time period covered by the invoice;
- 19 4. Total monthly invoice (including project-to-date cumulative invoice amount) and
20 retention;
- 21 5. Monthly Progress Report;
- 22 6. Certification signed by the CONTRACTOR or his/her designated alternate that a) The
23 invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup
24 information included with the invoice is true, complete and correct in all material respects; c) All payments
25 due and owing to SUBCONTRACTORs and suppliers have been made; d) Timely payments will be made
26 to SUBCONTRACTORs and suppliers from the proceeds of the payments covered by the certification

1 and; e) The invoice does not include any amount which CONTRACTOR intends to withhold or retain from
2 a SUBCONTRACTOR or supplier unless so identified on the invoice;

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

5 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

6 A. CONTRACTOR agrees to pay each SUBCONTRACTOR for the satisfactory work performed
7 under this Agreement, no later than seven (7) calendar days from the receipt of each payment
8 CONTRACTOR receives from AUTHORITY. CONTRACTOR agrees further to return retainage payments
9 to each SUBCONTRACTOR within thirty (30) calendar days after the SUBCONTRACTOR's work is
10 satisfactorily completed. AUTHORITY reserves the right to request the appropriate documentation from
11 CONTRACTOR showing payment has been made to the SUBCONTRACTORS. Any delay or
12 postponement of payment from the above referenced time frames may occur only for good cause following
13 written approval by AUTHORITY.

14 B. Failure to comply with this provision or delay in payment without prior written approval from
15 AUTHORITY will constitute noncompliance, which may result in appropriate administrative sanctions,
16 including, but not limited to a penalty of two percent (2%) of the invoice amount due per month for every
17 month that payment is not made.

18 C. These prompt payment provisions must be incorporated in all subcontract agreements issued
19 by CONTRACTOR under this Agreement.

20 **ARTICLE 7. MAXIMUM OBLIGATION**

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

26 /

ARTICLE 8. NOTICES

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

To CONTRACTOR:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Susan M. Rosenkranz

Phone:

Phone:(714) 560 – 5610

Email:

Email: srosenkranz@octa.net

ARTICLE 9. INDEPENDENT CONTRACTOR

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

ARTICLE 10. INSURANCE

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

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

Contractors', Contractual Liability, and Personal Injury, and Property Damage with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

2. Automobile Liability to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 each accident;

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

4. Employers' Liability with minimum limits of \$1,000,000.00; and

5. Professional Liability with minimum limits of \$1,000,000.00 per claim.

B. Proof of such coverage, in the form of an insurance company issued policy endorsement and a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and agents designated as additional insured on the general and automobile liability. Such insurance shall be primary and non-contributive to any insurance or self-insurance maintained by AUTHORITY. Furthermore, AUTHORITY reserves the right to request certified copies of all related insurance policies.

C. CONTRACTOR shall include on the face of the Certificate of Insurance the Agreement Number C-6-1302; and, the Senior Buyer's Name, Susan Rosenkranz.

D. CONTRACTOR shall also include in each subcontract the stipulation that SUBCONTRACTORS shall maintain insurance coverage in the amounts required from CONTRACTOR as provided in this Agreement.

ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 6-1302, (3) CONTRACTOR's proposal dated; and (4) all other documents, if any, cited herein or incorporated by reference.

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ARTICLE 12. CHANGES

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

ARTICLE 13. DISPUTES

A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by supplemental agreement shall be decided by AUTHORITY's Director, Contracts Administration and Materials Management (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMP, shall be final and conclusive.

B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMP. This Disputes clause does not preclude consideration of questions of law in connection with decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 14. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONTRACTOR written notice thereof. Upon termination, AUTHORITY shall pay CONTRACTOR its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition

1 Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for
2 convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be
3 given to CONTRACTOR in accordance with the provisions of the FAR referenced above and Article 8,
4 herein. Upon receipt of said notification, CONTRACTOR agrees to comply with all applicable provisions
5 of the FAR pertaining to termination for convenience.

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

16 **ARTICLE 15. INDEMNIFICATION**

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

23 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

24 A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by
25 CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be
26 subcontracted by CONTRACTOR, without the prior written consent of AUTHORITY. Consent by

AUTHORITY shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

B. AUTHORITY hereby consents to CONTRACTOR's subcontracting portions of the Scope of Work to the parties identified below for the functions described below. CONTRACTOR shall include in the subcontract agreement the stipulation that CONTRACTOR, 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 CONTRACTOR.

<u>SUBCONTRACTOR Name/Addresses</u>	<u>SUBCONTRACTOR</u> <u>Amounts</u>
	.00
	.00

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

CONTRACTOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to CONTRACTOR's accounting books, records, payroll documents and facilities of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. CONTRACTOR shall maintain such books, records; data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONTRACTOR's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier SUBCONTRACTORS identified in Article 16 of this Agreement. CONTRACTOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

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ARTICLE 18. CONFLICT OF INTEREST

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

ARTICLE 19. CODE OF CONDUCT

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

ARTICLE 20. PROHIBITION ON PROVIDING ADVOCACY SERVICES

CONTRACTOR and all SUBCONTRACTORS 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 CONTRACTOR or SUBCONTRACTOR. Failure to refrain from such representation may result in termination of this Agreement.

ARTICLE 21. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 22. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONTRACTOR shall not discriminate

1 against any employee or applicant for employment because of race, religion, color, sex, age or national
2 origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that
3 employees are treated during their employment, without regard to their race, religion, color, sex, age or
4 national origin. Such actions shall include, but not be limited to, the following: employment, upgrading,
5 demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other
6 forms of compensation; and selection for training, including apprenticeship.

7 **ARTICLE 23. CIVIL RIGHTS ASSURANCE**

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

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

15 B. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the
16 Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and
17 retention of SUBCONTRACTORS, including procurements of materials and leases of equipment. The
18 CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section
19 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth
20 in Appendix B of the Regulations.

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

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

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

11 1. Withholding of payments to the CONTRACTOR under the Agreement until the
12 CONTRACTOR complies; and/or

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

14 F. Title VI of the Civil Rights Act: In determining the types of property or services to acquire, no
15 person in the United States shall, on the grounds of race, color, or national origin, be excluded from
16 participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program
17 or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as
18 amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, "Nondiscrimination in Federally
19 Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of
20 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for
21 FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title
22 VI regulations.

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

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

10 **ARTICLE 24. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**
11 **CONTRACTOR CONTRACTS**

12 At the time of contract execution, the CONTRACTOR committed to utilize DBE(s) in the
13 performance of this DOT-assisted contract, and further agrees to ensure that DBE SUBCONTRACTORS
14 listed on the "DBE Participation Commitment Form Exhibit F-1," perform work and/or supply materials in
15 accordance with original commitments, unless otherwise directed and/or approved by the AUTHORITY
16 prior to the CONTRACTOR effectuating any changes to its race-conscious DBE participation
17 commitment(s). CONTRACTOR shall comply with all the requirements set forth in Attachment "A" titled,
18 "DBE CONTRACT PROVISIONS FOR FTA-ASSISTED CONTRACTS WITH DISADVANTAGED
19 BUSINESS ENTERPRISE (DBE) GOALS ", which is attached to and, by this reference, incorporated in
20 and made a part of this Agreement.

21 **ARTICLE 25. PROHIBITED INTERESTS**

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

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

ARTICLE 26. OWNERSHIP OF REPORTS AND DOCUMENTS

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

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

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

ARTICLE 27. PATENT AND COPYRIGHT INFRINGEMENT

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

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

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

17 **ARTICLE 28. FINISHED AND PRELIMINARY DATA**

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

1 AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations,
2 software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the
3 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for
4 preparation of finished artwork. Preliminary data title and right thereto shall be made available to
5 AUTHORITY if CONTRACTOR causes AUTHORITY to exercise Article 12, and a price shall be negotiated
6 for all preliminary data.

7 **ARTICLE 29. COVENANT AGAINST CONTINGENT FEES**

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

16 **ARTICLE 30. LOBBYING**

17 CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification
18 required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will not
19 or has not used Federal appropriated funds to pay any person or organization for influencing or attempting
20 to influence an officer or employee of any agency, a member of Congress, officer or employee of
21 Congress, or an employee of a member of Congress in connection with obtaining any Federal contract,
22 grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any
23 registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on
24 its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C.
25 1352. Such disclosures are forwarded from tier to tier up to the recipient.

26 /

1 **ARTICLE 31. HEALTH AND SAFETY REQUIREMENTS**

2 CONTRACTOR shall comply with all the requirements set forth in Exhibit H, titled "Level 3 Health,
3 Safety and Environmental Compliance Specifications." As used therein, "Contractor" shall mean
4 "CONTRACTOR," and "SUBCONTRACTOR" shall mean "Sub-CONTRACTOR."

5 **ARTICLE 32. CONTRACTOR PURCHASED EQUIPMENT**

6 A. If during the course of this Agreement, additional equipment is required, which will be paid for
7 by the AUTHORITY, CONTRACTOR must request prior written authorization from the AUTHORITY's
8 project manager before making any purchase. As part of this purchase request, CONTRACTOR shall
9 provide a justification for the necessity of the equipment or supply and submit copies of three (3)
10 competitive quotations. If competitive quotations are not obtained, CONTRACTOR must provide the
11 justification for the sole source.

12 B. CONTRACTOR shall maintain an inventory record for each piece of equipment purchased that
13 will be paid for by the AUTHORITY. The inventory record shall include the date acquired, total cost, serial
14 number, model identification, and any other information or description necessary to identify said equipment
15 or supply. A copy of the inventory record shall be submitted to the AUTHORITY upon request.

16 C. At the expiration or termination of this Agreement, CONTRACTOR may keep the equipment
17 and credit AUTHORITY in an amount equal to its fair market value. Fair market value shall be determined,
18 at CONTRACTOR's expense, on the basis of an independent appraisal. CONTRACTOR may sell the
19 equipment at the best price obtainable and credit AUTHORITY in an amount equal to the sales price. If
20 the equipment is to be sold, then the terms and conditions of the sale must be approved in advance by
21 AUTHORITY'S project manager.

22 D. Any SUBCONTRACTOR agreement entered into as a result of this Agreement shall contain
23 all provisions of this clause.

24 **ARTICLE 33. PRIVACY ACT**

25 CONTRACTOR shall comply with, and assures the compliance of its employees with, the
26 information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a.

1 Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government
2 before the CONTRACTOR or its employees operate a system of records on behalf of the Federal
3 Government. CONTRACTOR understands that the requirements of the Privacy Act, including the civil
4 and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply
5 with the terms of the Privacy Act may result in termination of the underlying Agreement.

6 **ARTICLE 34. INCORPORATION OF FTA TERMS**

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

13 **ARTICLE 35. FEDERAL CHANGES**

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

18 **ARTICLE 36. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

25 /

26 /

**ARTICLE 37. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND
RELATED ACTS**

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

B. CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. on the CONTRACTOR, to the extent the Federal Government deems appropriate. CONTRACTOR agrees to include this requirement in all of its subcontracts.

ARTICLE 38. RECYCLED PRODUCTS

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

ARTICLE 39. ENERGY CONSERVATION REQUIREMENTS

CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency,

1 which are contained in the state energy conservation plan issued in compliance with the Energy Policy
2 Conservation Act.

3 **ARTICLE 40. BUY AMERICA**

4 A. If this Agreement exceeds \$100,000, CONTRACTOR shall comply with the "Buy America"
5 requirements of 49 U.S.C. Section 5323 and the Intermodal Surface Transportation Efficiency Act of
6 1991 (ISTEA) Sections 1041(a) and 1048(a) and the regulations adopted pursuant thereto. In
7 conformance with the law and regulations, all manufacturing processes for steel and iron materials
8 furnished for incorporation into the work on this Project shall occur in the United States; with the
9 exception that pig iron and processed, pellitized and reduced iron ore manufactured outside of the
10 United States may be used in domestic manufacturing process for such steel and iron materials. The
11 application of coatings, such as epoxy coating, galvanizing, painting, and other coating that protects or
12 enhances the value of steel or iron materials shall be considered a manufacturing process subject to the
13 "Buy America" requirements.

14 B. A Certificate of Compliance, conforming to the provisions of this Article shall be furnished for
15 steel and iron materials. The certificates, in addition to certifying that the materials comply with the
16 specifications, shall specifically certify that all manufacturing processes for the materials occurred in the
17 United States, except for the exceptions listed herein.

18 The requirements imposed by law and regulations do not prevent a minimal use of foreign

19 **ARTICLE 41. CLEAN AIR**

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

25 **ARTICLE 42. CLEAN WATER REQUIREMENTS**

26 CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant

1 to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONTRACTOR shall
2 report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in turn,
3 report each violation as required to assure notification to FTA and appropriate EPA Regional Office.
4 CONTRACTOR agrees to include this requirement in all of its subcontracts.

5 **ARTICLE 43. FLY AMERICA REQUIREMENT**

6 CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with
7 the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients
8 and sub recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for the
9 U.S. Government-financed international air travel and transportation of their personal effects or property,
10 to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined
11 by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate
12 certification or memorandum adequately explaining why service by a U.S. carrier was not available or why
13 it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with
14 the Fly America requirements. CONTRACTOR agrees to include the requirements of this section in all
15 subcontracts that may involve international air transportation.

16 **ARTICLE 44. SEISMIC SAFETY REQUIREMENTS**

17 CONTRACTOR agrees that any new building or addition to an existing building will be designed
18 and constructed in accordance with the standards for Seismic Safety required in Department of
19 Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent
20 required by the regulation. CONTRACTOR also agrees to ensure that all work performed under this
21 contract including work performed by a SUBCONTRACTOR is in compliance with the standards required
22 by the Seismic Safety Regulations and the certification of compliance issued on the project.

23 **ARTICLE 45. DEBARMENT AND SUSPENSION**

24 This contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONTRACTOR
25 is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as
26 defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

ARTICLE 46. FORCE MAJEURE

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

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1 This Agreement shall be made effective upon execution by both parties.

2 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-6-1302 to be
3 executed on the date first above written.

4 **CONTRACTOR**

ORANGE COUNTY TRANSPORTATION AUTHORITY

5 By _____

 By _____

6 Darrell Johnson

7 Chief Executive Officer

8
9 APPROVED AS TO FORM:

10 By _____

11 James M. Donich

12 General Counsel

13
14 APPROVED:

15 By _____

DBE CONTRACT PROVISIONS FOR FTA-ASSISTED CONTRACTS WITH DISADVANTAGED
BUSINESS ENTERPRISE (DBE) GOALS

I. **DBE Participation**

It is the CONTRACTOR's responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and the Orange County Transportation Authority's (Authority's) DBE program developed pursuant to these regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime CONTRACTOR, SUBCONTRACTOR, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55 that is, a DBE firm 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.
- D. CONTRACTOR must not claim DBE participation as attained until the amount to be claimed is paid and fully adheres to DBE crediting provisions.

If the CONTRACTOR has committed to utilize DBE(s) in the performance of this DOT-assisted contract, the CONTRACTOR's submitted "DBE Participation Commitment Form" will be utilized to monitor CONTRACTOR's DBE commitments, unless otherwise directed and/or approved by the Authority prior to the CONTRACTOR effectuating any changes to its DBE participation commitment(s) (*Refer to Subsection H: "Performance of DBE SUBCONTRACTORS"*).

CONTRACTOR must complete and submit all required DBE documentation to effectively capture all DBE utilization on the Authority's DOT-assisted contracts whether achieved race neutrally or race

1 consciously. Even if a CONTRACTOR has not committed to utilize DBE(s) in the performance of this
2 contract, the CONTRACTOR must execute and submit all required DBE forms and other related
3 documentation as specified under this contract or as otherwise requested by the Authority. No
4 changes to the CONTRACTOR's DBE Commitment must be made until proper protocols for review
5 and approval of the Authority are rendered in writing.

6
7 To ensure full compliance with the requirements of 49 CFR, Part 26 and the Authority's DBE Program,
8 the CONTRACTOR must:

- 9
10 A. Take appropriate actions to ensure that it will continue to meet the DBE Commitment at the
11 minimal level committed to at award or will satisfy the good faith efforts to meet the DBE
12 Commitment, when change orders or other contract modifications alter the dollar amount of
13 the contract or the distribution of work. The CONTRACTOR must apply and report its DBE goal
14 commitments against the total Contract Value, including any contract change orders and/or
15 amendments.

16
17 **II. DBE Policy and Applicability**

18
19 In accordance with federal financial assistance agreements with the U.S. Department of Transportation
20 (U.S. DOT), the Authority has adopted a Disadvantaged Business Enterprise (DBE) Policy and
21 Program, in conformance with Title 49 CFR, Part 26, "Participation by Disadvantaged Business
22 Enterprises in Department of Transportation Programs".

23
24 The project is subject to these stipulated regulations and the Authority's DBE program. In order to
25 ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority
26 encourages the participation of DBEs as defined in 49 CFR, Part 26 in the performance of contracts

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

3
4 Fulfill the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49
5 CFR, Part 26, by ensuring that DBEs have equitable access to participate in all of Authority's DOT-
6 assisted contracting opportunities.

7
8 Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.

9
10 Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.

11
12 Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

13
14 Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate
15 as DBEs.

16
17 Help remove barriers to the participation of DBEs in DOT-assisted contracts.

18
19 Assist in the development of firms that can compete successfully in the marketplace outside the DBE
20 Program.

21
22 CONTRACTOR must not discriminate on the basis of race, color, national origin, or sex in the award
23 and performance of SUBCONTRACTOR.

24
25 ***Any terms used in this section that are defined in 49 CFR, Part 26, or elsewhere in the***
26 ***Regulations, must have the meaning set forth in the Regulations. In the event of any conflicts***

1 *or inconsistencies between the Regulations and the Authority's DBE Program with respect to*
2 *DOT-assisted contracts, the Regulations must prevail.*

3
4 **III. Authority's DBE Policy Implementation Directives**

5
6 Pursuant to the provisions associated with federal regulation 49 CFR, Part 26, the Disadvantaged
7 Business Enterprise (DBE) program exists to ensure participation, equitable competition, and
8 assistance to participants in the USDOT DBE program. Accordingly, based on the Authority's analysis
9 of its past utilization data, coupled with its examination of similar Agencies' Disparity Study and recent
10 Goal Methodology findings the Authority has implemented the reinstatement of the DBE program
11 utilizing both race-conscious and race-neutral means across the board as all protected groups
12 participation have been affected using strictly race neutral means on its FTA-assisted contracts.

13
14 The Authority reinstates the use of contract goals and good faith efforts. Meeting the contract-specific
15 goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, is a condition
16 of award. Additionally, contract-specific goals are now specifically targeted at DBEs (*DBEs owned and*
17 *controlled by Black Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans,*
18 *Asian-Pacific Americans, Sub-Continent Asian Americans, and Women*). In the event of a substitution,
19 a DBE must be substituted with another DBE or documented adequate good faith efforts to do so must
20 be made, in order to meet the contract goal and DBE contract requirements.

21
22 **I. Definitions**

23
24 The following definitions apply to the terms used in these provisions:

25
26 1. ***"Disadvantaged Business Enterprise (DBE)"*** means a small business concern: (a) which is at

1 least 51 percent owned by one or more socially and economically disadvantaged individuals or,
2 in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by
3 one or more socially and economically disadvantaged individuals; and (b) whose management
4 and daily business operations are controlled by one or more of the socially and economically
5 disadvantaged individuals who own it.

6
7 2. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the
8 Small Business Act and relevant regulations promulgated pursuant thereto, except that a small
9 business concern must not include any concern or group of concerns controlled by the same
10 socially and economically disadvantaged individual or individuals which has annual average
11 gross receipts in excess of \$19.57 million over the previous three fiscal years.

12
13 3. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are
14 citizens of the United States (or lawfully admitted permanent residents) and who are Black
15 Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian
16 Americans, women and any other minorities or individuals found to be disadvantaged by the
17 Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the
18 Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be
19 socially and economically disadvantaged:

20
21 A. "Black Americans," which includes persons having origins in any of the Black racial groups of
22 Africa;

23
24 B. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or
25 South American, or other Spanish or Portuguese culture or origin, regardless of race;
26

C. "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

D. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

E. "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

F. Women, regardless of ethnicity or race.

4. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.

5. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CONTRACTOR.

6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the 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.

7. ***"Fraud"*** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a 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 the case to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any 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 a recognized California Unified Certification Program Certifying Agency 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

1 in American society, not in other countries.

- 2 4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting
3 or insignificant.
- 4 5. The individual's social disadvantage must have negatively affected his/her entry into and/or
5 advancement in the business world.
- 6 6. A determination of social disadvantage must be made before proceeding to make a
7 determination of economic disadvantage.

8

9 **B. "Economic Disadvantage"**

- 10
- 11 1. The individual's ability to compete in the free enterprise system has been impaired due to
12 diminished capital and credit opportunities, as compared to others in the same line of business
13 and competitive market area that are not socially disadvantaged.
- 14
- 15 2. The following criteria will be considered when determining the degree of diminished credit and
16 capital opportunities of a person claiming social and economic disadvantage:

17

18 With respect to the individual:

- 19
- availability of financing bonding capability
 - availability of outside equity capital
 - available markets
- 20
- 21

22

23 With respect to the individual and the business concern:

- 24
- personal and business assets
 - personal and business net worth
 - personal and business income and profits
- 25
- 26

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

If there is a DBE goal on the contract, CONTRACTOR must complete and submit the following DBE exhibits (forms) consistent with CONTRACTOR DBE Goal Commitment within the specified timelines. Even if no DBE participation will be reported, the CONTRACTOR must execute and return the form:

1. **“Monthly DBE SUBCONTRACTOR Commitment and Attainment Report Summary and Payment Verification ” (Form 103)**

The purpose of this form is to ensure CONTRACTOR 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 form further serves to collect DBE utilization data required under 49 CFR, Part 26.

The CONTRACTOR is required to complete and submit a Form 103 to the Authority by the 10th of each month until completion of the contract. The CONTRACTOR must submit its first Form 103 following the first month of contract activity. Upon completion of the contract, the CONTRACTOR must complete and submit a “Final: Monthly DBE SUBCONTRACTOR Commitment and Attainment Report Summary and Payment Verification” (Form 103) to facilitate reporting and capturing actual DBE attainments at conclusion of the contract.

The Form 103 must include the following information:

- A. General Contract Information – Including Contract Number and Name, Prime CONTRACTOR and the following:

1. Original Contract Amount
2. Running Total of Change Order Amount
3. Current Contract Amount
4. Amount Paid to CONTRACTOR during Month
5. Amount Paid to CONTRACTOR from Inception to Date
6. DBE Contract Goal
7. Total Dollar Amount of DBE Commitment
8. DBE Commitment as Percentage of Current Contract Amount

B. Listed and/Proposed CONTRACTOR/SUBCONTRACTOR Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:

1. DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.

2. DBE Firm Contract Value Information:

Original contract amount, running total of change order amount, Current contract amount, Amount paid to CONTRACTOR during month and Amount paid to CONTRACTOR to date.

2. CONTRACTOR Assurance of Full Compliance with Prompt Payment Provisions

CONTRACTOR to sign the prompt payment assurance statement of compliance contained within the Form 103. CONTRACTOR is to further maintain and submit at the request of Authority a detailed running tally of related invoices submitted by DBE(s) and Non DBE(s), including dates of invoice submission, dates accepted and

corresponding dates and amount of payments made. The Payment and Retention Reporting tally must also include:

DBE(s) and Non DBE(s) Invoice Number, Invoice Amount, Invoice Date, Prime CONTRACTOR's Invoice Number that incorporated the corresponding DBE and Non DBE invoice(s) for billing purposes, Date of Invoice submission to Authority, Date and amount Authority paid on Prime CONTRACTOR's Invoice. The report must also reflect a breakout of retention withheld (including retention as specified in subcontract agreement(s) and disputed invoice retention) and retention payments made, check number and date paid to DBE and Non DBE.

CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR's DBE attainment until the amount being claimed has been paid to the DBE. Verification of payments and/or a signed Verification of Payment by the applicable DBE or Non DBE must be submitted with Form 103 to authenticate reported payments.

3. DBE Subcontract Agreements

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

4. "Monthly DBE Trucking Verification" Form

Prior to the 10th of each month, the CONTRACTOR must submit documentation on the

"Monthly DBE Trucking Verification" Form to the Authority showing the amount paid to DBE trucking companies. The CONTRACTOR must also obtain and submit documentation to the Authority showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contactor may count only the fee or commission the DBE receives as a result of the lease arrangement.

The CONTRACTOR must also obtain and submit documentation to the Authority showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month.

5. "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier SUBCONTRACTORS"

Upon completion of the contract, a summary of these records must be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier SUBCONTRACTORS" and certified correct by the CONTRACTOR or the CONTRACTOR's authorized representative, and must be furnished to the Engineer. The form must be furnished to the Authority within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted.

6. "Disadvantaged Business Enterprises (DBE) Certification Status Change"

If a DBE Sub is decertified during the life of the project, the decertified

SUBCONTRACTOR must notify the CONTRACTOR in writing with the date of decertification. If a SUBCONTRACTOR becomes a certified DBE during the life of the project, the SUBCONTRACTOR must notify the CONTRACTOR in writing with the date of certification (Attach DBE certification/Decertification letter). The CONTRACTOR must furnish the written documentation to the AUTHORITY.

Upon completion of the contract, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the CONTRACTOR indicating the DBEs' existing certification status. If there are no changes, please indicate "No Changes". The certified form must be furnished to the Authority within 90 days from the date of contract acceptance.

V. DBE Eligibility and Commercially Useful Function Standards

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

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a Prime CONTRACTOR, SUBCONTRACTOR, joint venture partner with a Prime or SUBCONTRACTOR, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its

ownership interest.

4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:

A. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.

5. A DBE must perform a commercially useful function in accordance with 49 CFR 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

1. When a DBE is proposed to participate in the contract, either as a Prime CONTRACTOR or SUBCONTRACTOR, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the CONTRACTOR is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.
2. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier SUBCONTRACTOR, the value of the subcontracted work may be counted toward DBE participation only if the SUBCONTRACTOR is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be credited toward the

1 Prime CONTRACTOR's DBE attainment.

- 2
- 3 3. CONTRACTOR is to calculate and credit participation by eligible DBE vendors of equipment,
- 4 materials, and suppliers toward DBE attainment, as follows:
- 5 A. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under
- 6 the Contract, obtained from a regular dealer; or
- 7 B. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies
- 8 required under the Contract, obtained from a DBE manufacturer.
- 9
- 10 4. The following types of fees or commissions paid to DBE SUBCONTRACTORS, Brokers, and
- 11 Packagers may be credited toward the prime CONTRACTOR's DBE attainment, provided that
- 12 the fee or commission is reasonable, and not excessive, as compared with fees or commissions
- 13 customarily allowed for similar work, including:
- 14
- 15 A. Fees and commissions charged for providing bona fide professional or technical services, or
- 16 procurement of essential personnel, facilities, equipment, materials, or supplies required in
- 17 the performance of the Contract;
- 18 B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies
- 19 themselves) when the licensed hauler, trucker, or delivery service is not also the
- 20 manufacturer of, or a regular dealer in, the material and supplies;
- 21 C. Fees and commissions charged for providing any insurance specifically required in the
- 22 performance of the Contract.
- 23
- 24 5. CONTRACTOR may count the participation of DBE trucking companies toward DBE attainment,
- 25 as follows:
- 26

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 - B. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - C. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - F. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
6. If the CONTRACTOR listed a non-certified 1st tier SUBCONTRACTOR to perform work on this contract, and the non-certified SUBCONTRACTOR subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified SUBCONTRACTOR or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE CONTRACTOR performs the installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

VII. Performance of DBE SUBCONTRACTORS

DBEs must perform work or supply materials as listed in the “DBE Participation Commitment Form” specified under “*DBE Proposal Submission Requirements*” of these special provisions. Do not terminate a DBE listed SUBCONTRACTOR for convenience and perform the work with your own forces or obtain materials from other sources without prior written authorization from the AUTHORITY.

The AUTHORITY grants authorization to use other forces or sources of materials for requests that show any of the following justifications (written approval from the AUTHORITY must be obtained prior to effectuating a substitution):

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a CONTRACTORS’ license and listed DBE does not have a valid license under CONTRACTORS License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

If a listed DBE SUBCONTRACTOR is terminated, you must make good faith efforts to find another DBE SUBCONTRACTOR to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE

goal.

The substitute DBE must be certified as a DBE at the time of request for substitution. The AUTHORITY does not pay for work or material unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

VIII. Additional DBE SUBCONTRACTORS

In the event CONTRACTOR identifies additional DBE SUBCONTRACTORS or suppliers not previously identified by CONTRACTOR for DBE participation under the contract, CONTRACTOR must notify the Authority by submitting "Request for Additional DBE Firm" to enable CONTRACTOR to capture all DBE participation. CONTRACTOR must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

IX. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in the Authority's federally -assisted contracts. Proposers are 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 to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

1 **X. CONTRACTOR's Assurance Clause Regarding Non-Discrimination**

2
3 In compliance with State and Federal anti-discrimination laws, the CONTRACTOR must affirm that
4 they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration
5 of contract award opportunities. Further, the CONTRACTOR must affirm that they will consider, and
6 utilize SUBCONTRACTORS and vendors, in a manner consistent with non-discrimination objectives.

7
8 **XI. Prompt Payment Clause**

9
10 Upon receipt of payment by Authority, CONTRACTOR agrees to promptly pay each
11 SUBCONTRACTOR for the satisfactory work performed under this Agreement, no later than seven
12 (7) calendar days. CONTRACTOR agrees further to return retainage payments to each
13 SUBCONTRACTOR within thirty (30) calendar days after the SUBCONTRACTOR's work is
14 satisfactorily completed. Authority reserves the right to request the appropriate documentation from
15 CONTRACTOR showing payment has been made to the SUBCONTRACTORS. Any delay or
16 postponement of payment from the above referenced time frames may occur only for good cause
17 following written approval by Authority.

18
19 In accordance with 49 CFR part 26.29 "Prompt Payment Provisions" (DBE Final Rule) the Authority
20 will elect to utilize the following method to comply with the prompt payment of retainage requirement:

21
22 Hold retainage from the CONTRACTOR and provide for prompt and regular incremental acceptances
23 of portions of the CONTRACTOR, pay retainage to prime CONTRACTORS based on these
24 acceptances, and require a contract clause obligating the CONTRACTOR to pay all retainage owed
25 to the SUBCONTRACTORS for satisfactory completion of the accepted work within thirty (30) days
26 after payment to the CONTRACTOR.

Failure to comply with this provision or delay in payment without prior written approval from Authority will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two (2%) percent of the invoice amount due per month for every month that payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by CONTRACTOR under this Agreement. Each subcontract must require the SUBCONTRACTOR to make payments to sub-SUBCONTRACTORS and suppliers in a similar manner.

XII. Administrative Remedies and Enforcement

CONTRACTOR must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all SUBCONTRACTORS regardless of tier are also fully compliant. CONTRACTOR's failure to comply constitutes a material breach of contract, wherein the Authority will impose all available administrative sanctions including payment withholdings, necessary to effectuate full compliance. In instances of identified non-compliance, a Cure Notice will be issued to the CONTRACTOR identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

The CONTRACTOR must be given ten (10) working days from the date of the Cure Notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the Authority to reconsider the Authority's DBE determination. Failure to respond within the ten (10) working day period must constitute a waiver of the CONTRACTOR's right to appeal. If the CONTRACTOR files an appeal, the Authority, must issue a written determination and/or set

1 a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final
2 Determination will be issued within ten (10) working days after the hearing, as applicable.

3
4 If, after review of the CONTRACTOR's appeal, the Authority decides to uphold the decision to impose
5 DBE administrative remedies on the CONTRACTOR, the written determination must state the specific
6 remedy(s) to be imposed.

7
8 Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s)
9 is a material breach of contract and is subject to administrative remedies, including, withholding at
10 minimum of two (2%) percent of the invoice amount due per month for every month that the identified
11 non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all
12 withholdings.

13
14 In addition to administrative remedies defined in this section, the Authority is not precluded from
15 invoking other contractual and/or legal remedies available under federal, state or local laws.
16
17
18
19
20
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26

EXHIBIT D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

**ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

RFP Number: _____ RFP Title: _____

To be completed only if campaign contributions have been made in the preceding 12 months.

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"/> Subcontractor | Yes____ | No ____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes____ | No ____ |

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

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

Name of Board Member: _____

Name of Contributor: _____

Date(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Lori Donchak, Chair

Michael Hennessey, Vice Chairman

Lisa Bartlett, Director

Andrew Do, Director

Steve Jones, Director

Jim Katapodis, Director

Jeff Lalloway, Director

Gary Miller, Director

Al Murray, Director

Shawn Nelson, Director

Miguel Pulido, Director

Tim Shaw, Director

Todd Spitzer, Director

Michelle Steel, Director

Tom Tait, Director

Frank Ury, Director

Greg Winterbottom, Director

EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

On the form provided below, Offeror 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 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 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 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. Each form must be signed by an officer of the Offeror 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

Date

Title

Last Rev. 08/26/2015

**EXHIBIT F: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
AND FORMS**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION
PROGRAM AND FORMS**

1.0 DBE Goal

To assist Proposers in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project based on their likely availability for work. The DBE Goal for this contract is **6%**.

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:

- 2.1** Implement strategies that promote the spirit and intent of the Federal DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have equitable access and opportunities to participate in all of Authority's DOT-assisted contracting opportunities.
- 2.2** Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- 2.3** Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- 2.4** Ensure that only firms that meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- 2.5** Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- 2.6** Provide training and other assistance through our resource partners to address capital, bonding and insurance needs.
- 2.7** Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

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

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

Race-Neutral measures will 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 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 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 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 reinstatement of contract goals and good faith efforts. The Authority reinstates the use of meeting the contract-specific goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, as a condition of award. Contract-specific goals are specifically targeted at DBEs (*DBEs owned and controlled by Black Americans, Hispanic Americans, Asian-Pacific Americans, Native Americans, Asian-Pacific Americans, Sub-Continent Asian Americans, and Women*). In the event of a substitution, a DBE must be substituted with another DBE or documented adequate good faith efforts to do so must be made, in order to meet the contract goal and DBE contract requirements.

3.0 **Definitions**

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

- 3.1 ***"Disadvantaged Business Enterprise (DBE)"*** means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any 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 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 relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
- 3.3 ***"Socially and Economically Disadvantaged Individuals"*** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
- 3.3.1 "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- 3.3.2 "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- 3.3.3 "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- 3.3.4 "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

3.3.5 "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

3.3.6 Women, regardless of ethnicity or race.

- 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 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 other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.
- 3.8 **"Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.

3.8.1 Social Disadvantage

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

3.8.2 Economic Disadvantage

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

With respect to the individual:

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

- available markets

With respect to the individual and the business concern:

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

4.0 DBE Proposal Submission Requirements

Proposer shall complete and submit the following DBE Exhibits (forms) at the times specified with their Proposal:

- “DBE Participation Commitment(s) Form” (Exhibit F-1)
- “Bidders List” (Exhibit F-2)
- “DBE Information - Good Faith Efforts” (Exhibit F-3)

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

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 A description of the work that each DBE will perform or provide;
- 4.1.3 The dollar amount of the work to be performed or provided by the DBE;
- 4.1.4 Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26;
- 4.1.5 The Proposer shall also submit, for each DBE to perform under this contract, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract proposal can serve in lieu of the written confirmation).

4.2 “Bidders List” (Exhibit F-2)

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

The “Bidders List” shall be included with the proposal submission.

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

A Proposer must, in order to be a responsible and/or responsive proposer, make good faith efforts to meet the goal. The Proposer can meet this requirement in either of two ways. First, the Proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn’t meet the established DBE goal, the proposer took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

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

If the Proposer has met the DBE goal based on the proposed participation of DBEs listed on the Proposer’s “DBE Participation Commitment(s) Form”, it is at the Proposer’s discretion (not mandatory) whether or not to submit “DBE Information – Good Faith Efforts” form. However, the submission of Good Faith Efforts documentation can protect the Proposer’s eligibility for award of the contract if the Authority determines that the Proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at proposal submission or the Proposer made a mathematical error. Submittal of only the “DBE Participation Commitment(s) Form” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

Good Faith Efforts documentation must be submitted with the proposal.

Good Faith Efforts documentation must include the following information and supporting documents, as necessary:

- 4.3.1 Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
- 4.3.2 Names of certified DBEs and dates on which they were solicited to propose on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
- 4.3.3 Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection and rejection of the DBE.
- 4.3.4 Name and date of each publication in which you solicited DBE participation for the project. Attach copies of the published advertisements (In the event the RFP submission due date is extended, proposer's are to re-advertise the new proposal due date).
- 4.3.5 Names of agencies and organizations, and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. Proposer to provide copies of supporting documents of this effort.
- 4.3.6 List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.

4.3.7 List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, and other technical assistance afforded. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.

4.3.8 Any additional data to support demonstration of good faith efforts undertaken prior to proposal submission shall be provided.

For further guidance refer to the United States Department of Transportation's (USDOT) DBE Program, Appendix A of Title 49 CFR Part 26- "Guidance Concerning Good Faith Efforts."

4.4 To determine costs of components or subcomponents for compliance with the Buy America Requirements, the Proposer is referred to the Federal Register, Volume 56, No. 6, Dated January 9, 1991.

In order to demonstrate compliance with the Buy America Requirements, Proposer shall complete the Certificates of Compliance/Noncompliance, Exhibit F-4, included in this RFP. Failure to complete the appropriate certificate shall render a Proposer non-responsive to this solicitation and will result in the rejection of the bid.



DBE PARTICIPATION COMMITMENT(S) FORM

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

Proposer to Complete this Section				
1. RFP No.: _____				
2. Project Name/Description: _____				
3. Prime Proposer Name: _____				
4. Contract DBE Goal %: _____				
DBE Commitment Information				
5. Proposed DBE Firm (Name and Address)	6. DBE Certification Number	7. Description of Scope of Services/Work to be Provided	8. Dollar Value (\$) and/or Percentage (%) Of Contract	9. Percentage (%) of Work to be Performed by DBE Firm(s)
Note: The proposer shall also submit, for each DBE to perform under this contract a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract proposal can serve in lieu of the written confirmation).			10. Total Value Claimed (\$) \$ _____	11. Total DBE (%) Claimed towards Goal: _____ %
Proposer Assurance: The information on this form is complete and accurate and the proposer certifies that all DBE certifications and written confirmation documentation has been submitted to support the proposed DBE Commitment.				
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> _____ 12. Preparer's Name (Print) _____ </div> <div style="width: 30%;"> _____ 13. Preparer's Signature _____ </div> <div style="width: 30%;"> _____ 14. Preparer's Title _____ </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 30%;"> _____ 15. Date </div> <div style="width: 30%;"> _____ 16. (Area Code) Tel. No. </div> <div style="width: 30%;"> _____ 17. Email Address </div> </div>				

INSTRUCTIONS - DBE Participation Commitment(s) Form

Consultant Section

The Consultant shall:

1. **RFP No.-** Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Prime Proposer Name** - Enter the consultant's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Proposed DBE Firm** - Enter name and address of the proposed DBE Firm.
6. **DBE Certification Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date proposals are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract).
7. **Description of Scope of Services/Work to be Provided** - Enter the scope of services/work that the proposed DBE Firm will be performing for this project and is eligible to perform the scope of services/work.
8. **Dollar Value (\$) and/or Percentage of Contract-** Enter the proposed dollar value and/or percentage of commitment each listed DBE firm.
9. **Percentage (%) of Work to be Performed by DBE Firm(s)** - Percent of participation listed in column 8 of work to be performed or services to be provided by DBE firms. This percentage should include work to be self-performed by the listed DBE as well as work that will be performed by lower-tier subconsultants to the listed DBE. DBE credit will only be credited for work performed by DBE firms, non-DBE subconsultants should not be reflected in the percentage (%).
10. **Total Value Claimed (\$)**-Enter the total dollar value of DBE credit claimed.
11. **Total DBE % Claimed towards Goal** - Enter the total participation claimed. If the Total % Claimed is less than item "4. Contract DBE Goal", a Good Faith Effort (GFE) is required.
12. **Preparer's Name (Print)** - Clearly enter the name of the authorized person signing the form for the consultant.
13. **Preparer's Signature** - The person completing this section of the form for the consultant's firm must sign their name.
14. **Preparer's Title** - Enter the position/title of the authorized person signing the form for the consultant.
15. **Date** - Enter the date the form is signed by the proposer.
16. **(Area Code) Tel. No.** - Enter the area code and telephone number of the authorized person signing the form for the consultant.
17. **Email Address-** Enter the email address of the authorized person signing the form for the consultant.

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

BIDDER'S LIST

Proposer: _____

RFP No.: _____

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

The Proposer is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary Proposer, and submit this information at the time of proposal submission, or as otherwise specified in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall DBE goal-setting process.

Prime Proposer's Information:	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<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
Provide the following information for every firm (DBE and non-DBE) that submitted proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract:	
Firm Name:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	

**RFP 6-1302
EXHIBIT F-2**

Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<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

Firm Name:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<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

If necessary, this "Bidders List" form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.
Failure of the Proposer to submit the required "Bidder's List" form may deem the Proposer non-responsive.

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

Names of DBEs Solicited Methods and Dates	Date of Initial Solicitation	Follow Up

- C. Rejected DBE Bid Documentation; the names, addresses, phone numbers, and amount of rejected DBE firms, the reasons for the Bidder's rejection of the DBE firms, the firms selected and accepted for that work (please attach all copies of quotes from the firms involved) and the price difference for each DBE if the selected firms is not a DBE, include an explanation of quote(s) rejected.

Names, addresses and phone numbers of rejected DBEs and the reasons for the Bidder's rejection of the DBEs as follows:

Names, addresses and phone numbers of firms selected for the work

- 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 Bidder (please attach copies of advertisements or proof of publications). (Please note: If IFB due date is extended, Bidder is to re-advertise new bid due date.)

Publications	Dates of Advertisement

- 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 (please attach copies of requests to agencies and any responses received), as follows:

- 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, Bidder 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, Bidder to provide a list of any assistance provided to prospective and bided DBEs:

- H. Additional Data to Support a Demonstration of Good Faith Efforts; (for additional data please use additional sheets as necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

EXHIBIT G: RESTRICTIONS ON LOBBYING

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

1. Authority, as used in this clause, means the Orange County Transportation Authority, acting on behalf of the Orange County Transit District.
2. Covered Federal action, as used in this clause, means any of the following Federal actions:
 - a. The awarding of any Federal contract.
 - b. The making of any Federal grant.
 - c. The making of any Federal loan.
 - d. The entering into of any cooperative agreement.
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
3. Indian tribe and tribal organization, as used in this clause, have the meaning provided in Section 450b of the Indian self-determination and Education Assistance Act (25 U.S.C. 450) and include Alaskan Natives.
4. Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
5. Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or 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 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 making lobbying contacts 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. 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, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder 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 _____, 201__

By _____
(Signature of authorized official)

(Title of authorized official)

DISCLOSURE OF LOBBYING ACTIVITIES

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

Approved by
OMB
003480045

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

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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EXHIBIT H: SAFETY SPECIFICATION

LEVEL 3 HEALTH, SAFETY AND ENVIRONMENTAL (HSE) SPECIFICATIONS

REQUIRED HSE SUBMITTAL SUMMARY

The contractor shall submit copies of the items listed below for contract scope work on OCTA projects and property. Copies shall be provided prior to contractor's mobilization onto OCTA projects and property. Contractor shall provide compliant written Health, Safety & Environmental (HSE) submittals within 30 days of the contract notice to proceed.

HSE submittals shall comply with the 1988 Drug Free Workplace Act, or the Department of Transportation (DOT), or the Federal Transportation Administration (FTA) requirements (according to OCTA procurement funding guidelines) and comply with the California Code of Regulations (CCR) Title 8 regulatory standards.

Contractor's established written programs/plans shall comply with CCR Title 8 regulatory standards. All HSE related programs/plans submitted to OCTA for acceptance shall be prepared and submitted by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, CHMM, etc.) and is experienced in developing compliant written HSE programs. The site safety HSE representative shall participate in the HSE submittal process.

1. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
2. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
3. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program.
4. Contractor shall provide a copy of their Hazard Communication Program and MSDS Management Program in compliance with CCR Title 8, Section 5194, Hazard Communication Standard.
5. On-Site HSE Representative:
On Facility Modification Projects, The Contractor shall submit a resume of the designated on-site qualified HSE Representative. The HSE Representative shall possess a current certification from the Board of Certified Safety Professionals (BCSP), plus five (5) years construction or scope agreement HSE experience enforcing HSE compliance on heavy or industrial construction project sites, the last two years of which have been administering HSE in the construction or scope discipline for which the Contractor is contracting with the Authority. The designated HSE Representative shall participate in all HSE related submittals through completion of scope.

On Capital Programs, The Contractor's on-site qualified HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP) or a Construction Health and Safety Technician (CHST) with current standing from the (BCSP) or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial

Hygiene (ABIH), or an equal professional HSE Certificate of standing from The National Examination Board in Occupational Safety and Health (NEBOSH), that is acceptable to the Authority. The Contractor's on-site HSE Representative(s) shall provide a resume and have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction/scope discipline for which Contractor is contracting with the Authority.

6. A Detailed Site Specific HSE Work Implementation Plan:

This plan shall be prepared and submitted by a recognized HSE professional experienced in developing compliant written HSE programs. Indicate the methods and procedures, and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, South Coast Air Quality Management District (SCAQMD) rules, National Fire Protection Association (NFPA), National Electric Code (NEC), American National Standards Institute (ANSI) codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

PART I – GENERAL

1.0 GENERAL HEALTH, SAFETY AND 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 including California Department of Transportation safety requirements and special provisions. Additionally, manufacturer requirements are considered incorporated by reference, as applicable, to this scope of work.
- B. Observance of unsafe acts or conditions, serious violation of health and safety standards, non-conformance of Authority HSEC requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. 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.

- D. 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.
- E. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
- F. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who works on Authority projects in the following; recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.

PART II – SPECIFIC REQUIREMENTS

- 2.0 While these safety specifications are intended to promote safe work practices, Contractors are reminded of their obligation to comply with all federal (Code of Federal Regulations (CFR) Sections 1926 & 1910 Standards), state (CCR Title 8 Standards), local and municipal safety regulations, and Authority health, safety and environmental requirements applicable to their project scope. Failure to comply with these standards may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

2.1 REQUIRED DOCUMENTATION / REPORTING REQUIREMENTS

The Contractor at a minimum shall provide the following documents to the Authority's Project Manager. Items A through E below shall be submitted and accepted by the Authority's Project Manager prior to Contractor mobilization. Item F upon each occurrence, and for items G through K, contractor shall verify the following documentation is in place, prior to and during contract scope and make the same available to the Authority upon request within 72 hours.

Contractor's established written programs/plans shall comply with CCR Title 8 regulatory standards. All new programs/plans shall be prepared and submitted by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, STS, CHMM, etc.) and is experienced in developing compliant written HSE programs. The site safety HSE representative shall participate in the scope submittal process.

- A. A Comprehensive Project Specific Health, Safety, and Environmental (HSE) Work Plan.
 - a. The Contractor shall develop a site project plan that may include, but is not limited to: Permits, Evacuation, Emergency Plan, Roles and Responsibilities, Scope and

Construction Activity Details, Constructability Review, Contractor Coordination Process, Safe Work Methods, Hazard Identification & Risk Control, First Aid and Injury Management, Emergency Procedures, Public Protection, Authority and Contractor Site Rules, Incident Reporting and Investigation, Specialized Work or Licensing, Training and Orientation Requirements, Chemical Management, and Subcontractor Management.

- b. A Detailed Site Specific HSE Implementation Plan: This plan shall be prepared and submitted by a recognized HSE professional (current BCSP Certification in good standing, i.e., CSP, CHST, OHST) experienced in developing compliant written HSE programs, acceptable to OCTA. Indicate the methods and procedures, and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, SCAQMD rules, NFPA, NEC, ANSI codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
 - B. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
 - C. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
 - D. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
 - E. Contractor shall provide the resume and qualifications/certifications of assigned project designated Onsite HSE Representative for this scope as identified in section 2.3 of this specification.
 - F. Accident/Incident investigation report within 24 hours of event (immediate verbal notification to Authority Project Manager, followed by Written Report).
- The following required documentation shall be provided to the Authority's Project Manager, upon Authority request, within 72 hours.
- G. A copy of Contractor weekly site safety inspection report with status of corrections, upon request, within 72 hours.
 - H. Contractor shall provide a copy of the Contractors and subcontractors competent person list (submit to Authority Project Manager, upon Authority request, within 72 hours).

- I. Contractors and subcontractors training records for qualified equipment operators, electrical worker certification (NFPA 70E), confined space training, HAZWOPER training, and similar personnel safety training certificates as applicable to the agreement scope and as requested by the OCTA Project Manager and/or HSEC department, upon Authority request, within 72 hours and prior to starting or during the scope activity (submit to Project Manager).
- J. A monthly report that includes number of workers on project, a list of subcontractors, work hours (month, year to date, & project cumulative) of each contractor, labor designation, OSHA Recordable injuries and illnesses segregated by medical treatment cases, restricted workday cases, number of restricted days, lost workday cases, and number of lost work days, and recordable incident rate. Contractor shall provide to the Authority, upon request, within 72 hours.

K. TRAINING DOCUMENTATION

To ensure that each employee is qualified to perform their assigned work, when applicable to scope work, Contractor shall verify training documentation is in place, prior to and during contract scope, and make available to the Authority, upon request, within 72 hours. Training may be required by the Authority or CCR Title 8 Standards and required for activity on Authority's property and/or Authority projects. Contractor shall provide to Authority, upon request, within 72 hours.

2.2 HAZARD COMMUNICATION (CCR Title 8, Section 5194)

- A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to chemical use on Authority property and/or project work areas the Contractor shall provide to the Authority Project Manager copies of Material Safety Data Sheet (MSDS) for all applicable products used, if any.
- B. All chemicals including paint, solvents, detergents and similar substances shall comply with SCAQMD Rules 103, 1113, and 1171.

2.3 DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE

- A. Before beginning on-site activities, the Contractor shall designate an On-site HSE Representative. 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.
- B. The Contractor's on-site qualified HSE Representative for all Authority projects is subject to acceptance by the Authority Project Manager and the HSEC Department Manager. All contact information of the On-site HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager.

QUALIFICATIONS – On Capital Programs, the Contractor shall submit a resume of the full time, on-site qualified HSE Representative(s) who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for HSE oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-site HSE Representative(s) shall have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP), or a Construction Health and Safety Technician (CHST) with current standing from the BCSP or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH), or an equal professional HSE Certificate of standing from The National Examination Board in Occupational Safety and Health (NEBOSH), that is acceptable to the Authority. The Contractor's On-site HSE Representatives(s) shall be on site during all operational hours. The On-site HSE Representative(s) shall set up, carry forward and aggressively and effectively maintain the project specific safety program and IIPP covering all phases of the work. If at any time the Contractor wishes to replace their On-site HSE Representative(s), the Contractor must provide written notice thirty (30) days prior to change of personnel to the Authority. The Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the scope work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Authority who may be involved. This requirement applies continuously and is not limited to normal working hours. The designated HSE Representative shall participate in all HSE related submittals. The Authority reserves the right to allow for an exception to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.

On Facility Modification Projects, the Contractor shall submit a resume of the full time qualified on-site HSE Representative who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for safety oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-Site HSE Representative shall hold a current certification from the BCSP, plus five (5) years construction or scope HSE experience enforcing HSE compliance on heavy construction or industrial construction project sites, the last two years of which have been administering HSE in the construction or scope discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative(s) shall be on site during all operational hours. The designated HSE Representative shall participate in all 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.

1. Capital Programs may include, but are not limited to, projects involving demolition and construction of; heavy construction, rail projects, highway projects, parking lots and structures, fuel stations, building construction, facility modifications, bus base construction, EPA/DTSC remediation, AQMD air or soil monitoring, fuel tank removal or modification, major bus base modifications, handling potential hazardous waste projects, and similar projects as deemed a Capital Program at the sole discretion by the Authority.
 2. Facility Modification Projects may include, but are not limited to, projects involving minor demolition and construction or improvement projects for transportation centers, bus base sites and/or building modifications, equipment and/or building upgrades, and similar projects as deemed a Facility Modification Project at the sole discretion by the Authority.
 3. 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.
 4. 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.
- C. The Contractor shall designate a Competent Individual for each task, as required by Cal-OSHA standards or laws. The task Competent Individual shall be responsible for the prevention of accidents. If the Authority or any public agency with jurisdiction notifies the Contractor of any claimed dangerous condition at the site that is within the Contractor's care, custody or control, the Contractor shall take immediate action to rectify the condition at no additional cost to the Authority. The Contractor shall be responsible for the payment of all fines levied against the Authority for deficiencies relating to the Contractor's supervision or conduct and/or control of the scope agreement.
- D. On Facility Modification Projects, the Authority Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in section 2.3 (C), above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 15 workers, there are multiple scope work sites, or as warranted by the scope of work at the sole discretion by the Authority.
- E. On Capital Programs, the Authority's Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in item 2.3 (C) above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 50 workers, or is warranted by the scope of work.

2.4 SITE HSE ORIENTATION

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, a copy of the HSE orientation attendance list shall be provided to the Authority Project Manager. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 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.

2.5 INCIDENT NOTIFICATION AND INVESTIGATION

A. The Authority shall be promptly notified of any of the following types of incidents:

1. Damage to Authority property (or incidents involving third party property damage);
2. Reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
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 general public that arise from the performance of Authority contract work. An initial immediate verbal notification, followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.

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, the contributing factors that led to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to OCTA.

C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or 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 senior executive from the Contractors' organization to participate in the presentation. The serious incident presentation shall include action taken for

the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, 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.
2. Serious Incident: includes 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, etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes an 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.

2.6 REGULAR INSPECTIONS & THIRD PARTY INSPECTIONS

- A. Frequent and regular inspections of the project jobsite shall be made by the Contractor's On-site HSE Representative, or another Competent Individual designated by the Contractor. Unsafe acts and/or conditions noted during inspections shall be corrected immediately.
- B. The Contractor is advised that representatives of regulatory agencies (i.e., CAL-OSHA, EPA, SCAQMD, etc.), upon proper identification, are entitled to access onto Authority property and projects. The Authority Project Manager shall be notified of their arrival as soon as possible.

2.7 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.
- E. If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined in California Health and Safety Code, and all regulations pursuant thereto) which has not been rendered harmless, the Contractor shall immediately stop work in that area affected and report the condition to the Authority in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Authority and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous substance and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous substance, or when it has been rendered harmless, by written agreement of the Authority and the Contractor, or in accordance with a final determination by an Environmental Consultant employed by the Authority.
- F. The Contractor shall not permit any hazardous substances to be brought onto or stored at the Project Site or used in the construction of the work, except for specified materials and commonly used construction materials for which there are no reasonable substitutes. All such materials shall be handled in accordance with all manufacturers' guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials shall be given by the Contractor. The Contractor shall not intentionally release or dispose of hazardous substances at the Project Site or into the soil, drains, surface or ground water, or air, nor shall the Contractor allow any Sub-Contractor, subcontractor or supplier or any other person for whose acts the Contractor or

any subcontractor, vendor or supplier may be liable, to do so. For purposes of Contract Documents, "hazardous substance" means any substance or material which has been determined or during the time of performance of the work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

2.8 VEHICLE AND ROADWAY SAFETY REQUIREMENTS

- A. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, are identified by company name and/or logo, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- B. Personal vehicles belonging to Contractor employees shall not be parked on the traveled way or shoulders including any section closed to public traffic, or areas of the community that may cause interference or complaints
- C. The Contractor shall comply with California Department of Transportation safety requirements and special provisions when working on highway projects.
- D. The Contractor shall conform to American Traffic Safety Services Association (Quality Standard for Work Zone Control Devices 1992).

2.9 LANGUAGE REQUIREMENTS

For safety reasons, the Contractor shall ensure employees that do not read, or understand English, shall be within visual and hearing range of a bilingual supervisor or responsible designee at all times when on the Authority property or projects.

2.10 PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

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.

- A. RESPIRATORS (CCR Title 8, Section 5144) - The required documentation for training and respirator use shall be provided to the Authority's Project Manager upon request within 72 hours. All compliance documentation as required by CCR Title 8, Section 5144, Respiratory Protective Equipment.
- B. EYE PROTECTION – The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.
- C. BUS BASE – Minimum PPE required includes but is not limited to; Eye protection, class 2 reflective vest, steel toe or construction type footwear that meets ANSI Z41 1991 are recommended.

- D. CONSTRUCTION PROJECTS - Minimum PPE required includes but is not limited to; hard hat, eye protection, hand protection, class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 are recommended.
- E. HARD HATS: Approved hard hat that meet ANSI Z89. 1 (latest revision). Hard hats should be affixed with the company/agency logo and/or name. The bill shall be worn forward. Metal hard hats and cowboy style are forbidden on Authority projects.
- F. FOOTWEAR: Enclosed leather that covers the ankles, such as a construction type boot. Employees shall not wear casual dress shoes, open toe, sneakers, sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal in construction work areas. Safety toe footwear that meets ANSI Z41 1991 are recommended on construction sites and in operating facilities.
- G. CLOTHING/SHIRTS: minimum or waist length shirts with sleeves (4" minimum).
- H. CLOTHING/TROUSERS: Cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. No sweat pants, or trousers with holes.

2.11 AERIAL DEVICES (CCR Title 8, Section 3648)

Aerial devices are defined in CCR Title 8 as any vehicle-mounted or self-propelled device, telescoping extensible or articulating, or both, which is primarily designed to position personnel. If aerial devices are to be used, the required documentation in CCR Title 8, Section 3648 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

2.12 CONFINED SPACE ENTRY (CCR Title 8, Section 5157)

Before any employee will be allowed to enter a confined space, the required documentation as required by CCR Title 8, Section 5157 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. RECOMMENDED: a copy of the most recent calibration record for each air monitoring unit, 3-gas monitor or "sniffer" to be used by the Entry Supervisor prior to entering permit-required confined spaces.

2.13 CRANES

- A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. **In addition, Contractor shall comply with the following requirements:** Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items 1, 2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.

1. Cranes require a submittal of the annual certification, and copy of the cranes most recent quarterly inspection.
2. A copy of each crane operator's qualification (NCCCO or equivalent) of company-authorized crane operators that have been properly trained in the equipment's use and limitations. Operator certification as required by CCR Title 8, Section 5006.1.
3. A rigging plan is required for all lifts. Critical lifts require an engineered plan designed by a registered professional engineer licensed in the State of California.
4. Contractor shall provide the name and qualifications of each "Qualified Rigger" as defined by OSHA.
5. Rigging scope activity shall comply with 29 CFR Subparts 1926.250, 1929.753 and CCR Title 8 Standards.
6. All rigging equipment shall be free from defects, in good operating condition and maintained in a safe condition.
7. Rigging equipment shall be inspected by a designated, competent employee prior to initial use on the project, prior to each use, and documented inspections performed regularly. Records shall be kept on jobsite of each of these inspections by contractor and be made available to the Authority upon request within 72 hours.
8. Only one (1) sling eye should be in a hook, for multiple slings a shackle shall be used to prevent separation of slings, and prevent stress on weak points of the hook.
9. Contractor shall prepare a documented daily crane inspection report.

B. Pick and carry with rubber tired cranes is forbidden on Authority projects.

C. Engineered Critical Lifts

A critical lift is established where any one of the following conditions are created:

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.
4. A single lift where two or more cranes are used, including tandem lifts and tailing cranes.

5. Lifts made in close proximity of power lines, as defined by CCR Title 8 voltage clearance specifications.
6. Lifts involving helicopters, and specialized or unique and complex rigging equipment.
7. Hoisting of suspended work platforms.
8. Static tower crane erection and dismantlement.
9. Making lifts below the ground level where the crane is positioned.
Note: Where the below the ground lift is minimal (evaluated by California registered professional engineer), a critical lift plan may not be required.

D. Critical Lift Plan

Where a critical lift will be performed, a written critical lift plan shall be submitted to the Authority Project Manager prior to commencing with the lift. The written plan shall include the following:

1. Crane manufacturer, capacity, and all specifications for the configuration to be used for the lift.
2. Load chart data for the crane to be used to make the lift. Total calculated weight of the load to be lifted including all rigging and other deductions consistent with the manufacturer's load chart.
3. Engineering data shall be provided on the hook assembly (manufacturer's certification or independent laboratory testing and load testing within the past 60 days), below-the hook rigging, and all specialized below-the-hook lifting devices.
4. Diagrams of the lift that provides geometrical conditions of the load, rigging, and all crane positions during the lift. The drawing shall provide the following:
 - A. Locations of all components to be lifted prior, during and after the lift is completed.
 - B. Radius points.
 - C. Swing patterns.
 - D. In the event that the lift must be aborted, positions where the load may be safely landed.

- E. Areas where any personnel, public, and vehicles must be evacuated during the lift.
- 5. Potential ground loading for each point of contact by the crane in selected locations in which the crane will perform the critical lift.
- 6. Soil and subsurface data and information pertaining to the location on which the crane used for the critical lift will be positioned. This information shall be procured from an authoritative source such as a geotechnical engineer or a professional civil engineer registered in the state of California.

Note: *This information may be available from the Authority for selected locations on some projects.*
- 7. An engineer shall use the data provided in #5 and #6 above to verify and confirm the following:
 - A. That the soil and subsurface conditions are capable of supporting all loads imposed during the critical lift.
 - B. That the designs of cribbing and other supports used under the crane load points are appropriate to safely transfer such loads.
- 8. Signature and stamp on the plan by a California registered professional engineer, evidencing review of the plan as meeting the requirements that all loads and load information and calculations contained in the plan are approved, acceptable and safe to perform.
- 9. Operator qualifications.
- 10. Method by which communication will be provided to the crane operator. (Designated signal person, two-way radio, hard wire phone system, etc.).
- 11. A critical lift hazard analysis which identifies the particular hazards (including weather, wind, obstructions, etc.) associated with the lift and the means and methods to reduce, mitigate, or eliminate the hazards.
- 12. Emergency action plan.
- 13. Documentation of lift and pre-job meeting shall be conducted by Contractor's Project Manager.

The written plan shall be submitted 7 days prior to any critical lift for review by the Authority Project Manager and the Authority HSEC department. No critical lifts shall be conducted prior to such review.

E. OVERHEAD CRANES

Before using the Authority overhead cranes, each Contractor shall designate a limited number of employees to attend a training session on the use and limitations of overhead cranes with designated Authority personnel.

2.14 DEMOLITION OPERATIONS (CCR Title 8, Section 1734)

Before starting demolition activities the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. Contractor shall provide all compliance documentation as required by CCR Title 8 Article 31.

- A. The Contractor shall be responsible for visiting and examining the project site to assess and personally determine the extent of demolition, associated work, debris removal, disposal and general work to be done under this section.
- B. The Contractor shall take possession of all demolished materials, except as noted otherwise in the Contract Documents, and be responsible for disposing of them in accordance with applicable laws and regulations. On-site burning or burial of demolition materials will not be permitted.
- C. Provide continuous noise and dust abatement as required, preventing disturbances and nuisances to the public, workers, and the occupants of adjacent premises and the surrounding areas. Dampen areas affected by demolition operation as necessary to prevent dust nuisance.
- D. Site demolition plan: Indicate methods, procedures, equipment, and structures to be employed. Specify safety measures in accordance with applicable codes including signs, barriers, and temporary walkways. Plans shall be prepared by a qualified person (CSP, CIH, CHST, CHMM, etc.), or as necessary by a professional engineer licensed to practice in the State of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
- E. Equipment, haul routes, and disposal sites to be used in the demolition and disposal work. Copy of manifests showing delivery of disposed materials in accordance with the plan and permit conditions. Certification that all demolished materials removed from the site have been disposed of in accordance with applicable laws and regulations.

2.15 EXCAVATION OPERATIONS (CCR Title 8, Section 1541)

Before starting excavation activities more than 5 feet deep into which people shall enter, the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. All compliance documentation shall comply with the following CCR Title 8, Section 1541 requirements:

- A. A copy of the Contractor's Excavation Permit.

- B. Attention is directed to the applicable sections of the Labor Code concerning trench excavation safety plans, "Trench Safety." Excavation for any trench 5 feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of that trench and any design calculations used in the preparation of the detailed plan. Excavations 20 feet or greater shall be engineered and plan stamped by a California registered professional engineer.
- C. The detailed plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If the plan complies with the shoring system standards established by the Construction Safety Orders, the plan shall be submitted at least five (5) days before the Contractor intends to begin excavation for the trench.
- D. Excavations and trenches shall be inspected by a "Competent Person" daily and after every rainfall to determine if they are safe. Daily inspections shall be recorded. Documentation is to be kept on site and available for review upon request.
- E. Excavations are considered class 'C' soil unless documented testing in accordance with 29 CFR Subpart P, Section 1926.650 and CCR Title 8 Standards supports a class 'B' soil classification and is confirmed and stamped by a California registered professional engineer. In no case will excavations be classified as class 'A' soil.

2.16 FALL PROTECTION (CCR Title 8, Sections 1669-1671)

The following standards are required when performing work on Authority property. The required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. Fall protection is required for workers exposed to falls in excess of six (6) feet.
- B. When conventional fall protections methods are impractical or create a greater hazard, a written plan in conformance with CCR Title 8, Article 24, shall be submitted to the Authority a minimum of seven (7) days in advance of the scheduled activity.

2.17 FORKLIFTS, BACKHOES AND OTHER INDUSTRIAL TRACTORS (CCR Title 8, Section 3664)

CCR Title 8 defines backhoes as "industrial tractors". All compliance documentation shall be provided as required by CCR Title 8, Section 3664. The following required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A copy of each operator's certificate or a list of company-authorized industrial tractor operators that have been properly trained in the equipment's use and limitations. Please state which equipment, and model each operator has been authorized to operate (i.e. forklifts, backhoe, bulldozer, front-end loader, etc.).

2.18 ELECTRICAL OPERATIONS

HIGH VOLTAGE (CCR Title 8, Sections 2700-2974)

Any work on electrical equipment defined by OSHA as high-voltage, at or above 600 volts, requires specialized training certifications and personal protective equipment. Before any high-voltage work commences, the Authority Project Manager must be notified and must provide approval. The following required NFPA 70E certification and a certificate of training from a recognized organization of a two day high voltage safety training course shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A list of the name(s) of the company-designated high voltage Qualified Electrical Worker(s)

LOW VOLTAGE (CCR Title 8, Sections 2299-2599)

Only qualified persons shall work on electrical equipment or systems.

- A. Electrical Certification of Training: Contractor employees working on or around electrical panels, wiring, motors, electrical energy sources or similar electrical devices shall have attended a NFPA 70E, Electrical Safety Course and provide to the OCTA Project Manager a copy of employees' NFPA 70E qualification certificate of training for each employee assigned to electrical tasks on OCTA property or projects.

2.19 POWDER-ACTUATED TOOLS (CCR Title 8, Section 1685)

Before using tools such as "Hilti guns" or other powder-actuated tools, the following required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. A copy of each qualified person's valid operator card.

2.20 SCAFFOLDS (CCR Title 8, Sections 1635.1-1677)

Scaffold erection shall be in compliance with CCR Title 8 Standards. All compliance documentation shall be provided as required by CCR Title 8, Sections 1635.1-1677. In addition, the Contractor shall comply with the following additional requirements.

- A. All scaffolds on Authority project shall be inspected by a competent person qualified for scaffolds in accordance with CCR Title 8 Standards.

- B. Contractor shall arrange for a third party inspection, at least quarterly, by a credentialed professional (insurance carrier, scaffold manufacturer representative, or similar) in addition to the contractors daily self inspections.
- C. A proper scaffold inspection and tagging system shall be maintained identifying compliance status (Example: Green/safe, Yellow/modified-fall protection required, Red/unsafe-do not use).
- D. Contractor shall have a fall protection plan that meets CCR Title 8 Standards for scaffold erectors, an erection/dismantling plan shall be submitted to Authority Project Manager for review prior to start of activity.
- E. Scaffold erection/dismantling shall install handrails beginning on the first level above ground erected, and erectors shall plan erection and dismantling in a manner to maximize handrail protection and minimize employees at unprotected areas.

2.21 WARNING SIGNS AND DEVICES

Signs, signals, and/or barricades shall be visible at all times when and where a hazard exists. Overhead tasks, roofing tasks, excavations, roadwork activity, demolition work, and other recognized hazards shall have guardrail protection, warning barricades, or similar protective measures acceptable to the Authority's Project Manager. Signs, signals, and/or barricades shall be removed when the hazard no longer exists.

2.22 STEEL ERECTION

Steel Erection scope activity shall comply with 29 CFR Subpart R, Section 1926.750, and CCR Title 8 Standards. In addition to OSHA Standards, Contractor shall comply with the following requirements.

- A. Erection planning should incorporate installation methods using aerial devices (man-lifts) and elevated work platforms (scissor lift) to minimize fall hazards of climbing steel where possible. A detailed written job safety analysis (JSA) shall identify installation methods, equipment, and control methods to minimize potential fall hazards.
- B. The Contractor shall not allow any employee to walk the steel unprotected from falls. Contractor employees must be tied-off and "coon" the beam until safety cables are provided to which employees shall use 100% tie-off protection. Two lanyards are required to ensure 100% tie-off protection.
- C. A safe means of access to the level being worked shall be planned. Climbing and sliding down columns are not considered safe access and are forbidden on Authority projects.
- D. A qualified rigger shall inspect the rigging prior to each shift and each lift.

- E. Multiple lift rigging (Christmas Treeing) lifts are forbidden on Authority property and controlled projects.

2.23 AUDITS

- A. The Authority may make periodic patrols of the project site as a part of its normal security and safety program. The Contractor shall not be relieved of its aforesaid responsibilities and the Authority shall not assume same, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor, as a result of safety patrols by the Authority.
- B. The Authority may audit the Contractor's safety program for HSE compliance at various intervals of the project, at the sole discretion of the Authority. Elements may include, but are not limited to: OSHA injury & illness records and logs, Job Safety Analysis and safety plans, equipment operator licenses and training records, incident reports, meeting minutes, engineered plans, safety meeting records, crane and rigging plans, equipment inspection records, qualifications of and interviews with key Contractor management personnel, and other similar information. The Contractor shall support and cooperate with these audits at no additional compensation or schedule impacts with this contract.

2.24 RAILWAY SAFETY PRECAUTIONS

- A. Work on operating railways shall be in compliance with 49 CFR, Part 214, CCR Title 8 Standards, and the Southern California Regional Rail Authority (SCRRA).
- B. New construction rail projects require that all employers and contractors are responsible to assure employees are trained and understand on-track safety procedures, and follow roadway worker rules identified in 49 CFR, Part 214, CCR Title 8, SCRRA, the California Department of Transportation (CalTrans), and OCTA HSE Construction Management Requirements (i.e., item E references).
- C. Minimum PPE for workers include hard hat, safety glasses, orange (i.e., rail company approved color) class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 (lace-up type over the ankle) and hearing protection (on person and worn as necessary).

2.25 FINES

The Contractor shall be responsible for the payment of all fines levied against the Authority for HSE violations arising from or related to activities over which Contractor has responsibility per the contract..

2.26 COMPLIANCE COSTS

Compliance with Health, Safety and Environmental Compliance identified in these aforementioned Authority Safety Specifications shall be at the expense of the Contractor, and included in Bid Documents to the Authority for the Contractor's scope. The Authority shall incur no additional cost or schedule impacts by Contractor, for compliance with California Construction Safety Orders, CCR Title 8 Standards, Federal OSHA Standards, and the Authority Safety Specifications for the protection of persons and property.

2.27 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. CFR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. USACE Construction Quality Management Manuel (EM-385-1-1)
- E. Construction Industry Institute (CII)
- F. OCTA Construction Management Procedures Manual
- G. OCTA Yard Safety Rules

END OF DOCUMENT

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:

EXHIBIT J: BUY AMERICA CERTIFICATION FORM

BUY AMERICA CERTIFICATION

Certificate of Compliance

The Proposer hereby certifies that it will comply with the requirements of 49 USC Section 5323(j)(2)(C), Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, and the regulations of 49 CFR 661.11:

Name and title:

Company:

Authorized signature

Date

Certificate of Non-Compliance

The Proposer hereby certifies that it cannot comply with the requirements of 49 USC Section 5323(j)(2)(C) and Section 165(b)(3) of the Surface Transportation Assistance Act of 1982, as amended, but may qualify for an exception to the requirements consistent with 49 USC Sections 5323(j)(2)(B) or (j)(2)(D), Sections 165(b)(2) or (b)(4) of the Surface Transportation Assistance Act, as amended, and regulations in 49 CFR 661.7.

Name and title:

Company:

Authorized signature

Date