

**REQUEST FOR PROPOSALS (RFP) 7-1719**

**CONSULTANT SERVICES FOR THE  
PREPARATION OF PLANS, SPECIFICATIONS  
AND ESTIMATES FOR THE STATE ROUTE 55  
IMPROVEMENT PROJECT BETWEEN  
INTERSTATE 405 AND INTERSTATE 5**



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

**Key RFP Dates**

<b>Issue Date:</b>	<b>June 12, 2017</b>
<b>Pre-Proposal Conference Date:</b>	<b>June 22, 2017</b>
<b>Question Submittal Date:</b>	<b>June 27, 2017</b>
<b>Proposal Submittal Date:</b>	<b>July 10, 2017</b>
<b>Interview Date:</b>	<b>August 2, 2017</b>

**FEDERAL HIGHWAY ADMINISTRATION FUNDED PROJECT**

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June 12, 2017

**NOTICE OF REQUEST FOR PROPOSALS**

**(RFP): 7-1719: "CONSULTANT SERVICES FOR THE PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATES FOR THE STATE ROUTE 55 IMPROVEMENT PROJECT BETWEEN INTERSTATE 405 AND INTERSTATE 5"**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants for CONSULTANT SERVICES FOR THE PREPARATION OF PLANS, SPECIFICATIONS AND ESTIMATES FOR THE STATE ROUTE 55 IMPROVEMENT PROJECT BETWEEN INTERSTATE 405 AND INTERSTATE 5.

The Authority intends to award a single contract as a result of this procurement.

The Authority has set a **10%** Disadvantaged Business Enterprise (DBE) participation goal for this project. Award of this contract is contingent upon Consultant meeting the DBE attainment requirements including the good faith effort to meet the established goal.

The Authority has made the following documents available on CAMM NET for review:

1. Draft Project Report
2. Draft Environmental Document

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

Offerors are advised that all Consultant proposals and supporting documents for the project contract are subject to audit or review by the California Department of Transportation (Caltrans) or the Federal Highway Administration (FHWA). The Cost Proposal is subject to an audit or Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review.

The Cost Proposal shall be adjusted by the Consultant and approved by the Authority's Contract Administrator to conform to the Workpaper Review recommendations or audit recommendations. The C agrees that individual terms of cost identified in the audit report shall be incorporated into the agreement by this reference if directed by the Authority at its sole discretion. Refusal by the Consultant to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

In response to Caltrans' audit/review requirements, Offeror and all their subconsultants will be required to submit, after award of contract, Caltrans Exhibit 10-K entitled "Certification of Contract Costs and Financial Management System", a copy of which is attached to this RFP as Exhibit J. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

**Proposals must be received in the Authority's office at or before 2:00 p.m. on July 10, 2017.**

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

**Orange County Transportation Authority  
Contracts Administration and Materials Management  
600 South Main Street, (Lobby Receptionist)  
Orange, California 92868  
Attention: Marjorie Morris Threats, Senior Contract Administrator**

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

**Orange County Transportation Authority  
Contracts Administration and Materials Management  
P.O. Box 14184  
Orange, California 92863-1584  
Attention: Marjorie Morris Threats, Senior Contract Administrator**

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 7-1719, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Professional Services	Architect Services, Professional Engineering - Architectural Engineering - Civil Engineering - Environmental Professional Consulting
Land Surveying	Land Surveying
Professional Consulting	Architectural & Engineering Design Consulting Environmental Consulting Traffic Planning Consulting

A pre-proposal conference will be held on **June 22, 2017**, at **9:00 a.m.** at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 09. All prospective Offerors are encouraged to attend the pre-proposal conference.

Offeror's are asked to submit written statements of technical qualifications and describe in detail their work plan for completing the work specified in the Request for Proposal. **No Cost Proposal or estimate of work hours is to be included in this phase of the RFP process.**

The Authority has established **August 2, 2017**, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

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

**SECTION I: INSTRUCTIONS TO OFFERORS**

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

A pre-proposal conference will be held on **June 22, 2017**, at **9:00 a.m.** the Authority's Administrative Office, 550 South Main Street, Orange, California, in Conference Room 09. All prospective Offerors are encouraged to attend the pre-proposal conference.

**B. EXAMINATION OF PROPOSAL DOCUMENTS**

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

**C. ADDENDA**

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

**D. AUTHORITY CONTACT**

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

Marjorie Morris Threats, Senior Contract Administrator  
Contracts Administration and Materials Management Department  
600 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584  
Phone: 714.560. 5633, Fax: 714.560.5792  
Email: mthreats@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no 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 consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any 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 D.2. below. Should it be found that the point in question is not clearly and fully set forth, the Authority will issue a written addendum clarifying the matter which will be sent to all firms registered on CAMM NET under the commodity codes specified in this RFP.

### **2. Submitting Requests**

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on **June 27, 2017**.
- 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: mthreats@octa.net

### **3. Authority Responses**

Responses from the Authority will be posted on CAMM NET, no later than **June 30, 2017**. Offerors may download responses from CAMM NET at <https://cammmnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Marjorie Morris Threats, Senior Contract Administrator.

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

<u>Category:</u>	<u>Commodity:</u>
Professional Services	Architect Services, Professional Engineering - Architectural Engineering - Civil Engineering - Environmental Professional Consulting
Land Surveying	Land Surveying
Professional Consulting	Architectural & Engineering Design Consulting Environmental Consulting Traffic Planning Consulting

Inquiries received after 5:00 p.m. on June 27, 2017, will not be responded to.

## **F. SUBMISSION OF PROPOSALS**

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

Proposals must be received in the Authority's office at or before 2:00 p.m. on **July 10, 2017**.

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

### **2. Address**

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

**Orange County Transportation Authority  
Contracts Administration and Materials Management (CAMM)  
600 South Main Street, (Lobby Receptionist)  
Orange, California 92868  
Attention: Marjorie Morris Threats, Senior Contract Administrator**

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

**Orange County Transportation Authority  
Contracts Administration and Materials Management (CAMM)  
P.O. Box 14184**

Orange, California 92863-1584

Attention: Marjorie Morris Threats, Senior Contract Administrator

**3. Identification of Proposals**

Offeror shall submit an **original and 6 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, DVD, or flash drive.***

**4. Acceptance of Proposals**

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

**G. PRE-CONTRACTUAL EXPENSES**

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

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

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

**H. JOINT OFFERS**

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

**I. TAXES**

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

**J. PROTEST PROCEDURES**

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

**K. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a firm-fixed price contract specifying firm-fixed prices for individual tasks specified in the Scope of Work, included in this 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. All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

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

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

**M. PREVAILING WAGES**

Certain labor categories under this project are subject to prevailing wages as identified in the State of California Labor Code commencing in Section 1770 et.seq., and all applicable Federal requirements respecting prevailing wages. The proposer to whom a contract for the work is awarded by the Authority shall comply with the provision of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the work is to be performed in accordance with, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code governing employment of apprentices. Copies of the prevailing rates of per diem wages are on file at the Authority's principal office at 550 S. Main Street, Orange, CA 92868 and are available to any interested party on request.

**N. CODE OF CONDUCT**

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

**O. DISADVANTAGED BUSINESS ENTERPRISE**

The Authority has established a ten percent (**10%**) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

**P. NONDISCRIMINATION**

The Authority hereby notifies all Offerors that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

**Q. PRIME AND LOWER TIER DEBARMENT**

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

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

Offerors and all their subconsultants will be required to submit, after award of contract, Caltrans Exhibit 10-K entitled "Certification of Contract Costs and Financial Management System", a copy of which is attached to this RFP as Exhibit J. As part of this certification, the prime and all subconsultants must show their financial system's ability to segregate cost elements.

**SECTION II: PROPOSAL CONTENT**

**SECTION II. PROPOSAL CONTENT****A. PROPOSAL FORMAT AND CONTENT****1. Format**

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

**2. Letter of Transmittal**

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

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 180 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.



### 3. Technical Proposal

#### a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

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

**b. Proposed Staffing and Project Organization**

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

Offeror to:

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

**c. Work Plan**

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

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.

- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (6) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

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

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

#### 4. **Cost and Price Proposal**

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

#### 5. **Appendices**

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

### B. **FORMS**

#### 1. **Campaign Contribution Disclosure Form**

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed 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 consultant, 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 9/25/2017.

#### 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. 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.

**4. Safety Specifications**

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

**5. Certification of Consultant, Commissions & Fees**

In receiving federal funds, Offeror is required to complete the Certification of Consultant, Commissions and Fees form. This form is to be included with Offeror's proposal.

**6. Request for DBE Subcontractor/Supplier Substitution**

Substitution of subcontractors shall be in accordance with the Contract terms and condition. If a listed or approved DBE Subcontractor is unable to perform the work in accordance with the Contract Specifications, the Prime Contractor shall replace the Subcontractor with another DBE Subcontractor, or make good faith efforts to do so in accordance with the

Contract terms and conditions. Such request for substitution is subject to approval by the Authority.

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

Offer shall complete and submit to the Authority in their proposal Exhibits E-1, E-2, and E-3 per the instructions set forth in Section II: “Instructions to Offerors” and Exhibit E: “Disadvantaged Business Enterprise” – Requirements and Instructions.

- E-1 Caltrans Exhibit 10-O1 – Consultant Proposal DBE Commitment
- E-2 Caltrans Exhibit 10-O2 – Consultant Contract DBE Information
- E-3 Bidders List
- E-4 DBE Information – Good Faith Efforts

**8. Certification of Contract Costs and Financial Management System “Exhibit 10-K”**

This exhibit entitled “Exhibit 10-K Certification of Contract Costs and Financial Management System” (RFP Exhibit J) is to be completed by Offeror and all subconsultants after award of contract. As part of this certification, the prime and all subconsultants must show their financial system’s ability to segregate cost elements.

**9. Proposal Exceptions and/or Deviations Form**

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

**SECTION III: EVALUATION AND AWARD**

### **SECTION III. EVALUATION AND AWARD**

#### **A. EVALUATION CRITERIA**

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

1.     **Qualifications of the Firm** **25%**  
  
       Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
  
2.     **Staffing and Project Organization** **40%**  
  
       Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
  
3.     **Work Plan** **35%**  
  
       Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.

#### **B. EVALUATION PROCEDURE**

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established **August 2, 2017**, 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 evaluation process, the evaluation committee will rank proposals and will recommend to the Regional Planning and Highways Committee, the Offeror(s) with the highest ranking. The Regional Planning and Highways Committee(s) will review the evaluation committee's recommendation and forward its recommendation to the Board of Directors for final action.

### **C. AWARD**

The Evaluation Committee will select a firm to recommend to the Authority's Board of Directors. At the same time the recommended Offeror will be asked to submit a sealed price proposal. In conjunction with its action of selecting a firm, the Authority's Board of Directors will authorize staff to negotiate a contract price and other terms and conditions. The Board will also grant staff the ability to terminate negotiations with the selected Offeror if no satisfactory agreement can be reached and to begin negotiations with the next highest-ranked Offeror until a satisfactory agreement has been achieved.

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 and subconsultants will be required to submit to an audit of its financial records to confirm its financial stability and the Offeror's accounting system. Additionally, the selected Offeror will be required to submit to the Authority's Accounting Department a current IRS W-9 Form prior to commencing work.

All Consultant proposals and supporting documents for the project contract are subject to audit or review by the California Department of Transportation (Caltrans) or the Federal Highway Administration (FHWA). The Cost Proposal is subject to an audit or Certified Public Accountant (CPA) Indirect Cost (Overhead) Audit Workpaper Review. The Cost Proposal shall be adjusted by the Consultant and approved by the Authority's Contract Administrator to conform to the Workpaper Review recommendations or audit recommendations. The Consultant agrees that individual terms of cost identified in the audit report shall be incorporated into the agreement by this reference if directed by the Authority at its sole discretion. Refusal by the Consultant to incorporate the Workpaper Review recommendations or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

**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**

**PREPARATIONS OF PLANS, SPECIFICATIONS AND ESTIMATES  
(PS&E)**

**FOR**

**PROPOSED IMPROVEMENTS TO**

**STATE ROUTE 55 (SR-55)**

**BETWEEN**

**INTERSTATE 405 (I-405)**

**AND**

**INTERSTATE 5 (I-5)**

**SECTION 1  
DESCRIPTION OF PROJECT**

**1.1 PROJECT DESCRIPTION**

**1.1-1 Background**

The Orange County Transportation Authority (Authority), in cooperation with the California Department of Transportation (Caltrans), City of Irvine, City of Santa Ana, and City of Tustin, is issuing the Request for Proposals (RFP) for professional and technical consultant services for development of Plans, Specifications, and Estimates (PS&E) for the State Route 55 (SR-55) Improvement Project between Interstate 405 (I-405) and Interstate 5 (I-5).

The project is currently in the Project Approval/Environmental Document (PA/ED) phase. The Draft Environmental Document (DED) was circulated for public review in November 2015 and modifications were re-circulated for public review in March 2017, and alternative 3 Modified has been selected as the preferred alternative by the project development team.

Authority will be the implementing agency for plans, specifications, and estimate and to perform right-of-way activities for the project. Caltrans will be the implementing agency for the construction phase, and will be responsible for the advertisement, bid opening, award, approval, and administration of the construction contract.

**1.1-2 Location and Limits**

The project limits on SR-55 extend from Post Mile R6.4, north of I-405 to Post Mile 10.3, south of I-5. The project is located in the cities of Irvine, Santa Ana and Tustin and in the County of Orange.

**1.1-3 Statement of Intent**

It is the intent of the Authority to award a professional services contract to provide engineering services including supplemental environmental document as required, obtain environmental regulatory permits, preparation of PS&E, and right-of-way engineering for the SR-55 Improvement Project.

**1.1-4 General Project Description**

The proposed project will add one High Occupancy Vehicle lane and one General Purpose lane in each direction, re-establish existing Auxiliary lanes, and add new Auxiliary lanes. The proposed improvements for Alternative 3 Modified, described in the Draft Project Report (EA 12-0J3400), dated March 30, 2017, shall be the basis of the work contained in this Scope of Work. The design of said

improvements shall be in accordance with Caltrans and all other applicable standards. All pedestrian facilities, including curb ramps, within the project limits must be in accordance with current ADA standards.

## **1.2 STANDARDS**

### **1.2-1 Latest Editions**

CONSULTANT shall perform all services under the Agreement in conformance and in compliance with the latest Caltrans editions of applicable design and environmental standards.

### **1.2-2 Conflicts**

In case of conflict, ambiguities, discrepancies, errors, or omissions among the reference materials obtained by CONSULTANT from other agencies, CONSULTANT shall submit the matter to Authority for clarification. Any work affected by such conflicts, ambiguities, discrepancies, errors or omissions which is performed by CONSULTANT prior to clarification by Authority shall be at CONSULTANT's risk and expense.

### **1.2-3 Roadway/Design**

Roadway design shall be performed in accordance with all applicable Federal, State and local laws, rules, regulations, policies, procedures, manuals, standard plans and specifications, roadway maintenance and structure maintenance reports, and other standards that State would normally follow, including but not limited to, compliance with applicable Federal Highway Administration (FHWA) requirements. Fact sheets for mandatory non-standard features shall require approvals from Caltrans and FHWA. Fact sheets for advisory non-standard features shall require approval from Caltrans.

### **1.2-4 Drafting**

Roadway and related plans shall be prepared in conformance with the latest versions of the Caltrans "Drafting and Plans Manual" and "CADD Manual." CONSULTANT is required to furnish .dgn files either at PS&E or as-built stage in the Microstation version currently in use by Caltrans at the time of submittal.

The size and clarity of lettering on plan sheets requires special attention, as final contract plans are half-size. Plans, which are illegible or otherwise difficult to read, are unacceptable.

#### 1.2-5 Plans, Specifications and Estimates (PS&E)

PS&E shall be prepared in English units and in conformance with the most recent versions of the Caltrans Guide for the Submittal of Plans, Specifications, Estimates, Standard Plans, and Standard Specifications. As part of the work involved in the preparation of the PS&E, CONSULTANT shall prepare Special Provisions pertaining to items of work included in the plans that are not addressed in the latest Caltrans Standard Specifications and Caltrans approved Standard Special Provisions. CONSULTANT shall furnish the Special Provisions to Caltrans. Non-standard Special Provisions shall be prepared by CONSULTANT and shall require approval by Caltrans. Reports and PS&E items related to structures shall be submitted through Caltrans Office of Special Funded Projects (OSFP) as indicated in the OSFP Information and Procedures Guide and at the direction of the District 12 OSFP Liaison Engineer.

#### 1.2-6 Reference Material

CONSULTANT shall utilize the following documents. Please note it is not the Authority's intent to provide a comprehensive list of resources; therefore, CONSULTANT shall also be responsible for ensuring they are using the most recent version of all reference material, including and addenda and errata.

- A Policy on Geometric Design of Highways and Streets (AASHTO)
- SCRRRA Engineering Standards, Guidelines, and Standard Specifications
- American Railway Engineering and Maintenance of Way Association (AREMA) Standards
- Caltrans Highway Design Manual including Design Information Bulletins, and Design Memorandums
- Manual of Uniform Traffic Control Devices (MUTCD)
- California MUTCD
- Caltrans DOS Structures Manuals, including Information and Procedures Guide, Design Details, Aids, Practice and Memo to Designers Manuals
- Caltrans Project Development Procedures Manual
- Caltrans Environmental Guidelines & Manuals
- Caltrans Plans Preparation Manual
- Caltrans CADD User's Manual
- Caltrans Highway Planting and Irrigation Manual
- Caltrans Guide for Submittal of PS&E
- Caltrans RTL Guide
- Caltrans Standard Plans and Standard Specifications
- Caltrans Storm Water Quality Handbooks
- Orange County Hydrology Manual
- Caltrans Right of Way Engineering Procedures Handbook
- Caltrans HOV Guidelines
- Caltrans Local Assistance Procedures Manual

- Caltrans Survey Manual
- Caltrans District 12 R/W Engineering Requirements for the Preparation of Documents and Maps
- Applicable Local Codes and Manuals
- Construction Best Management Practices (BMPs)
- Caltrans Signal and Lighting Guidelines, CMS Guidelines, Ramp Metering Guidelines, Communications Systems Guidelines and National Electrical Code.

### **1.3 DESIGN CRITERIA**

The following is a general listing of specific criteria which shall be adhered to. This list is by no means comprehensive and other standards may apply.

#### **1.3-1 Roadway**

Design speed and other design criteria shall follow the latest Caltrans Highway Design Manual (HDM) guidelines as well as pertinent city standards.

#### **1.3-2 Bridge & Retaining Walls**

Design: AASHTO LRFD Design Specifications 6<sup>th</sup> Edition and the California Amendments, Seismic Design Criteria (SDC) latest edition.  
Caltrans Bridge Design Memo to Designers, latest edition.

#### **1.3-3 Surveys**

CONSULTANT shall conduct all surveys in conformance with the Land Surveyor's Act and Caltrans Survey Manual for PS&E. Topographic mapping will be provided to CONSULTANT, only design level survey will be required.

#### **1.3-4 Material Report**

CONSULTANT shall conform to the guidelines established by Caltrans Office of Materials Engineering and Testing Services (METS).

#### **1.3-5 Drainage**

Q25 for Design on-site drainage  
Q100 for Design off-site drainage  
Q50 for Design for bridge Deck Drain



## **SECTION 2**

### **GENERAL CONDITIONS AND REQUIREMENTS**

#### **2.1 SCOPE OF WORK GENERAL CONDITIONS AND REQUIREMENTS**

- 2.1-1** CONSULTANT shall carry out the instructions as received from Authority Project Manager and shall cooperate with Caltrans, the City of Irvine, City of Santa Ana, City of Tustin, and any other consultants working on this project.
- 2.1-2** It is not the intent of the foregoing paragraph to relieve CONSULTANT of his professional responsibility during the performance of this contract. In those instances where CONSULTANT believes a better design or solution to a problem is possible, CONSULTANT shall promptly notify Authority/Caltrans Project Managers of these concerns, together with the reasons therefore.
- 2.1-3** CONSULTANT is responsible for the accuracy and completeness of PS&E prepared for this project and shall check such material accordingly. While Caltrans will review the data and plans for conformity with Caltrans Design Standards, as well as conformance with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) requirements, the responsibility for accuracy and completeness lies with CONSULTANT.
- 2.1-4** Neither CONSULTANT nor its subcontractors shall incorporate materials, or equipment of single or sole source origin, other than those included in Caltrans Standards, into the design without the prior written approval of Caltrans.
- 2.1-5** The plans, specifications, designs, estimates, calculations, reports, and other documents furnished under this Scope of Work shall be of a quality acceptable to Caltrans and Authority. The minimum criteria for acceptance shall be a product of neat appearance that is well organized, technically and grammatically correct, and thoroughly checked in accordance with the Caltrans QA/QC Procedures Manual. All work products shall clearly identify both the preparer and checker. The standards of appearance, organization, and contents of the drawings shall meet or exceed those of similar documents produced by Caltrans.
- 2.1-6** The page identifying preparers of engineering reports, the title for specifications and each sheet of plans, shall bear the professional seal, certificate number and expiration date, registration classification, and the signature of the professional engineer(s) responsible for their preparation.
- 2.1-7** To assist in understanding contract objectives and requirements, CONSULTANT will hold regular meetings with the Authority and Caltrans. If the original established schedule is insufficient, CONSULTANT will hold additional meetings as necessary. The primary purpose of these meetings

is to discuss work objectives, CONSULTANT's work schedule, the terms of the contract and other related issues. In addition, the meetings will serve as a forum for resolving any issues related to the PS&E development.

- 2.1-8** CONSULTANT may establish direct contact with governmental regulatory and resource agencies and others in order to obtain information, expertise, and assistance in developing baseline data and resource inventories. CONSULTANT shall maintain a record of such contacts and shall transmit copies of those records to Caltrans and Authority on a regular basis. At a minimum, these records shall be transmitted monthly or more frequently, when the content or extent of the records so warrants.
- 2.1-9** Caltrans and Authority will retain responsibility for final consultation, both informal and formal, with state and federal agencies regarding project mitigation and compensation proposals.
- 2.1-10** CONSULTANT shall comply with OSHA regulations regarding safety equipment and procedures, safety instructions issued by Caltrans, and the safety provisions included in the Caltrans Survey Manual. While working on the job site, CONSULTANT's personnel shall wear white hard hats, rubber soled shoes, and appropriate safety vests. In the case of a discrepancy between the Caltrans and OSHA requirements, the more stringent regulation shall apply.
- 2.1-11** CONSULTANT shall designate a Surveys Manager who will coordinate CONSULTANT's surveying operations. The Surveys Manager shall be responsible for all matters related to CONSULTANT's surveying operations, but shall coordinate with CONSULTANT's Project Manager.
- 2.1-12** Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyors Act and the Caltrans Surveys Manual. In accordance with the Act, "responsible charge" for the work shall reside with a pre-January 1, 1982, Registered Civil Engineer or a Licensed Land Surveyor, in the State of California.
- 2.1-13** CONSULTANT shall designate a Construction Lead, who is a qualified Construction Management professional, to lead constructability and biddability reviews.
- 2.1-14** In the case of conflicts between the instructions contained in this Scope of Work and those found in the Bridge Memos to Designers, the instructions in this Scope of Work take precedence.
- 2.1-15** Where this Scope of Work requires CONSULTANT to prepare and submit studies, reports, plans, etc., to Caltrans and Authority, these materials shall be submitted in draft as scheduled, and the opportunity provided for the Authority and Caltrans to direct revisions, prior to final submission.
- 2.1-16** Throughout the design of this project, CONSULTANT will consider least cost alternatives analysis for major project components, where appropriate.

**2.1-17** Authority Project Manager will administer CONSULTANT contract and provide general direction to CONSULTANT. Caltrans is responsible for providing Quality Assurance as well as final approval of the PS&E, required reports, and work product.

**2.1-18** Following material may be furnished by Caltrans/Authority (as available):

- Existing aerial photographs and negatives
- Existing survey control data and site survey information (hard copy and electronic files) including survey control maps, coordinate control maps, existing right-of-way maps, existing monument maps, existing land-net information and any pertinent records of information
- Existing Caltrans Detailed Seismic Revisions Data Sheets
- Existing maintenance reports
- Existing as-built Logs of Test Borings
- Existing noise data
- Existing Materials Data and Foundation Reports
- Approved Project Report
- Approved Environmental Document
- Pertinent correspondence
- Caltrans standard CADD cell library including bridge, geometric, landscape, project plans, right of way, and traffic/electrical (hard copy and electronic files)
- Caltrans District CADD cell library (hard copy and electronic files)
- Caltrans Headquarters/District font library
- Caltrans CADD plotting pen tables
- Caltrans CADD seed file
- Available aerial mapping for the entire project limits (hard copy and electronic files) in proper format
- Current Standard Special Provisions (hard copy and electronic files)
- Monument disks, plugs, tags, and marker posts
- Current Traffic Counts and 2040 Traffic Projections

**2.1-19** Following is work which is to be performed by Caltrans:

- Communications with FHWA
- Process Exceptions to Policy

- Provide all Survey Controls
- Input Construction Cost Estimate into BEES
- Technical reviews of work and deliverables (technical and office engineers)
- Preparation and processing of request to the Caltrans Longitudinal Encroachment Committee for exceptions to policy, if needed
- Analysis and recommendations for rehabilitation work on existing ramps to be widened
- Perform Safety Review during design and construction
- Perform Constructability Review
- Perform Bidability Review
- Caltrans will be the lead agency for CEQA and NEPA

### **SECTION 3 STATEMENT OF WORK**

#### **3.1 TASK 1 – PROJECT MANAGEMENT / COORDINATION / ADMINISTRATION**

##### **3.1-1 Coordination/Administration**

##### **3.1-1a Coordination and Meetings**

Meetings with affected parties shall be held to discuss issues pertinent to analysis, design, and effects of the Project. During these meetings, Authority and Caltrans may provide direction for development of the PS&E.

CONSULTANT shall participate in the following meetings:

*Project Development Team (PDT) Meetings* with Authority and Caltrans shall be held on a monthly basis to discuss policy, procedural and freeway-specific issues. CONSULTANT shall bring progress plans as appropriate. No special presentation materials shall be required.

*Agency Coordination/Technical Workshop Meetings* shall be held as needed to discuss technical issues with specific agencies. CONSULTANT shall bring progress plans as appropriate. No special presentation materials shall be required. Collateral material may be black and white.

*Right-of-Way Coordination Meetings* shall be held before starting work between CONSULTANT and the Chief of Caltrans District 12 R/W Engineering (CHIEF). Thereafter monthly progress meetings shall take place between CONSULTANT and the CHIEF at District 12 headquarters. An emergency meeting may be called at any time to address pressing problems.

*Constructability Workshop Meetings* shall be held with Authority and Caltrans to present, discuss and resolve constructability issues to minimize construction change orders. CONSULTANT shall present progress plans and specifications prior to the 65% and 95% submittals. Provide special presentation materials as needed to convey and resolve constructability issues.

**CONSULTANT Deliverables:**

Following are the meeting materials which CONSULTANT will be responsible for preparing and providing:

- Notices
- Agendas
- Handouts
- Minutes
- Progress plans

**3.1-1b Administration**

Following are administrative duties which shall be performed by CONSULTANT:

- Supervise subcontractors, coordinate, and monitor work for conformance with Caltrans standards and policies.
- Apply for and obtain Caltrans encroachment permits necessary for CONSULTANT to be on the jobsite.
- Apply for and obtain City approvals and permits as required.
- Prepare, circulate, and file correspondence and memoranda as appropriate.
- Prepare and update Project Risk Register, including Risk Register Certification Form.
- Maintain Project files using the Caltrans Uniform File System.
- Thirty days after Notice to Proceed, CONSULTANT shall submit the Project Master Schedule to Authority and Caltrans Project Managers. Section 3.1-2 contains description of the Master Schedule.

**3.1-2 Schedules**

CONSULTANT shall submit an initial Project Master Schedule. Following approval by Authority, this schedule will become the Project Schedule. The approved Project Schedule shall be displayed on the Project Master Schedule updates. The

following elements must be included by CONSULTANT in the Schedule:

- Work items and deliverables identified in accordance with a Work Breakdown Structure (WBS) as developed by CONSULTANT and approved by Authority
- Work items of agencies and other third parties that may affect or be affected by CONSULTANT's activities
- Schedule shall provide adequate time for OCTA and Caltrans review, based on standard practices.
- Resource loading of work items in work hours to show the effort required to perform the work. Resource loading shall be used to develop plan and actual progress curves
- The Project Master Schedule shall include all data necessary to represent the total Project and the critical path shall be clearly identified
- The order, sequence, and interdependence of significant work items shall be reflected on the Project Master Schedule
- The following list of major tasks shall be used to develop the Project Master Schedule:

Task 1 – Project Management/Coordination/Administration

Task 2 – 35 Percent PS&E

Task 3 – Unchecked Details PS&E (65 Percent) Submittal

Task 4 – Initial PS&E (95 Percent) Submittal

Task 5 – Final PS&E (100 Percent) Submittal

Task 6 – Construction Bidding Phase

Task 7 – Construction Support Phase

Task 8 – Project Closeout

Major tasks should be broken down into subtasks as warranted.

CONSULTANT shall submit a copy of the Project Master Schedule to the Authority Project Manager for review and approval and a copy to Caltrans for information. Monthly schedule updates will be part of the Progress Report and will be in accordance with the requirements shown in Section 3.1-3.

### **3.1-3 Progress Reports**

At the end of each month, CONSULTANT shall report the progress of the work. Progress shall be based on physical percent complete such as number of drawings or deliverables completed or estimated progress toward completion. Progress payments will be based upon percent complete of the major tasks identified.

CONSULTANT shall submit one copy of a monthly Progress Report to the Authority Project Manager consisting of a written narrative and an updated bar-chart format of the Project Master Schedule. This report shall be received no later than the tenth (10<sup>th</sup>) calendar day of the month.

The narrative portion of the monthly Progress Report shall describe overall progress of the work, discuss significant problems and present proposed corrective action and show the status of major changes.

All schedule tasks will be updated to reflect current percent complete. If the latest completion time for a significant work item does not fall within the time allowed by the original Project Master Schedule, the sequence of work and/or duration shall be revised by CONSULTANT through concurrent operations, additional staffing or overtime, until the resultant schedule indicates that all significant project completion dates shall be met. If during the course of the work, CONSULTANT falls behind in overall performance in accordance with the current schedule, a project management meeting will be called to determine the cause. If cause is found to be due to Consultant performance, payment to Consultant may be withheld pending the submittal of an action plan outlining the steps which will be taken to correct the identified delay(s). The initial Project Master Schedule, referenced in Section 3.1-2, as agreed to by Authority shall become the project. The target schedule shall be displayed on the updated Project Master Schedule.

### **3.1-4 Design Quality Management Plan**

CONSULTANT shall prepare, implement and maintain a Design Quality Management Plan (DQMP) throughout the services under this Agreement. The DQMP will establish Quality Assurance and Quality Control processes and procedures; describe how the quality of the work products will be managed to minimize or eliminate errors and omissions; ensure that all design reports, studies, plans, specifications, quantities, estimates and other design documents are complete, accurate, consistent, checked, and reviewed; and will be prepared to an acceptable quality of the Authority.

The Authority encourages a commitment to quality throughout the preparation of Plans, Specifications & Estimates (PS&E) for the project.

At a minimum, the DQMP shall address the following:

1. Quality Commitment: management commitment and message to achieve a quality culture and promote quality practices throughout the project delivery process.
2. Project Initiation and Early Activities: Ensure that the proper design criteria, guidelines, standards, specifications, directives, etc. are properly implemented throughout the entire Design Team at all times. Ensure that all field activities use equipment that is properly maintained and calibrated in accordance with the manufacturer's guidelines.

3. Constructability and Biddability: Commit a qualified Construction Management professional(s) to the project who will lead constructability and biddability reviews for the duration of the project including performing reviews at all milestone submittals.
4. QA Manager: Commit a Quality Assurance Manager to the project who is qualified to implement the DQMP and oversee the DQMP compliance and conformance of the entire project team, conduct internal surveillances and audits of the entire design team, monitor quality performance, identify when and where corrective action is required, follow up on corrective action to ensure compliance, and actively engage in the Authority surveillances and audits. QA Manager shall identify critical reviews in the Project Master Schedule.
5. Quality Control:
  - a. Provide the Quality Control Processes for checking and reviewing design documents. A discipline review shall precede the inter-discipline review but the constructability review maybe sequential with the inter-discipline review.
  - b. Provide Quality Control Procedures for complete and independent checking, back checking, correction and verification of all types of calculations, drawings, reports, specifications, quantities and estimates. Establish an appropriate means to avoid conflicts and misalignments between existing facilities and proposed improvements. Provide checklists and ensure use when performing the quality control reviews.
  - c. Maintain a communication plan to adequately and consistently interface with the internal development of the design within all disciplines of work and all external stakeholders.
  - d. Maintain a review comment tracking system that encourages complete resolution of all comments and prevents any review comment from not being resolved.
  - e. Maintain and Action Item Register from the beginning of the project throughout the completion of the approved final design.
  - f. Maintain a Risk Identification, assessment and mitigation log from the beginning of the project. Note all design assumptions as a risk on the log and consider each risks as part of the contingency planning.
6. Quality Assurance:
  - a. Each deliverable shall be verified and certified by the QA Manager and Project Manager as being prepared and checked in accordance with the approved DQMP. A QA Certification shall accompany each submittal.
  - b. Identify critical reviews in the Project Master Schedule.
  - c. The Quality Assurance Manager shall demonstrate that he/she is qualified to implement the DQMP.



**7. Document Control:**

- a. Establish an electronic Document Management System that will be used to maintain and store project files and quality records.
  - b. Drawing quality records shall be marked clearly as being checked, signifying that the preparation of the work products followed the DQMP established for the project.
  - c. Quality records and documentation shall be maintained and provided to Authority upon request.
  - d. Maintain interface documentation, meeting notes and correspondence.
8. Demonstrate how Project Management, production and Quality Management will cooperate with and participate in QA surveillances, audits and other monitoring performed by Authority. Provide documentation to Authority in advance of any planned QA surveillance or audit, as requested.
9. Implementation and Training: Ensure that CONSULTANT and subconsultant staff are trained to properly implement, execute and maintain the approved DQMP processes and procedures. Maintain a training log of materials and attendees.

Within 30 days of receiving the Notice to Proceed, CONSULTANT shall submit a complete Design Quality Management Plan for review and approval by the Authority and Caltrans. The DQMP must be approved prior to all submittals.

**Deliverables:** 2 hard copies and an electronic copy of the DQMP

**3.1-5 Project Management Plan/Financial Plan**

CONSULTANT shall actively coordinate with Authority, Caltrans, and FHWA to discuss progress and coordinate design activities. CONSULTANT shall prepare a Project Management Plan and Financial Plan pursuant to FHWA's Issuance Major Project Guidance, dated January 19, 2007.

**Deliverables:**

- FHWA Project Management Plan and Financial Plan

**3.2 TASK 2 – 35% PS&E**

**Caltrans is expected to complete WBS 185 - Prepare Base Maps and Plan Sheets for PS&E Document and WBS 220 - Perform Right of Way Engineering activities related to PS&E. Level of effort may be limited to coordination, review and acceptance of Caltrans work for some TASK 2 deliverables.**

**3.2-1 Data Collection**

CONSULTANT will collect existing topographic maps, as-built drawings, reports, and other available materials. CONSULTANT will request data from the Cities of

Irvine, Santa Ana, Tustin, Caltrans, the County, and other agencies, as appropriate.

### **3.2-2 Permit Applications**

CONSULTANT will prepare permit applications and secure encroachment permits for surveying, geotechnical investigations, and construction. Possible permits required for this project include:

- City and State Encroachment Permit for Construction
- National Pollutant Discharge Elimination System (NPDES) General Construction Activity Stormwater Permit
- Environmental clearance permits for construction as needed per the Draft Project Report and Environmental Document.
- **Deliverables:**
  - Prepared Permit Applications
  - Secure all required permits

### **3.2-3 Geometric Workshop**

CONSULTANT will conduct a workshop with Caltrans District 12 staff, the geometric reviewer, and City staff to present and obtain consensus on the geometrics for proposed project design. CONSULTANT will identify and clarify any major non-standard features.

### **3.2-4 Fact Sheets**

CONSULTANT will prepare supplemental Fact Sheets for Mandatory and Advisory Design Exceptions for non-standard design features not included in Fact Sheets approved in the PA/ED phase of this project.

#### **Deliverables:**

- Caltrans approved Fact Sheet(s)
- Project Engineer's reasoning for all permissive non-standard design items

### **3.2-5 Design Surveys**

CONSULTANT will perform design surveys during this phase. Authority may provide recent photogrammetric mapping in English units. No new mapping is anticipated. However, if significant topographic changes have occurred, supplemental mapping will be necessary, subject to prior Authority and Caltrans approval. Should such additional mapping be required, the compensation will be via a contract amendment. Any additional survey work or mapping performed prior

to receiving the required approval will be at CONSULTANT's risk and expense. Upon receipt of the Survey Control Data from Caltrans, CONSULTANT shall verify the physical existence of the Monumented Control Points and, if necessary, re-establish such Control Points.

CONSULTANT will perform detailed field surveys of existing street and drainage features. The Surveys Manager will coordinate with the Design Engineer to establish limits of work. Cross sections and tie-in surveys will ensure accurate design fit and smooth transitions from existing roadway and infrastructure features.

CONSULTANT will verify survey results and then transmit them in MicroStation 3D DGN and CaiCE DTM formats, along with ASCII point and station-offset files of all field survey ties. All work and files will be based on project coordinate control and in accordance with Caltrans Surveys and Right-of-Way Manuals, and Caltrans District 12 Right of Way Engineering Requirements for the Preparation of Documents and Maps.

CONSULTANT will survey Geotechnical Boring locations to verify these locations (see Task 3.2-6 Geotechnical Exploration Plan).

CONSULTANT will survey locations of utility potholes (see Task 3.2-11 Utilities) and overhead utility lines that cross the improvements or near any pile construction locations.

### **3.2-6 Geotechnical Exploration**

CONSULTANT will prepare and submit a geotechnical review and exploration plan for the Authority and Caltrans review. CONSULTANT will obtain permits-to-enter prior to exploration. CONSULTANT will conduct subsurface investigation and evaluate the results in accordance with Caltrans testing criteria. CONSULTANT will analyze the results and present them in the geotechnical report (see Task 3.3-9a Geotechnical Design Report).

#### **Deliverables:**

- Geotechnical Exploration Plan
- Permits-to-enter

### **3.2-7 Roadway Plans**

CONSULTANT will prepare 35 percent level layouts, profiles, superelevation diagrams, typical sections, and ROW requirements for the assigned segment.

#### **Deliverables:**

- 35% Roadway Plans – 10 sets

### **3.2-8 Preliminary Foundation Report**

To assist in Structure Type Selection, CONSULTANT will prepare a Preliminary Foundation Report, in accordance with Caltrans Office of Structural Foundations

requirements. This report shall include a summary of the exploration program, description of the site geotechnical issues, and recommendations for foundation design and construction including retaining walls, if appropriate.

**Deliverables:**

- Preliminary Foundation Report

**3.2-9 Structure Type Selection**

CONSULTANT will prepare the Structure Type Selection documents and the Bridge General Plan to comply with the most current Caltrans guidelines.

The Type Selection Report will include a discussion of foundation and falsework requirements, seismic and aesthetic considerations, traffic handling requirements and alternatives, and construction cost and staging. In addition, CONSULTANT will develop an order-of-magnitude construction cost estimate. Anticipated construction methods will be identified in the Type Selection process and coordinated with the project geometry.

CONSULTANT will submit Type Selection documents to the Caltrans Office of Special Funded Projects (OSFP) for review and approval.

**3.2-10 Bridge Type Selection Meeting and Approval**

CONSULTANT will attend a Type Selection review meeting at Caltrans Headquarters in Sacramento to finalize structure type, foundations, seismic design, aesthetics, and traffic handling plans.

CONSULTANT will summarize and submit meeting proceedings to the liaison engineer within one week for written Type Selection approval. The meeting summary may update or supplement the Type Selection Report.

**3.2-11 Utilities**

CONSULTANT will coordinate and work closely with the cities and utility companies to determine the need to relocate impacted lines, using Caltrans policy for high- and low-risk utilities. It is assumed the utility companies will perform relocation design for their own facilities. Any necessary utility relocation plans will not be part of the PS&E package developed by CONSULTANT. CONSULTANT will perform potholing of existing high- and low-risk utilities that are within fifty (50) feet of the proposed improvements or cross the improvements, and prepare and distribute utility base maps to affected utilities for confirmation and determination of any needs for relocations. If necessary, CONSULTANT will conduct a utility relocation feasibility study to evaluate existing systems and optimize relocations.

**Deliverables:**

- Utility base maps and plans
- Utility relocation feasibility study, if needed

- Utility conflict matrix

### **3.2-12 Hazardous Waste**

CONSULTANT shall address hazardous soil contaminants (aerially deposited lead [ADL]) and structural materials (polychlorinated biphenyls [PCBs], mercury, lead-based paint [LBP]) that may be encountered during project construction. Asbestos containing materials (ACM) related to buildings and private properties will be addressed by the Authority's right-of-way consultant. In addition, there is a potential that gasoline-impacted soil could be encountered during excavation activities near or at several properties throughout the project limits. Following the completion of Preliminary Site Investigations at these properties in the PA/ED phase, it is possible that Detailed Site Investigations will be required during the PS&E phase.

#### **Deliverables:**

- Work plan, report, plans and specification for handling of ADL soil.
- Work plan, report, and specifications for survey of PCB at transformers.
- Specification for the handling of potential contamination of PCB at transformers
- Work plan, report, and specification for handling asbestos, LBP, and PCB/mercury/chlorofluorocarbon (CFC) containing equipment on building structures that are located within parcels that will be acquired
- Work plan, report, and specification for Detailed Site investigation at properties with potentially contaminated soil, if needed.
- Hazardous Materials Disclosure Document – Acquisition (Env-0001-A) Form and Request for Acquisition of Contaminated Property (Env-002) Form (if needed)

### **3.2-13 Aesthetics Plan**

CONSULTANT will prepare conceptual aesthetic treatment plan for retaining walls, structures, and any soundwalls.

#### **Deliverables:**

- Conceptual Aesthetics Treatment Plan

## **3.3 TASK 3 – DRAFT PS&E (65%) SUBMITTAL**

**Caltrans is expected to complete WBS 185 - Prepare Base Maps and Plan Sheets for PS&E Document and WBS 220 - Perform Right of Way Engineering activities related to PS&E. Level of effort may be limited to coordination, review and acceptance of Caltrans work for some TASK 3 deliverables.**

### **3.3-1 Roadway Plans**

CONSULTANT will incorporate all reviewing agency comments from the 35% submittal into the roadway plans and estimates. Where it is not possible or desirable to incorporate certain comments, CONSULTANT will provide an explanation. Electronic copies will be included with the 65% submittal.

**Deliverables:**

- Title Sheet – 10 sets
- Typical Cross Sections - 10 sets
- Key Map and Line Index - 10 sets
- Layout Plans – 10 sets
- Profiles and Superelevation Diagrams – 10 sets
- Construction Details – 10 sets
- Contour Grading – 10 sets
- Summary of Quantities - 10 sets

**3.3-2 Drainage Plans**

CONSULTANT will prepare a drainage report to address the existing drainage condition and the proposed mitigation and design. This report shall consider both onsite and offsite systems. CONSULTANT will prepare drainage plans, profiles, and quantities based on the drainage report. To address storm water quality (NPDES & Caltrans) requirements, consultant shall prepare a Storm Water Data Report (SWDR). The drainage, SWDR, temporary water pollution control, and erosion control plans will be prepared in accordance with Caltrans Standard Drainage Plans and Quality Sheets guidance. CONSULTANT shall also prepare temporary drainage plans where needed.

**Deliverables:**

- Drainage Report – 10 copies
- Drainage Plans, Profiles, Details, and Quantities – 10 sets
- Storm Water Data Report -10 copies
- Water Pollution Control Plans – 10 sets
- Temporary Drainage Plans – 10 sets
- Erosion Control Plans – 10 sets
- 

**3.3-3 Stage Construction, Traffic Handling, Detour, and Construction Area Sign Plans, and Transportation Management Plan (TMP)**

The CONSULTANT will develop a traffic management plan (TMP) that addresses traffic detours and traffic operations during the construction phase. The TMP will be coordinated with the impacted cities, Caltrans, and other stakeholders, including the CHP. Stage Construction and Detour Plans will include construction detour routes. Traffic studies conducted as part of the final environmental document process should be reviewed in advance of developing the TMP to ensure that any specified mitigation is incorporated.

**Deliverables:**

- Transportation Management Plan – 10 copies
- Stage construction and traffic handling/detour plans, profiles, details, and quantities – 10 sets
- Detour layouts, profiles, and super elevation diagrams – 10 sets, as required
- Construction area signs – 10 sets

**3.3-4 Pavement Delineation Plans**

CONSULTANT will prepare pavement delineation plans to identify locations of painted and thermoplastic stripes and markings, pavement markers, and delineators.

**Deliverables:**

- Pavement Delineation Plans, Details, and Quantities – 10 sets

**3.3-5 Sign Plans**

CONSULTANT will prepare Sign Plans to show existing and proposed new signs. The plans will include sign details and quantity sheets.

**Deliverables:**

- Sign Plans, Details, and Quantities – 10 sets

**3.3-6 Electrical Lighting, Traffic Signal, Ramp Metering, Traffic Monitoring, and Communication System**

CONSULTANT will prepare plans for safety lighting (Caltrans and Cities), traffic signal, ramp metering, traffic monitoring stations, CCTV and communication systems. CONSULTANT will coordinate with Caltrans to ensure that ramp meter and electrical designs will accommodate future traffic monitoring features within the project limits.

**Deliverables:**

- Lighting Plans and Details – 10 sets
- Ramp Metering Plans and Details – 10 sets
- Traffic Signal Plans and Details -10 sets
- Traffic Monitoring System – 10 sets
- CCTV and Communication System – 10 sets
- Changeable Message Sign System – 10 sets
- Electrical Services (Irrigation) System – 10 sets

**3.3-7 Planting and Irrigation Plans**

CONSULTANT will prepare planting and irrigation plans to include replacement planting in those landscaped areas disturbed by construction. Specimen trees will replace any mature trees that are removed by the project. The determination of the size and quantity of the replacement trees will be by the District 12 Landscape Architect. If it is determined that the cost for highway planting and irrigation will exceed \$200,000, a separate highway planting contract for construction will be required. The contract documents will include all that is needed for a standalone PS&E for Caltrans to bid the highway planting as a separate contract.

**Deliverables:**

- Highway Planting and Irrigation Plans and Details – 10 sets

**3.3-8 Right-of-Way Engineering Services**

*3.3-8a Location*

Establishment of the existing R/W for SR-55 and intersecting local streets for the entire length of the project as defined by the project limits. All boundary establishment shall be documented on a Before Condition Record of Survey per section 3.3-8c4 below.

Various Temporary Construction Easements will be needed throughout the entire length of the project limits. All acquisitions and TCE's shall be documented on Right of Way Maps per section 3.3-8c-6 below.

*3.3-8b References*

- Ref 1. Caltrans Right of Way Manual (with special attention to Chapter 6 - Right of Way Engineering)
- Ref 2. Caltrans Surveys Manual
- Ref 3. Caltrans Drafting and Plans Manual



- Ref 4. Caltrans District 12 R/W Engineering Requirements for the Preparation of Documents and Maps (dated JAN-2007)
- Ref 5. Caltrans District 12 R/W Engineering CADD Standards (dated 2003)
- In the event of conflict between Ref 1, 2, 3 and Ref 4, 5 - the latter shall prevail.

### *3.3-8c Activities*

In compliance with the above references and as project needs dictate, CONSULTANT shall perform the following:

#### **3.3-8c-1 Perform Record Data Search**

Search, acquisition, and analysis of appropriate deeds, field notes, and survey maps contained in State, County, and City files.

#### **3.3-8c-2 Acquire Title Reports**

Acquire title reports for all parcels impacted by proposed R/W fee and easement takes. (If applicable)

#### **3.3-8c-3 Perform Land Net Recovery and Field Ties**

Field and related survey effort necessary to search, recover, describe, and tie-in controlling land survey monuments. (See "State Right of Way Boundary Establishment" Ref 4)

#### **3.3-8c-4 Prepare Land Net Map - "Before Condition" Record of Survey**

This activity is required by the Professional Land Surveyors Act and involves the production and filing of the "Before Condition" Record of Survey. (See "Records of Survey" Ref 4)

#### **3.3-8c-5 Perform Monument Perpetuation Surveys**

This activity is required by the Professional Land Surveyors Act and includes:

- Preparation of lists of monuments threatened with destruction.
- Referencing threatened monuments with tie-outs for perpetuation through construction.
- Setting replacement monuments after construction to effect said perpetuation.

All reset replacement monuments shall meet the requirements described below under the activity "Final Monuments".

The "Before Condition" Record of Survey (See "Records of Survey" Ref 4) shall be the instrument on which tie-outs are documented prior to construction. In the cases where swing ties or tangent over ties are the method of tie-out, each monument tied out using these methods shall clearly be shown as a separate "Detail" on the "Before Condition" Record of Survey.

### **3.3-8c-6 Prepare Right of Way Maps**

Prepare various types of R/W Maps (See Ref 1 and Ref 3) as dictated by project need. (Also see "Right of Way Maps" Ref 4). Various types of R/W Maps may include but are not limited to:

- Right of Way Requirements Maps
- Appraisal Map
- Resolution of Necessity Map
- Director's Deed Map
- Relinquishment Map
- Vacation Map
- Transfer Control and Possession Map
- Right of Way Record Map

### **3.3-8c-7 Prepare Acquisition Documents**

Prepare property acquisition documents. (If required) (See "Legal Descriptions & Exhibits" Ref 4)

### **3.3-8c-8 Prepare Resolution of Necessity Legal Descriptions and Plats**

Prepare Resolution of Necessity and any additional information for the filing of the complaint, and the preparation of any attendant map or plat. (See "Legal Descriptions & Exhibits" Ref 4)

### **3.3-8c-9 Prepare Director's Deed and Plats**

Prepare Director's Deed and attendant maps or plats. (If required) (See "Legal Descriptions & Exhibits" Ref 4)

### **3.3-8c-10 Prepare Utility Legal Description and Plat**

Prepare legal description and plat to fulfill contract obligations with utility entities including Joint Use Agreement and Consent to Common Use Agreement. (See "Legal Descriptions & Exhibits" Ref 4)

### **3.3-8c-11 Prepare Parcel Files**

For each R/W fee of easement take, prepare a parcel file. (If required) (See "Parcel Files" Ref 4).

## **3.3-9 Geotechnical and Foundation Reports**

### **3.3-9a Geotechnical Design Report (GDR)**

CONSULTANT will prepare a report discussing the geotechnical design basis of the project and recommendations for design and construction of earth retaining structures, cut, and fill slopes, pavement, and drainage facilities. This report will be submitted to Caltrans for review. CONSULTANT will address any comments stemming from this review and prepare a final draft. All calculations supporting the design recommendations will be included as an appendix to the GDR.

#### **Deliverables:**

- Draft/Final Geotechnical Design Reports

### **3.3-9b Foundation Reports for Bridges, Retaining Walls, and Soundwalls**

CONSULTANT will prepare a Foundation Report based upon Type Selection comments and additional information from the GDR analyses. Logs of test borings will be included as 11-inch by 17-inch plans.

#### **Deliverables:**

- Draft/Final Foundation Reports

### **3.3-9c Materials Report**

CONSULTANT shall prepare a report discussing the pavement structure recommendations and/or pavement studies for the project. This report shall be submitted to Caltrans for review. CONSULTANT shall address any comments stemming from this review and prepare a final draft. All calculations supporting the recommendations shall be included as an appendix to the Materials Report.

**Deliverables:**

- Draft/Final Materials Reports

**3.3-10 Bridge Plans (Unchecked Details)**

CONSULTANT will prepare layout plans and structural details for the modification of Bridges and tie-back walls. CONSULTANT will also prepare draft technical special provisions for the bridges.

Bridge design will be in accordance with Caltrans Seismic Design Criteria, Bridge Design Specifications, Memos to Designers and Bridge Design Details Manual. Details and construction specifications will be prepared in accordance with Caltrans Standard Plans, Standard Specifications, and Standard Special Provisions.

CONSULTANT will update the bridge General Plan estimate to verify its ongoing validity.

**Deliverables:**

- Unchecked structure plans –10 reduced sets
- Electronic copy of Unchecked Structures Plans
- Draft Structures Special Provisions
- Updated Structures Cost Estimate

**3.3-11 Retaining Wall Plans**

CONSULTANT will prepare retaining wall layout plans, profiles and structural details for the walls specified along the project route. Plans will incorporate aesthetic details consistent with the Conceptual Aesthetics Treatment Plan.

CONSULTANT will prepare draft technical special provisions for the retaining walls.

**Deliverables:**

- Retaining Wall Plans, Details, and Quantities – 10 reduced sets

**3.3-12 Soundwall Plans**

CONSULTANT will prepare soundwall plans and details for proposed soundwalls (if any) specified along the assigned segment. Plans will incorporate aesthetic details consistent with the Conceptual Aesthetics Treatment Plan. CONSULTANT will prepare draft technical special provisions for the soundwalls.

**Deliverables:**

- Soundwall Plans, Details and Quantities – 10 reduced sets

**3.3-13 Utility Plans**

CONSULTANT will prepare and update the utility conflict maps as a result of the coordination, reviews and potholing done during the 35% PS&E. Again, it is assumed the utility companies will perform relocation design for their own facilities. Any necessary utility relocation plans will not be part of the PS&E package developed by the CONSULTANT.

**Deliverables:**

- Utility conflict maps with pothole information
- Updated Utility Conflict Matrix

**3.3-14 Aesthetics Plan**

CONSULTANT will prepare the aesthetic detail sheets required for structures, retaining walls and soundwalls. CONSULTANT will prepare profile, cross-section, and details with proposed treatment in a master file, and will prepare the cut sheets required to have a full set of plans for structures, retaining walls and soundwalls.

**Deliverables:**

- Aesthetics Plan – 10 reduced sets

**3.3-15 Storm Water Pollution Prevention Plan (SWPPP)**

CONSULTANT shall update the existing Storm Water Data Report (SWDR) and incorporate its recommendation into the project PS&E.

**3.4 TASK 4- INITIAL PS&E (95%) SUBMITTAL**

**3.4-1 Roadway Plans**

This submittal will include comments, reviews, coordination efforts, and updated information. CONSULTANT will update all Roadway Plans, and will provide Quantity Sheets with updated Special Provisions and BEES estimate. Any Revised and/or New Standard Plans developed by Caltrans shall be included with CONSULTANT's Roadway Plan submittal. Response and resolution of all review comments for each deliverable from 65% submittal will take place prior to 95% submittal. All roadway quantities shall be independently checked and all issues raised by independent quantity checker(s) will be resolved prior to the submittal. The estimate will reflect checked and resolved quantities.

CONSULTANT shall review unit price cost assumptions which comprise project cost estimate with Authority. Any discrepancies in unit price costs between Authority and CONSULTANT shall be resolved through a joint review meeting.

**Deliverables:**

- 95 percent Roadway PS&E – 10 sets plus two electronic copies
- 95 Percent Quantities and Independent Check Calculations – 2 sets

**3.4-2 Bridge and Specialty Retaining Wall Plans**

CONSULTANT will independently review the unchecked plans, draft special provisions, quantities, and construction cost estimate for the Bridges and retaining walls. CONSULTANT's independent review team will analyze the structures, verify member capacities, review the special provisions, and prepare independent quantity calculations. All issues raised by the checkers will be resolved with the structural designers. The final design will reflect agreement among the designers and independent checkers.

**Deliverables:**

- Checked structure plans, reduced size – 10 sets
- Edited structures special provisions – 2 copies
- Design calculations – 1 set
- Design Independent check calculations – 1 set
- Quantities and check calculations – 2 sets

**3.4-3 Construction Schedule**

CONSULTANT will prepare a CPM construction schedule in consultation with the Authority Construction Manager and Caltrans based on the estimated required working days for project construction.

**Deliverables:**

- CPM Schedule Printout and electronic copy

**3.4-4 Utility and ROW Update**

CONSULTANT will verify and update utility and ROW engineering data.

**Deliverables:**

- Report containing all updated utility and ROW engineering data with changes clearly identified

### **3.4-5 Update SWDR**

Consultant will update the Storm Water Data Report (SWDR) based on comments received from Caltrans.

**Deliverables:**

- Final SWDR – 2 copies

### **3.4-6 Planting and Irrigation Plans**

CONSULTANT shall prepare planting and irrigation plans to include replacement planting in those landscaped areas disturbed by construction. Specimen trees will replace any mature trees that are removed by the project. The determination of the size and quantity of the replacement trees will be by the District 12 Landscape Architect.

**Deliverables:**

- Separate Highway Planting and Irrigation PS&E – 10 sets

### **3.4-7 Environmental Commitment Record (ECR)**

CONSULTANT shall update the ECR based on changes during final design provided by the project engineer and ensure that all measures are incorporated in the final PS&E package. If there are any changes to the project design, appropriate environmental revalidation shall be prepared pursuant to NEPA and CEQA requirements.

### **3.4-8 Update TMP**

CONSULTANT will update the TMP based on comments received from Caltrans.

**Deliverables:**

- Transportation Management Plan – 10 copies

### **3.4-9 Railroad Coordination/C&M Agreement/Service Contract**

CONSULTANT will assist in the coordination of the following agreements with Southern California Regional Rail Authority (SCRRA):

- **Railroad Construction and Maintenance (C&M) Agreement:** CONSULTANT will assist in the coordination of the C&M agreement between Authority and SCRRA including review and comment on the project scope, schedule, costs, easements, and exhibits.
- **SCRRA Right-of-Entry Coordination:** CONSULTANT will coordinate with SCRRA to obtain the right-of-entry agreements for the survey and design

work. This will include obtaining agreements from SCRRA, coordinating flagging, and coordinating site access.

**Deliverables:**

- Assist in coordination of C&M Agreement or Service Contract

**3.5 TASK 5 – FINAL PS&E (100 PERCENT) SUBMITTAL**

**3.5-1 Roadway Plans, Bridge Plans, Special Provisions, Cost Estimates, and Working Day Schedules**

CONSULTANT will submit the Final PS&E package to Caltrans District Office Engineer and Office of Special Funded Projects (OSFP) for final approval. The submittal will incorporate review comments from all involved agencies and include all completed forms in the RTL Guide.

**Deliverables:**

- Final Roadway PS&E – 10 sets and 2 electronic files
- Final Quantities and Independent Check Calculations – 2 sets
- Full-size reproducible final structure plans – 1 set
- Final structures special provisions – 4 sets
- Prints of final structure plans – 4 sets; Cost estimates – 2 copies
- Working day schedules – 2 copies
- Original/checked quantity calculations – 2 copies

Deliverables to Office of Special Funded Projects (OSFP):

- Full-size reproducible final structure plans – 1 set
- Final structures special provisions – 4 sets
- Prints of final structure plans, reduced size – 4 sets

In addition, CONSULTANT will provide electronic version of all plans, special provisions, estimates and schedules. The final BEES will be provided as a Microsoft Excel file.

**3.5-2 Resident Engineer File**

CONSULTANT will meet with the Resident Engineer (RE) and functional units and provide the following information for the RE file. This list is not comprehensive and CONSULTANT shall provide additional information as appropriate:

- Permits
- Surveying Notes



- Geotechnical (GDR) and Foundation (FDR) Reports
- Hydrology/Hydraulics Report and calculations
- Relevant correspondence and memoranda
- Engineering calculations (horizontal and vertical alignments, earthwork quantities, etc.)
- Environmental Agreements and Reports
- Summary and discussion of Environmental issues
- Transportation Management Plan and supplements
- Material Handouts
- Storm Water Data Report
- Right-of-Way Maps & Agreements
- Utility Relocation Plans and Agreements
- Safety Review Report
- List of Project Personnel
- Cooperative Agreements CONSULTANT
- Working Cross Sections
- Bridge four-scale plans – 3 sets

**Deliverables:**

- RE file

CONSULTANT will provide an electronic version of all RE file information.

**3.5-3 Materials Handouts**

CONSULTANT will prepare materials handout information per Caltrans HDM, Section 111.3 Materials Information Furnished to Prospective Bidders

**Deliverables:**

- Material Handouts

**3.5-4 Paleontological Mitigation Plan (PMP)**

CONSULTANT will prepare a Paleontological Mitigation Plan consistent with Caltrans and County requirements. The PMP will be implemented during excavation activities.

**Deliverables:**

- Paleontological Mitigation Plan (PMP)

### **3.6 TASK 6 – CONSTRUCTION BIDDING PHASE**

Bidding procedures will be the responsibility of Caltrans. In addition, Caltrans will:

- Advise the Design Consultant of listing dates.
- Inform CONSULTANT of all issues and inquiries list and responses.
- Provide CONSULTANT with bid results and summary sheets for their review.

During bid advertisement of the project, CONSULTANT will refer all questions concerning the intent to Caltrans for resolution. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, CONSULTANT will inform Caltrans. Caltrans will advise CONSULTANT regarding the proper procedure required for analysis of said items. Any necessary corrective action will either be in the form of an addendum prepared by CONSULTANT and issued by Caltrans, or via a covering change order after the award of the construction contract.

#### **3.6-1 Pre-Bid Meeting**

CONSULTANT will attend the pre-bid meeting.

#### **3.6-2 Respond to Inquiries**

CONSULTANT will draft responses to bidders' inquiries as requested by the District Office Engineer. All such responses will be routed through the District Engineer.

#### **Deliverables:**

- Draft Bidder Inquiry Responses (hard copy and electronic in ms word)

#### **3.6-3 Addenda**

CONSULTANT will prepare addenda as requested by District Engineer.

#### **Deliverables:**

- Copies of Addenda

### **3.7 TASK 7 – CONSTRUCTION SUPPORT PHASE**

Construction of the project will be the responsibility of Caltrans. During the construction phase, CONSULTANT shall work closely with Resident Engineer (RE) within the budget allotted to assist and advise the RE in order to minimize construction conflicts and to expedite project completion.

**3.7-1 Pre-Construction Meeting**

CONSULTANT will attend the pre-construction meeting.

**3.7-2 Partnering Workshop**

CONSULTANT will attend a partnering workshop as requested by Caltrans.

**3.7-3 Additional Drawings Due to Consultant Error, Omission, or Revision**

In the case of errors and/or omissions, CONSULTANT shall furnish additional and/or revised drawings necessary for corrections and change orders. Caltrans will provide a written request for such drawings and CONSULTANT will provide said drawings at no additional cost to Caltrans or Authority. CONSULTANT will also provide the original tracings of the drawings and contract wording for related change orders to Caltrans at no additional cost.

**3.7-4 Shop Drawing and Submittal Review**

CONSULTANT will review all submittals and shop drawings. The review of shop drawings shall include bridge working drawing submittals, construction contractor's submittals for substitutions, construction contractor's alternative construction approval, steel layout for structures, independent check of construction contractor's falsework submittal and others as requested by the Resident Engineer.

**3.7-5 Additional Drawings at Caltrans Request**

If requested by Caltrans, CONSULTANT will prepare additional drawings and change order-supporting documents. Any such additional drawings constitute extra work; therefore, prior approval from Authority is required. Any such additional engineering services, drawings, or change order documentation prepared prior to receiving the required approval will be at CONSULTANT's risk and expense.

**3.7-6 Site Visits**

CONSULTANT will visit the job site as requested by Authority.

**3.7-7 Respond to Inquiries/RFIs**

CONSULTANT will draft responses to contractor inquiries and RFIs as requested by the Resident Engineer.

### **3.7-8 Change Order Preparation and Review, CRIP Reviews**

CONSULTANT will review proposed change orders, draft change order language and make recommendations as requested by Resident Engineer. If said changes are necessary as a direct result of design errors and omissions, CONSULTANT shall prepare and/or review contract change orders at no additional cost.

#### **Caltrans Responsibility**

- Provide advice on any issues raised and inquiries made by Resident Engineer
- Inform Design Consultants of all field changes and Contract Change Orders (CCOs)
- Prepare and maintain as-built mark-ups in the field

### **3.7-9 As-Builts**

CONSULTANT will be responsible for preparing as-builts plans, signed and stamped by CONSULTANT and submitted to Caltrans.

#### **Deliverables:**

- As-Built plans, hard copy and electronic DGN format – 1 set

## **3.8 TASK 8 – PROJECT CLOSEOUT**

After construction, CONSULTANT will provide all final construction project records in accordance with Section 5-104 of the Caltrans Construction Manual and all other Caltrans requirements. Records shall include, but not necessarily be limited to design survey records, including legible hard copies and electronic files, recorded monumentations, and post audits. CONSULTANT shall maintain all project records in accordance with the Caltrans Uniform filing system.

### **3.8-1 Develop Final Record Drawing Plans**

While Caltrans is responsible for maintaining field as-built plans, CONSULTANT shall keep a similar set of plans, noting any variation between the plans and the actual construction. These marked up plans will form the basis for the development of the Final record drawing PS&E. In developing the Final record drawing PS&E, CONSULTANT shall follow all requirements specified in Sections 5-104D (1) and (2) of the Caltrans Construction Manual and submit to Caltrans no later than 60 days after construction contract acceptance by Caltrans.

### **3.8-2 Deliver Project Files**

CONSULTANT will provide all pertinent project records to Caltrans. Documents shall be organized in accordance with the Caltrans Uniform Filing System.

**3.8-3 Post Audits**

CONSULTANT will assist Caltrans with the post audits, as required and requested by Caltrans.

### **3.9 PROJECT SCHEDULE**

Activity	Proposed Date
A. Begin Work	January 2018
B. Draft PS&E	
B.1 Submit 35% PS&E	March 2018
B.2 Submit Unchecked Details (65%) PS&E	October 2018
B.3 Submit Initial (95%) PS&E	April 2019
C. Submit Final PS&E (100%) to Caltrans	September 2019
D. Advertise	April 2020
E. Award	July 2020
F. Begin Construction	August 2020
G. Completion of Construction	August 2023
H. Project Close Out	February 2024

**END OF SCOPE OF WORK**

**EXHIBIT B: PROPOSED AGREEMENT**

PROPOSED AGREEMENT NO. C-7-1719

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

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

**WITNESSETH:**

**WHEREAS**, AUTHORITY requires assistance from CONSULTANT to provide consulting services for the preparation of plans, specifications, and estimates for the State Route 55 Improvement Project Between Interstate 405 and Interstate 5; and

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

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

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

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

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

**ARTICLE 1. COMPLETE AGREEMENT**

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



1 B. AUTHORITY's failure to insist in any one or more instances upon the performance of any  
2 terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of  
3 AUTHORITY's right to such performance by CONSULTANT or to future performance of such terms or  
4 conditions and CONSULTANT obligation in respect thereto shall continue in full force and effect. This  
5 Agreement may be amended or modified only by mutual written agreement of the parties. CONSULTANT  
6 shall only commence work covered by an amendment after the amendment is executed and notification  
7 to proceed has been provided by AUTHORITY.

8 **ARTICLE 2. AUTHORITY DESIGNEE**

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

11 **ARTICLE 3. SCOPE OF WORK**

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

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

18 **Names**

**Functions**

19  
20  
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 CONSULTANT, nor shall his/her agreed-upon function or  
23 level of commitment hereunder be changed, without the prior written approval by AUTHORITY's Contract  
24 Administrator. Should the services of any key person become no longer available to CONSULTANT, the  
25 resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval  
26 as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the

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

**ARTICLE 4. TERM OF AGREEMENT**

A. This Agreement shall go into effect on \_\_\_\_\_, contingent upon approval by AUTHORITY, and CONSULTANT shall commence after notification to proceed by AUTHORITY's Contract Administrator. This Agreement shall end on December 30, 2024 unless extended by amendment to the Agreement, or terminated as provided hereunder.

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

**ARTICLE 5. ALLOWABLE COSTS AND PAYMENT**

A. For CONSULTANT's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provision set forth in Article 7 "Maximum Obligation" AUTHORITY shall pay CONSULTANT on a firm fixed price (lump sum) basis.

B. The following schedule shall establish the firm fixed payment to CONSULTANT by AUTHORITY for each tasks set forth in the Scope of Work.

<u>Task</u>	<u>Description</u>	<u>Firm Fixed Price</u>
1.	Project Management/Coordination/Administration	
2.	35% PS&E	
3.	Draft PS&E (65%) Submittal	
4.	Initial PS&E (95%) Submittal	
5.	Final PS&E (100%) Submittal	
6.	Construction Bidding Phase	
7.	Construction Support Phase	
8.	Project Closeout	

**TOTAL FIRM FIXED PRICE (LUMP SUM) PAYMENT**

**00.00**

1           C.       The method of payment for this Agreement is based on lump sum. The total lump sum  
2 price paid CONSULTANT will include compensation for all work and deliverables, including travel and  
3 equipment described in Exhibit A entitled "Scope of Work" to this agreement. No additional compensation  
4 will be paid to CONSULTANT unless there is a change in the Scope of Work or the scope of the project.  
5 In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum  
6 compensation will be negotiated between CONSULTANT and AUTHORITY. Adjustment in the total lump  
7 sum compensation will not be effective until authorized by amendment to this Agreement that is approved  
8 by AUTHORITY.

9           D.       Reimbursement for transportation and subsistence costs shall not exceed the rates  
10 specified in the approved Cost Proposal.

11           E.       Progress payments may be made monthly in arrears based on the percentage of work  
12 completed by the CONSULTANT. If CONSULTANT fails to submit the required deliverable items  
13 according to the schedule set forth in the Scope of Work, AUTHORITY shall have the right to delay  
14 payment or terminate this Agreement in accordance with the provisions of Article 14 Termination.

15           F.       CONSULTANT will be reimbursed, less any retention amount withheld, as promptly as  
16 fiscal procedures will permit upon receipt by the AUTHORITY's Accounts Payable office of itemized  
17 invoices in duplicate. Invoices shall be submitted no later than forty five (45) calendar days after the  
18 performance of the work for which the CONSULTANT is billing. Invoices shall detail the work performed  
19 on each task as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and  
20 shall reference this Agreement number and project title. Final invoice must contain the final cost and all  
21 credits due the AUTHORITY that include any equipment purchased under the provisions of Article 47  
22 Equipment Purchase of this Agreement. The final invoice should be submitted to AUTHORITY within 60-  
23 calendar days after completion of CONSULTANT's work.

24           G.       CONSULTANT shall invoice AUTHORITY on a monthly basis for payments  
25 corresponding to the work actually completed by CONSULTANT. Percentage of work completed shall  
26 be documented in a monthly progress report prepared by CONSULTANT, which shall accompany each

1 invoice submitted by CONSULTANT. CONSULTANT shall also furnish such other information as may  
2 be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY  
3 may decline to make full payment for any task listed in paragraph B of this Article until such time as  
4 CONSULTANT has documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed  
5 all work required under the task. AUTHORITY's payment in full for any task completed shall not constitute  
6 AUTHORITY's final acceptance of CONSULTANT's work under such task.

7 H. As partial security against CONSULTANT's failure to satisfactorily fulfill all of its obligations  
8 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice  
9 submitted for payment by CONSULTANT. All retained funds shall be released by AUTHORITY and shall  
10 be paid to CONSULTANT within sixty (60) calendar days of payment of final invoice, unless AUTHORITY  
11 elects to audit CONSULTANT's records in accordance with Article 17 Audit and Inspection of Records,  
12 of this Agreement. If AUTHORITY elects to audit, retained funds shall be paid to CONSULTANT within  
13 thirty (30) calendar days of completion of such audit in an amount reflecting any adjustment required by  
14 such audit. During the term of the Agreement, at its sole discretion, AUTHORITY reserves the right to  
15 release all or a portion of the retained amount based on CONSULTANT's satisfactory completion of  
16 certain milestones/tasks. CONSULTANT shall invoice AUTHORITY for the release of the retention in  
17 accordance with this Article.

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

1 involving late payment or nonpayment by the prime consultant, deficient subconsultant performance, or  
2 noncompliance by a subconsultant.

3 J. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted  
4 in duplicate to AUTHORITY's Accounts Payable office or may be emailed to VendorInvoices@octa.net.  
5 Each invoice shall be accompanied by the monthly progress report specified in paragraph G of this Article.  
6 Invoices shall be submitted no later than 45-calendar days after the performance of work for which  
7 CONSULTANT is billing. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt  
8 and approval of each invoice. Each invoice shall include the following information:

- 9 1. Agreement No. C-7-1719;
- 10 2. Specific task number for which payment is being requested;
- 11 3. The time period covered by the invoice;
- 12 4. Total monthly invoice by task (including project to-date cumulative invoice amount);  
13 and retention amount;
- 14 5. Monthly Progress Report;
- 15 6. Weekly certified payroll for personnel subject to prevailing wage requirements;
- 16 7. Certificate signed by the CONSULTANT or his/her designated alternate that a) The  
17 invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup  
18 information included with the invoice is true, complete and correct in all material respects; c) All payments  
19 due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to  
20 subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The  
21 invoice does not include any amount which CONSULTANT intends to withhold or retain from a  
22 subcontractor or supplier unless so identified on the invoice.

23 8. Any other information as agreed or otherwise requested by AUTHORITY to  
24 substantiate the validity of an invoice.

25 K. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this  
26 Agreement number and project title. Invoices shall include all reimbursable costs/expenditures to satisfy

Caltrans' Local Assistance Procedures Manual (LAPM), Chapter 5 Accounting/Invoices.

L. CONSULTANT shall not commence performance of work or services until this Agreement has been approved by the AUTHORITY. No payment will be made prior to approval of any work, or for any work performed prior to approval of this Agreement.

**ARTICLE 6. PROMPT PAYMENT CLAUSE**

A. CONSULTANT agrees to pay each subconsultant for the satisfactory work performed under this Agreement, no later than seven (7) calendar days from the receipt of each payment CONSULTANT receives from AUTHORITY. CONSULTANT agrees further to return retention payments to each subconsultant within thirty (30) calendar days after the subconsultant's work is satisfactorily completed. AUTHORITY reserves the right to request the appropriate documentation from CONSULTANT showing payment has been made to the subconsultants and CONSULTANT agrees to provide said documentation upon request. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by AUTHORITY.

B. 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 penalty of two percent (2%) of the invoice amount due per month for every month that payment is not made.

C. These prompt payment provisions must be incorporated in all subcontracts issued by CONSULTANT as a result of this Agreement.

**ARTICLE 7. MAXIMUM OBLIGATION**

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

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**ARTICLE 8. NOTICES**

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

To CONSULTANT:		To AUTHORITY:	
		Orange County Transportation Authority	
		550 South Main Street	
		P.O. Box 14184	
		Orange, CA 92863-1584	
ATTENTION:		ATTENTION:	Marjorie Morris-Threats Senior Contract Administrator
Tel:		Tel: (714) 560-5633	
Email:		Email: mthreats@octa.net	

**ARTICLE 9. INDEPENDENT CONTRACTOR**

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

**ARTICLE 10. INSURANCE**

A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this Agreement. The following coverage shall be full coverage and not subject to self-insurance provision. Prior to commencement of the work described herein, and no later than ten (10) days after date of

1 execution of Agreement, CONSULTANT shall furnish AUTHORITY a Certificate of Insurance stating that  
2 CONSULTANT shall provide the following insurance coverage:

3 1. Commercial General Liability, to include Products/Completed Operations,  
4 Independent Contractors', Contractual Liability, and Personal Injury with a minimum combined single limit  
5 of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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

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

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

11 5. Professional Liability/Error and Omissions with minimum limits of \$2,000,000.00 per  
12 claim.

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

20 C. CONSULTANT shall include on the face of the certificate of Insurance the Agreement No.  
21 C-7-1719; and, the Contract Administrator's Name, Marjorie Morris-Threats, Senior Contract  
22 Administrator.

23 D. CONSULTANT shall also include in each subcontract agreement the stipulation that  
24 subconsultants shall maintain insurance coverage in the amounts required from CONSULTANT as  
25 provided in this Agreement, prior to start of work.

26 E. Additionally, the Certificate of Insurance shall provide:



1           1.       That the insurer will not cancel the insured's coverage without 30 days prior  
2 written notice to AUTHORITY.

3           2.       That AUTHORITY, its officers, agents, and employees are included as  
4 additional insureds, but only insofar as the operations under this Agreement are concerned.

5           3.       That AUTHORITY will not be responsible for any premiums or assessments on  
6 the policy.

7           F       CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall  
8 be in effect at all times during the term of this Agreement. In the event said insurance coverage  
9 expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at  
10 least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing  
11 insurance coverage as provided for herein, for not less than either the remainder of the term of the  
12 Agreement, or for a period of not less than one (1) year. New Certificates of Insurance are subject to  
13 the approval of AUTHORITY. In the event CONSULTANT fails to keep in effect at all times insurance  
14 coverage as herein provided, AUTHORITY may, in addition to any other remedies it may have,  
15 terminate this Agreement upon occurrence of such event.

16           **ARTICLE 11. ORDER OF PRECEDENCE**

17           Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:  
18 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 7-1719; (3)  
19 CONSULTANT's technical proposal dated \_\_\_\_\_, CONSULTANT's cost proposal dated \_\_\_\_\_ and  
20 final cost proposal dated \_\_\_\_\_, and (4) all other documents, if any, cited herein or incorporated by  
21 reference.

22           **ARTICLE 12. CHANGES**

23           A.       By written notice or order, AUTHORITY may, from time to time, order work suspension  
24 and/or make changes in the general scope of this Agreement, including, but not limited to, the services  
25 furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work  
26 suspension or change causes an increase or decrease in the price of this Agreement or in the time

1 required for its performance, CONSULTANT shall promptly notify AUTHORITY thereof and assert its  
2 claim for adjustment within ten (10) days after the change or work suspension is ordered, and an equitable  
3 adjustment shall be negotiated. However, nothing in this clause shall excuse CONSULTANT from  
4 proceeding immediately with the Agreement as changed.

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

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

10 **ARTICLE 13. DISPUTES**

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

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

23 **ARTICLE 14. TERMINATION**

24 A. AUTHORITY reserves the right to terminate this Agreement upon thirty (30) calendar  
25 days written notice to CONSULTANT with the reasons for termination stated in the notice.

26 /

1           B.       AUTHORITY may terminate this Agreement with CONSULTANT should CONSULTANT  
2 fail to perform the covenants herein contained at the time and in the manner herein provided. In the event  
3 of such termination, AUTHORITY may proceed with the work in any manner deemed proper by  
4 AUTHORITY. If AUTHORITY terminates this Agreement with CONSULTANT, AUTHORITY shall pay  
5 CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost  
6 of completion to AUTHORITY exceeds the funds remaining in the Agreement. In which case the overage  
7 shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall  
8 be paid to CONSULTANT upon demand. Said termination shall be construed in accordance with the  
9 provisions of the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 49, of the Federal  
10 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination  
11 for convenience.

12           C.       If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be  
13 given to CONSULTANT in accordance with the provisions of the FAR referenced above and Article 8  
14 "Notices", herein. Upon receipt of said notification, CONSULTANT agrees to comply with all applicable  
15 provisions of the FAR pertaining to termination for convenience.

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

25       /

26       /

**ARTICLE 15. INDEMNIFICATION**

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

**ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

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

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

E. All subcontracts in excess of \$25,000 entered into as a result of this Agreement shall contain all of the provisions stipulated in this Agreement to be applicable to subconsultants.

F. Any substitution or addition of subconsultant(s) must be approved in writing by the AUTHORITY's Contract Administrator, prior to the start of work by the subconsultant(s).

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

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

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

A. For the purpose of determining compliance with the Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and AUTHORITY shall maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties shall make such materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. The state, State Auditor, AUTHORITY, FHWA, their duly authorized representative or other agents of AUTHORITY or any duly representative of the Federal Government shall have access to any books, records, payroll documents, facilities and documents of CONSULTANT and its certified public accountants (CPA) work papers that

1 are pertinent to the Agreement and indirect cost rate (ICR) for audit, examinations, excerpts, and  
2 transactions, and copies thereof shall be furnished if requested.

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

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

11 **ARTICLE 18. AUDIT REVIEW PROCEDURES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23              A.       CONSULANT agrees that the Agreement Cost Principles and Procedures, CFR, Title 48,  
24 Chapter 1, Part 31 of the FAR, shall be used to determine the cost allowability of individual items.

25              B.       CONSULTANT also agrees to comply with federal procedures in accordance with CFR,  
26 Title 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State



1 and Local Governments.

2 C. Any costs for which payment has been made to CONSULTANT that are determined by  
3 subsequent audit to be unallowable under 49 CFR, Part 18 and 48 CFR, Chapter 1, Part 31.000 et seq.,  
4 are subject to repayment by CONSULTANT to AUTHORITY.

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

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

9 **ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY**

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

17 **ARTICLE 22. PROHIBITED INTERESTS**

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

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

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

24 A. The originals of all letters, documents, reports and other products and data produced under this  
25 Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for  
26 CONSULTANT's records but shall not be furnished to others without written authorization from

1 AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein  
2 shall be retained by AUTHORITY.

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

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

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

21 E. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall  
22 contain all of the provisions of this Article.

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

24 A. In lieu of any other warranty by CONSULTANT against patent or  
25 copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend, at its  
26 expense, any claim or suit against AUTHORITY on account of any allegation that any item furnished

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

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

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

19 A. In order to ensure the accuracy of the construction budget for the benefit of the public  
20 works bidders and AUTHORITY's budget process, CONSULTANT shall accomplish the design services  
21 required under this Agreement so as to permit the award of a contract, for the construction of the facilities  
22 designed at a price that does not exceed the estimated construction contract price as set forth by  
23 AUTHORITY. When bids or proposals for the construction contract are received that exceed the  
24 estimated price, CONSULTANT shall perform such redesign and other services as are necessary to  
25 permit contract award within the funding limitation. These additional services shall be performed at no  
26 increase in the price for which the services were specified. However, CONSULTANT shall not be required

1 to perform such additional services at no cost to AUTHORITY if the unfavorable bids or proposals are the  
2 result of conditions beyond its reasonable control.

3 B. CONSULTANT will promptly advise AUTHORITY if it finds that the project being designed  
4 will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within  
5 these limitations. Upon receipt of such information, AUTHORITY will review CONSULTANT's revised  
6 estimate of construction cost. AUTHORITY may, if it determines that the estimated construction contract  
7 price is so low that award of a construction contract not in excess of such estimate is improbable,  
8 authorize a change in scope or materials as required to reduce the estimated construction cost to an  
9 amount within the estimated construction contract price set forth by AUTHORITY, or AUTHORITY may  
10 adjust such estimated construction contract price. When bids or proposals are not solicited or are  
11 unreasonably delayed, AUTHORITY shall prepare an estimate of constructing the design submitted and  
12 such estimate shall be used in lieu of bids or proposals to determine compliance within the funding  
13 limitation.

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

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

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

22 A. Upon completion of all work under this Agreement, ownership and title to all reports,  
23 documents, plans, specifications, and estimates, including, but not limited to, illustrations, photographs,  
24 tapes, software, software design documents, including without limitation source code, binary code, all  
25 media, technical documentation and user documentation, photoprints and other graphic information  
26 required to be furnished under this Agreement, will automatically be vested in AUTHORITY and no further

1 agreement will be necessary to transfer ownership to AUTHORITY.

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

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

11 D. All subcontracts entered into as a result of this Agreement shall contain all of the  
12 provisions of this Article.

13 E. It is expressly understood that any title to preliminary technical data is not passed to  
14 AUTHORITY, but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,  
15 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the  
16 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given  
17 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to  
18 AUTHORITY, if CONSULTANT causes AUTHORITY to exercise Article 14 "Termination", and a price  
19 shall be negotiated for all preliminary data.

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

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

24 B. When prevailing wages apply to the services described in the scope of work,  
25 transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department  
26 of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See

1 <http://www.dir.ca.gov>.

2 A. The State of California's General Prevailing Wage Rates are not applicable to this  
3 Agreement.

4 **Note:** The Federal "Payment of Predetermined Minimum Wage" applies only to federal-aid  
5 construction contracts.

6 B. CONSULTANT warrants that all mechanics, laborers, journeypersons, workpersons,  
7 craftspersons or apprentices employed by CONSULTANT or subconsultant at any tier for any work  
8 hereunder, shall be paid unconditionally and not less often than once a week and without any subsequent  
9 deduction or rebate on any account (except such payroll deductions as are permitted or required by  
10 federal, state or local law, regulation or ordinance), the full amounts due at the time of payment, computed  
11 at a wage rate and per diem rate not less than the aggregate of the highest of the two basic hourly rates  
12 and rates of payments, contributions or costs for any fringe benefits contained in the current general  
13 prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial  
14 Relations of the State of California, (as set forth in the Labor Code, commencing at Section 1770 et. seq.),  
15 or as established by the Secretary of Labor (as set forth in the Davis-Bacon Act, 40 U.S.C. 267a, et. seq.),  
16 regardless of any contractual relationship which may be alleged to exist between CONSULTANT or  
17 subconsultant and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or  
18 apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on  
19 file at AUTHORITY's offices and will be made available to CONSULTANT upon request. CONSULTANT  
20 shall post a copy thereof at each job site at which work hereunder is performed.

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

25 D. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for  
26 public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of

1 public works, shall contain all of the provisions of this Article. CONSULTANT agrees to insert or cause to  
2 be inserted the preceding clause in all subcontracts which provide for workers to perform work hereunder  
3 regardless of the subcontractor tier.

4 **ARTICLE 29. STATEMENT OF COMPLIANCE**

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

7 A. CONSULTANT's signature affixed herein, and dated, shall constitute a certification under  
8 penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt,  
9 complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title  
10 2, California Administrative Code, Section 8103.

11 B. Nondiscrimination: During the performance of this Agreement, Consultant and its  
12 subconsultants shall not unlawfully discriminate, harass, or allow harassment against any employee or  
13 applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical  
14 disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital  
15 status, and denial of family care leave. Consultant and subconsultants shall insure that the evaluation and  
16 treatment of their employees and applicants for employment are free from such discrimination and  
17 harassment. Consultant and subconsultants shall comply with the provisions of the Fair Employment and  
18 Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated there under  
19 (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair  
20 Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in  
21 Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement  
22 by reference and made a part hereof as if set forth in full. Consultant and its subconsultants shall give  
23 written notice of their obligations under this clause to labor organizations with which they have a collective  
24 bargaining or other Agreement.

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1           C.     Compliance with Regulations: The Consultant shall comply with regulations relative to  
2 Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49  
3 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides  
4 that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which  
5 no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age,  
6 disability, be excluded from participation in, denied the benefits of or subject to discrimination under any  
7 program or activity by the recipients of federal assistance or their assignees and successors in interest.

8           D.     Solicitations for Subcontracts, Including Procurement of Materials and Equipment: The  
9 Consultant, with regard to the work performed by it during the Agreement shall act in accordance with Title  
10 VI. Specifically, the Consultant shall not discriminate on the basis of race, color, national origin, religion,  
11 sex, age, or disability in the selection and retention of subconsultants, including procurement of materials  
12 and leases of equipment. The Consultant shall not participate either directly or indirectly in the  
13 discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations, including employment practices  
14 when the Agreement covers a program whose goal is employment.

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

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

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



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

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

H. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A) through (G) in every lower-tier subcontract, which exceeds \$100,000, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto, and that all such sub recipients shall certify and disclose accordingly. CONSULTANT shall take such action with respect to any subcontract or procurement as AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the CONSULTANT may request AUTHORITY to enter into such litigation to protect the interests of AUTHORITY, and, in addition, CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

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

At the time of Agreement execution, the CONSULTANT committed to utilize DBE(s) in the performance of this DOT-assisted Agreement, and further agrees to ensure that DBE subcontractors listed on the Attachment "Consultant Contract DBE Commitment Caltrans Exhibit 10-O1," perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the AUTHORITY prior to the CONSULTANT effectuating any changes to its race-conscious DBE participation commitment(s). CONSULTANT shall comply with all the requirements set forth in Attachment A titled, "RACE -CONSCIOUS DBE CONTRACT PROVISIONS FOR FHWA-ASSISTED CONSULTANT CONTRACTS DISADVANTAGED BUSINESS ENTERPRISE (DBE)

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PARTICIPATION", which is attached to and, by this reference, incorporated in and made a part of this Agreement.

**ARTICLE 31. PRIVACY ACT**

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

**ARTICLE 32. CONFLICT OF INTEREST**

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

B. CONSULTANT shall disclose any financial, business, or other relationship with AUTHORITY that may have an impact upon the outcome of this Agreement, or any ensuing AUTHORITY construction project. CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing Authority construction project, which will follow.

C. Consultant hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

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1 D. CONSULTANT hereby certifies that neither CONSULTANT, nor any firm affiliated with  
2 CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection  
3 for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to  
4 the control of the same persons through joint-ownership, or otherwise.

5 E. Except for subconsultants whose services are limited to providing surveying or materials  
6 testing information, no subconsultant who has provided design services in connection with this  
7 Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction  
8 inspection for any construction project resulting from this Agreement.

9 **ARTICLE 33. CODE OF CONDUCT**

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

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

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

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

19 All contractual provisions required by United States Department of Transportation (USDOT),  
20 including the Federal Highway Administration (FHWA), whether or not expressly set forth in this  
21 document, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all  
22 federally mandated terms shall be deemed to control in the event of a conflict with other provisions  
23 contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse  
24 to comply with any requests, which would cause AUTHORITY to be in violation of the USDOT or FHWA  
25 terms and conditions.

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**ARTICLE 36. FEDERAL CHANGES**

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

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

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

B. CONSULTANT agrees to include these requirements in all of its subcontracts entered into as a result of this Agreement.

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

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

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1 the Program Fraud Civil Remedies Act of 1986 against the CONSULTANT to the extent the Federal  
2 Government deems appropriate.

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

9 C. CONSULTANT agrees to include this requirement in all of its subcontracts entered into  
10 as a result of this Agreement.

11 **ARTICLE 39. RECYCLED PRODUCTS**

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

17 **ARTICLE 40. ENERGY CONSERVATION REQUIREMENTS**

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

21 **ARTICLE 41. CLEAN AIR**

22 CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant  
23 to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT shall report each violation  
24 to AUTHORITY, who will in turn, report each violation as required to assure notification to USDOT and  
25 the appropriate Environmental Protection Agency (EPA) Regional Office. CONSULTANT agrees to  
26 include this requirement in all of its subcontracts entered into as a result of this Agreement.

**ARTICLE 42. CLEAN WATER REQUIREMENTS**

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

**ARTICLE 43. CONTINGENT FEE**

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

**ARTICLE 44. DEBARMENT AND SUSPENSION CERTIFICATION**

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with CFR Title 2, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three

1 (3) years. Any exceptions to this certification must be disclosed in writing to the AUTHORITY.

2 B. Exceptions will not necessarily result in denial of recommendation for award, but will be  
3 considered in determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions  
4 apply, initiating agency, and dates of action.

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

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

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

10 1. No state, federal or local agency appropriated funds have been paid, or will be  
11 paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer  
12 or employee of any state or federal agency; a Member of the State Legislature or United States Congress;  
13 an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature  
14 or Congress, in connection with the awarding of any state or federal contract; the making of any state or  
15 federal grant; the making of any state or federal loan; the entering into of any cooperative agreement,  
16 and the extension, continuation, renewal, amendment, or modification of any state or federal contract,  
17 grant, loan, or cooperative agreement.

18 2. If any funds other than federal appropriated funds have been paid, or will be paid  
19 to any person for influencing or attempting to influence an officer or employee of any federal agency; a  
20 Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in  
21 connection with this federal Agreement, grant, loan, or cooperative agreement; CONSULTANT shall  
22 complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its  
23 instructions.

24 B. This certification is a material representation of fact upon which reliance was placed when  
25 this transaction was made or entered into. Submission of this certification is a prerequisite for making or  
26 entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file

1 the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than  
2 \$100,000 for each such failure.

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

6 **ARTICLE 46. FUNDING REQUIREMENTS**

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

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

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

18 **ARTICLE 47. DISADVANTAGED BUSINESS ENTERPRISE GOAL**

19 A. CONSULTANT hereby agrees to attain DBE participation in the amount of ten percent  
20 (10%) of the total Agreement amount. CONSULTANT shall enter into agreements for the services  
21 identified in Attachment entitled "Consultant Contract DBE Information Caltrans Exhibit 10-O2".

22 B. CONSULTANT is required to comply with this goal for the duration of this Agreement.  
23 CONSULTANT's failure to comply with the DBE participation provisions may result in:

24 1. Withholding of payment until such compliance is achieved or a waiver of the  
25 provisions is provided by AUTHORITY;

26 2. The Agreement may be canceled, terminated or suspended in whole or in part.



1           C.     Any substitution of subcontractors must be approved in writing by the AUTHORITY's  
2 Contract Administrator in advance of assigning work to a substitute subcontractor.

3           D.     To ensure that all obligations under this Agreement are met, AUTHORITY will conduct  
4 periodic reviews of the CONSULTANT's small DBE efforts during Agreement performance. The  
5 CONSULTANT shall bring to the attention of AUTHORITY's Contract Administrator any situation in which  
6 regularly scheduled payments are not made to DBE contractors, subcontractors or suppliers.

7           E.     At the conclusion of the Agreement, CONSULTANT will be required to report its utilization,  
8 scope of work and dollar amount of the subcontracts. The report shall include identification of the  
9 subcontractors and whether the subcontractors are eligible DBE.

10          F.     CONSULTANT, subconsultants and suppliers shall permit access to their books, records,  
11 and accounts by the Contract Administrator, or a designated representative, for the purpose of  
12 investigation to ascertain compliance with these specified requirements. Such records shall be  
13 maintained in a fashion which is readily accessible to AUTHORITY, as described in Article 17 Audit and  
14 Inspection of Records, for a minimum of four (4) years from the date of final payment by AUTHORITY.

15           **ARTICLE 48. EQUIPMENT PURCHASE**

16          A.     Prior authorization, in writing, by AUTHORITY's Project Manager shall be required  
17 before CONSULTANT enters into any unbudgeted purchase order, or subcontract exceeding  
18 \$5,000.00 for supplies, equipment or CONSULTANT services. CONSULTANT shall provide an  
19 evaluation of the necessity or desirability of incurring such costs.

20          B.     For purchase of any item, service or consulting work not covered in CONSULTANT's  
21 Cost Proposal and exceeding \$5,000.00 prior authorization by AUTHORITY's Project Manager; three  
22 (3) competitive quotations must be submitted with the request, or the absence of bidding must be  
23 adequately justified.

24          C.     Any equipment purchased as a result of this Agreement is subject to the following:  
25 "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property  
26 is defined as having a useful life of at least two years and an acquisition cost of \$5,000.00 or more. If

1 the purchased equipment needs replacement and is sold or traded in, AUTHORITY shall receive a  
2 proper refund or credit at the conclusion of this Agreement, or if the Agreement is terminated,  
3 CONSULTANT may either keep the equipment and credit AUTHORITY in an amount equal to the its  
4 fair market value, or sell such equipment at the best price obtainable at a public or private sale, in  
5 accordance with established AUTHORITY procedures; and credit AUTHORITY in an amount equal to  
6 the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined  
7 at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment.  
8 Appraisals shall be obtained from an appraiser agreeable to both AUTHORITY and CONSULTANT.  
9 If it is determined to sell the equipment, the terms and conditions of such sale must be approved in  
10 advance by AUTHORITY." CFR, Title 49, Part 18 requires a credit to Federal funds when participating  
11 equipment with a fair market value greater than \$5,000.00 is credited to the project.

12 **ARTICLE 49. HEALTH AND SAFETY REQUIREMENTS**

13 A. CONSULTANT shall comply with all the requirements set forth in Exhibit C, Level 1  
14 Safety Specifications. As used therein, "Contractor" shall mean "Consultant" and Subcontractor" shall  
15 mean "Sub-consultant."

16 B. Any subcontract entered into as a result of this Agreement shall contain all of the  
17 provisions of this Article.

18 **ARTICLE 50. CONFIDENTIALITY OF DATA**

19 A. All financial, statistical, personal, technical, or other data and information relative to the  
20 AUTHORITY's operations, which are designated confidential by the AUTHORITY and made available to  
21 the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from  
22 unauthorized use and disclosure.

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

26 /

1 C. Except as provided herein, CONSULTANT shall not comment publicly to the press or any  
2 other media regarding the Agreement.

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

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

8 F. All information related to the construction estimate is confidential, and shall not be  
9 disclosed by the CONSULTANT to any entity other than the AUTHORITY.

10 **ARTICLE 51. REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

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

17 **ARTICLE 52. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

23 **ARTICLE 53. EVALUATION OF CONSULTANT**

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

**ARTICLE 54. 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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This Agreement shall be made effective upon execution by both parties.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-7-1719 to be  
executed on the date first above written.

**CONSULTANT**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

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

Darrell Johnson  
Chief Executive Officer

**APPROVED AS TO FORM:**

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

James M. Donich  
General Counsel

**APPROVED:**

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

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

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

RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR FHWA-ASSISTED  
CONSULTANT CONTRACTS DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
PARTICIPATION

**I. DBE Participation**

At the time of contract execution, the Consultant (as used herein, "Consultant" shall mean "Contractor" and "Subconsultant" shall mean "Subcontractor") committed to utilize DBE(s) in the performance of this DOT-assisted contract, and further agrees to ensure that DBE Subconsultants listed on the "**Consultant Proposal-DBE Commitment Caltrans Exhibit 10-01,**" perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Authority prior to the Consultant effectuating any changes to its DBE participation commitment(s) (*Refer to Subsection H: "Performance of DBE Subconsultants"*).

By causing the total contract amount to increase or decrease and/or by altering the distribution of work among Consultants, change orders and other contract modifications can impact the participation of DBE firms and the ability of the Consultant to achieve its DBE commitment. To ensure full compliance with the requirements of 49 C.F.R. Part 26 and the Authority's DBE Program, the Consultant shall:

- A. Consultant shall take appropriate actions to ensure that the Consultant will continue to meet the DBE Commitment at the minimal level committed to at award or will satisfy the good faith efforts to meet the DBE Commitment, when change orders or other contract modifications alter the dollar amount of the contract or the distribution of work.

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

Fulfill 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 to participate in all of Authority's DOT-assisted contracting opportunities.

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

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

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

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

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

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

Consultant 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.***

### **III. Authority's Race-Conscious DBE Policy Implementation Directives**

Pursuant to recently released Race-Conscious DBE policy directives issued by Caltrans in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation and Final Disparity Study results*, **the Authority has implemented a Race-Conscious DBE Program**.

Caltrans reinstates the use of contract goals and good faith efforts. Meeting the contract-specific goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, is a condition of award. Additionally, contract-specific goals are now 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.

#### **I. Definitions**

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

- 1. "Disadvantaged Business Enterprise (DBE)"** means a small business concern: (a) which is at least 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.
- 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. **"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:
  - A. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - B. "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;
  - 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 Consultant.
6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the 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 Department may initiate suspension or debarment proceedings against you under 49 CFR part 29. If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that



does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29. 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 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 in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

**B. "Economic Disadvantage"**

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

Consultant shall complete and submit the following DBE exhibits (forms) at the times specified:

**1. “Monthly Race-Conscious DBE Subconsultants Paid Report Summary and Payment Verification” (Form 103)**

If the Consultant is a DBE firm and/or has proposed to utilize DBE firms, the Consultant will be required to complete and submit a Form 103 to the Authority by the 10<sup>th</sup> of each month until completion of the contract to facilitate reporting of DBE participation, following the first month of contract activity.

The Monthly DBE Progress Report shall include the following information:

**A. General Contract Value Information - The following general contract value information must be provided:**

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

**B. Consultant/Subconsultant information – The following information shall be prepared for the Consultant and each Subconsultant (at every tier level) performing on the contract:**

**1. Firm General Information:**

(a) name, (b) address, (c) phone, (d) DBE status, (e) contact person, (f) prime Consultant name, (g) date contract agreement signed, (h) scope of work, (i) anticipated first date of performance, (j) anticipated last date of performance.

**2. Firm Contract Value Information:**

(a) Original contract amount, (b) running total of change order amount, (c) current contract amount, (d) amount paid to Consultant during month, (e) amount paid to Consultant to date.

**3. Prompt Payment (Running history of information related to invoices submitted by and payments made to Consultants, including):**

(a) Consultant invoice number, (b) invoice amount, (c) invoice date, (d) Consultant's prime's invoice number that incorporates this invoice for billing purposes, (e) date of said invoice, (f) project Consultant invoice number and (b) date and amount Authority paid on Consultant's invoice, (h) date and amount Consultant's prime paid Consultant on invoice, (i) breakout of retention withheld (further broken out by regular retention and disputed retention) and payments on withheld retention, (j) check number, date and amount paid to Consultant.

Consultant is advised not to report the participation of DBEs toward the Consultant's DBE attainment until the amount being counted has been paid to the DBE. Verification of payment signed by the Consultant and affected DBE Subconsultant must be submitted with Form 103 to authenticate reported payments.

Upon the Authority's request, the Consultant shall 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. The Consultant shall 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.

Upon completion of the contract, the Consultant will be required to prepare and submit to the Authority a "Monthly Race-Conscious DBE Subconsultants Paid Report Summary and Payment Verification" (Form 103) clearly marked "Final" to facilitate reporting and capturing actual DBE attainments. *Consultant shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.*

**2. "Monthly DBE Trucking Verification" Form CEM-2404(F)**

Prior to the 15th of each month, the Consultant shall submit documentation on the "Monthly DBE Trucking Verification" Caltrans Form CEM-2404(F) to the AUTHORITY showing the amount paid to DBE trucking companies. The Consultant shall 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 Consultant shall 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.

**3. "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subconsultants" Caltrans Exhibit 17-F**

Upon completion of the contract, a summary of these records shall be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subconsultants" Caltrans Exhibit 17-F and certified correct by the Consultant or the Consultant's authorized representative, and shall be furnished to the Engineer. The form shall 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.

**4. "Disadvantaged Business Enterprises (DBE) Certification Status Change" Caltrans Exhibit 17-0**

If a DBE Subconsultant is decertified during the life of the project, the decertified Subconsultant shall notify the Consultant in writing with the date of decertification. If a Subconsultant becomes a certified DBE during the life of the project, the Subconsultant shall notify the Consultant in writing with the date of certification (Attach DBE certification/Decertification letter). The Consultant shall furnish the written documentation to the AUTHORITY.

Upon completion of the contract, the Caltrans Exhibit 17-0: "Disadvantaged Business Enterprises (DBE) Certification Status Change" shall be signed and certified correct by the Consultant indicating the DBEs' existing certification status. If there are no changes, please indicate "No Changes". The certified form shall 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 Consultant, Subconsultant, joint venture partner with a prime or Subconsultant, 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 Consultant or Subconsultant, 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 Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.
2. If a DBE intends to subcontract part of the work of its subcontract to a lower tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and actually performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the prime Consultant's DBE attainment.
3. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:

- A. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
  - B. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
4. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packagers may be credited toward the prime Consultant's DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
- A. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
  - B. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
  - C. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
5. Consultant may count the participation of DBE trucking companies toward DBE attainment, as follows:
- 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 Consultant listed a non-certified 1<sup>st</sup> tier Subconsultant to perform work on this contract, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE Consultant performs the installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

#### **VII. Performance of DBE Subconsultants**

DBEs must perform work or supply materials as listed in the "Consultant Proposal - DBE Commitment", Caltrans Exhibit 10-O1 form specified under "*DBE Proposal Submission Requirements*" of these special provisions. Do not terminate a DBE listed Subconsultant 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 Consultants' license and listed DBE does not have a valid license under Consultants 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 Subconsultant is terminated, you must make good faith efforts to find another DBE Subconsultant 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 Subconsultants**

In the event Consultant identifies additional DBE Subconsultants or suppliers not previously identified by Consultant for DBE participation under the contract, Consultant shall notify the Authority by submitting "Request for Additional DBE Firm" to enable Consultant to capture all DBE participation. Consultant shall 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.

**X. Consultant’s Assurance Clause Regarding Non-Discrimination**

In compliance with State and Federal anti-discrimination laws, the Consultant shall affirm that they will not exclude or discriminate on the basis of race, color, national origin, or sex in consideration of contract award opportunities. Further, the Consultant shall affirm that they will consider, and utilize Subconsultants and vendors, in a manner consistent with non-discrimination objectives.

**XI. Prompt Payment Clause**

Upon receipt of payment by Authority, consultant agrees to promptly pay each Subconsultant for the satisfactory work performed under this Agreement, no later than seven (7) calendar days. consultant agrees further to return retainage payments to each Subconsultant within thirty (30) calendar days after the Subconsultant’s work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from consultant showing payment has been made to the Subconsultants. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by authority.

In accordance with 49 CFR part 26.29 “Prompt Payment Provisions” (DBE Final Rule) the authority will elect to utilize the following method to comply with the prompt payment of retainage requirement:

Hold retainage from consultant and provide for prompt and regular incremental acceptances of portions of the consultant, pay retainage to prime Consultants based on these acceptances, and require a contract clause obligating the consultant to pay all retainage owed to the Subconsultants for satisfactory completion of the accepted work within 30 days after payment to the consultant.

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 consultant under this Agreement. Each subcontract shall require the Subconsultant to make payments to sub-Subconsultants and suppliers in a similar manner.

**XII. Administrative Remedies and Enforcement**

Consultant shall fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. Consultant'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 Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

The Consultant shall 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 shall constitute a waiver of the Consultant's right to appeal. If the Consultant files an appeal, the Authority, shall issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If, after review of the Consultant's appeal, the Authority decides to uphold the decision to impose DBE administrative remedies on the Consultant, the written determination shall state the specific remedy(s) to be imposed.

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

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



**EXHIBIT C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**Information Sheet**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**IMPORTANT NOTICE**

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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<br>to represent the Prime in this RFP | Yes____ | No ____ |

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

\_\_\_\_\_

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**

**Michael Hennessey, Chairman**

**Lisa A. Bartlett, Vice Chair**

**Laurie Davies, Director**

**Barbara Delgleize, Director**

**Andrew Do, Director**

**Lori Donchak, Director**

**Steve Jones, Director**

**Mark A. Murphy, Director**

**Richard Murphy, Director**

**Al Murray, Director**

**Shawn Nelson, Director**

**Miguel Pulido, Director**

**Tim Shaw, Director**

**Todd Spitzer, Director**

**Michelle Steel, Director**

**Tom Tait, Director**

**Greg Winterbottom, Director**

**EXHIBIT D: 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.

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

Last Rev. 08/26/2015

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



## DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS AND INSTRUCTIONS

### A. 1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR), and is one of the following groups:
  1. Black American
  2. Hispanic American
  3. Native American
  4. Asian-Pacific American
  5. Subcontinent Asian American
  6. Women
- The term “bidder” also means “proposer” or “offeror.”
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

### 2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Offeror should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Offeror shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Offerors are encouraged to use services offered by financial institutions owned and controlled by DBEs.

### B. 3. SUBMISSION OF DBE INFORMATION

#### ***“Exhibit E-1 Consultant Proposal DBE (Consultant Contract) Commitment”***

A “Consultant Proposal DBE (Consultant Contract) Commitment” form shall be included with the Request for Proposal. The purpose of the form is to track the proposers progress towards meeting the Contract Goal. This form collects

information on all DBEs towards meeting the contract goal. Even if no DBE participation will be reported, the Offeror must execute and return the form.

***“Exhibit E-2 Consultant Contract DBE (Consultant Contract) Information”***

A “Consultant Contract DBE (Consultant Contract) Information” form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. This form collects information on all DBEs. Even if no DBE participation will be reported, the successful Offeror must execute and return the form.

***“Exhibit E-3 Bidders List”***

The U.S. Department of Transportation (DOT) requires the Authority to create and maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on the Authority’s DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Authority’s overall annual DBE goal-setting process. Therefore, the Offeror shall provide the requested information for every firm who submitted a bid, proposal or quote, including the primary Offeror, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Firm’s status as a DBE or non-DBE;
- d. Age of the firm;
- e. Type of services provided by the firm; and
- f. Range of annual gross receipts for the last year.

The “Bidders List” information must be submitted on ***Exhibit E-3*** and should be included with the proposal submittal; however, in the event that the referenced Exhibit is not included, the Exhibit shall be submitted to the Authority no later than 48 hours following proposal submission due date and timeline for the Offeror to be deemed responsive.

**C. 4. DBE PARTICIPATION GENERAL INFORMATION**

It is the Offeror’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s (California Department of Transportation) DBE program developed pursuant to the 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 bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
1. The bidder is a DBE and will meet the goal by performing work with its own forces.
  2. The bidder will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
  3. The bidder, prior to bidding, made adequate good faith efforts to meet the goal.
- D. 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.
- E. 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.
- F. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. An Offeror who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

#### **D. 5. RESOURCES**

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled Find a Certified Firm
  - Click on Query Form link, located in the first sentence
  - Click on Certified DBE's (UCP) located on the first line in the center of the page
  - Click on Click To Access DBE Query Form

- Searches can be performed by one or more criteria
- Follow instructions on the screen
- “Start Search,” “Requery,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form

**C. How to Obtain a List of Certified DBEs without Internet Access**

**DBE Directory:** If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

**6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT AND PURCHASES WILL COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:**

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers’ own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers’ representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT, UNDER THE FOLLOWING CONDITIONS:**

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement 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 Agreement
- 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 the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use 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, as 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.



## INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

### Consultant Section

*The Consultant shall:*

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids 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.)
9. **DBE %** - Percent participation of work to be performed or service provided by a DBE. Include the prime consultant if the prime is a DBE. See LAPM Chapter 9 for how to count full/partial participation.
10. **Total % Claimed** – Enter the total DBE participation claimed. If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of 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 proposed to perform.

### Local Agency Section:

*The Local Agency representative shall:*

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

**EXHIBIT 10-O2 CONSULTANT CONTRACT DBE INFORMATION**

(Inclusive of all DBEs listed at contract award. Refer to instructions on the reverse side of this form)

<b>Consultant to Complete this Section</b>			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Total Contract Award Amount: \$ _____			
5. Consultant Name: _____			
6. Contract DBE Goal %: _____			
7. Total Dollar Amount for <u>all</u> Subconsultants: \$ _____			
8. Total Number of <u>all</u> Subconsultants: _____			
<b>Award DBE/DBE Information</b>			
9. Description of Services to be Provided	10. DBE/DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
<div style="background-color: #d3d3d3; text-align: center; padding: 2px;"><b>Local Agency to Complete this Section</b></div> <div style="padding: 5px;"> 20. Local Agency Contract Number: _____   21.               Federal-aid                               Project                               Number: _____   22. Contract Execution Date: _____   Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:   23. Local Agency Representative Name (Print) _____   24. Local Agency Representative Signature _____               25. Date _____   26. Local Agency Representative Title _____               27. (Area Code) Tel. No. _____ </div>		13. Total Dollars Claimed \$ _____  14. Total % Claimed _____ %  <div style="text-align: center; height: 50px;">•</div>	
<div style="background-color: #d3d3d3; text-align: center; padding: 2px;"><b>Caltrans to Complete this Section</b></div> <div style="padding: 5px;"> Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness:   28. DLAE Name (Print) _____               29. DLAE Signature _____               30. Date _____ </div>		15. Preparer's Signature _____  16. Preparer's Name (Print) _____  17. Preparer's Title _____  18. Date _____               19. (Area Code) Tel. No. _____	

**Distribution:** (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.  
(2) Copy – Include in award package sent to Caltrans DLAE



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## INSTRUCTIONS - CONSULTANT CONTRACT AWARD DBE INFORMATION

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### Consultant Section

*The Consultant shall:*

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services to be provided. Indicate all work to be performed by DBEs including work performed by the prime consultant's own forces, if the prime is a DBE. If 100% of the item is not to be performed or furnished by the DBE, describe the exact portion to be performed or furnished by the DBE. See LAPM Chapter 9 to determine how to count the participation of DBE firms.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids 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.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subconsultants on the Exhibit 10-O1 *Consultant Proposal DBE Commitment* form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for column 13.
14. **Total % Claimed** – Enter the total DBE participation claimed for column 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts of the LAPM*).
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

### Local Agency Section:

*The Local Agency representative shall:*

20. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
23. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
24. **Local Agency Representative Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
25. **Date** - Enter the date the Local Agency Representative signs the form.
26. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
27. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

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 proposed to perform.

**Caltrans Section:**

*Caltrans District Local Assistance Engineer (DLAE) shall:*

**28. DLAE Name (Print)** – Clearly enter the name of the DLAE.

**29. DLAE Signature** – DLAE must sign this section of the form to certify that it has been reviewed for completeness.

**30. Date** - Enter the date that the DLAE signs this section the form

**BIDDERS LIST**

**Bidder/Offeror:** \_\_\_\_\_ **IFB/RFP No.:** \_\_\_\_\_

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

The Bidder/Offeror is to complete all requested information on **Exhibit \_\_: "Bidders List"** for themselves and all subcontractors, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall annual DBE goal-setting process. ***The "Bidders List" content will not be considered in evaluating the bid/proposal or determining award of any contract.***

**Prime Bidder's/Offeror'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? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American  <input type="checkbox"/> Native American <input type="checkbox"/> Woman  <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American  <input type="checkbox"/> 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

Name of Sub'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? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):  <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> 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 subcontractor (DBE and non-DBE) included in this bid, proposal or quote.

Name of Sub'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? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
<b>DBE Certification Eligibility (place an "X"):</b> <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> 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 subcontractor (DBE and non-DBE) included in this bid, proposal or quote.

Name of Sub'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? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):	<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
<input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other	

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 Bidder/Offeror to submit the required "Bidders List" form will deem the Bidder/Offeror non-responsive.

**DBE INFORMATION - GOOD FAITH EFFORTS**

Federal-aid Project No. \_\_\_\_\_ Bid Opening Date \_\_\_\_\_

The Orange County Transportation Authority established a Disadvantaged Business Enterprise (DBE) goal of **10%** for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The 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 proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>
_____	_____
_____	_____
_____	_____

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Performs (Y/N)	Normally Item Items	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

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

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

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- E. 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:

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- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

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- G. 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, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

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**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.



**STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION**  
**FINAL REPORT-UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES**  
**(DBE), FIRST-TIER SUBCONTRACTORS**

**ADA Notice**  
For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814

CEM-2402F (REV 02/2008)

CONTRACT NUMBER		COUNTY	ROUTE	POST MILES	FEDERAL AID PROJECT NO.		ADMINISTERING AGENCY		CONTRACT COMPLETION DATE
PRIME CONTRACTOR				BUSINESS ADDRESS				ESTIMATED CONTRACT AMOUNT \$	
ITEM NO.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	COMPANY NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER	CONTRACT PAYMENTS			DATE OF FINAL PAYMENT		
				NON-DBE	DBE	DATE WORK COMPLETE			
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
				\$	\$				
ORIGINAL COMMITMENT \$			TOTAL	\$	\$				
<p align="center">DBE</p> <p>List all First-Tier Subcontractors, Disadvantaged Business Enterprises (DBEs) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on back of form. List actual amount paid to each entity.</p>									
<b>I CERTIFY THAT THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>									
CONTRACTOR REPRESENTATIVE'S SIGNATURE						BUSINESS PHONE NUMBER		DATE	
<b>TO THE BEST OF MY INFORMATION AND BELIEF, THE ABOVE INFORMATION IS COMPLETE AND CORRECT</b>									
RESIDENT ENGINEER'S SIGNATURE						BUSINESS PHONE NUMBER		DATE	

Copy Distribution-Caltrans contracts:

**Original** - District Construction

**Copy**- Business Enterprise Program

**Copy**- Contractor

**Copy** Resident Engineer

Copy Distribution-Local Agency contracts:

**Original** - District Local Assistance Engineer  
(submitted with the Report of Expenditure)

**Copy**- District Local Assistance Engineer

**Copy**- Local Agency file

**FINAL REPORT  
UTILIZATION OF DISADVANTAGED  
BUSINESS ENTERPRISES (DBE),  
FIRST-TIER SUBCONTRACTORS**

CEM 2402(F) (Rev. 02/2008)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, Federal-aid Project No., the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the prime contractor name and business address. The focus of the form is to describe who did what by contract item number and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No. (or Item No's) and description of work performed or materials provided, as well as a column for the subcontractor name and business address. For those firms who are DBE, there is a column to enter their DBE Certification Number. The DBE should provide their certification number to the contractor and notify the contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has six columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what program(s) status the firm is certified. This program status is determined by the California Unified Certification Program by ethnicity, gender, ownership, and control issues at time of certification. To confirm the certification status and program status, access the Department of Transportation Civil Rights web site at: <http://www.dot.ca.gov/hq/bep> or by calling (916) 324-1700 or the toll free number at (888) 810-6346.

Based on this DBE Program status, the following table depicts which column to be used:

<b>DBE Program Status</b>	<b>Column to be used</b>
If program status shows DBE only with no other programs	DBE

If a contractor performing work as a DBE on the project becomes decertified and still performs work after their decertification date, enter the total dollar value performed by this contractor under the appropriate DBE identification column.

If a contractor performing work as a non-DBE on the project becomes certified as a DBE, enter the dollar value of all work performed after certification as a DBE under the appropriate identification column.

Enter the total of each of the six columns in Form CEM-2402(F).

Any changes to DBE certification must also be submitted on Form-CEM 2403(F).

Enter the Date Work Completed as well as the Date of Final Payment (the date when the prime contractor made the "final payment" to the subcontractor for the portion of work listed as being completed).

The contractor and the resident engineer sign and date the form indicating that the information provided is complete and correct.

**July 1, 2012    LPP 09-02**

<b>MONTHLY RACE-CONSCIOUS DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)</b> Reporting Period (month): _____, 20 ____							
Contract/Project Number: _____ Report Number: _____ Report prepared by: _____ Project Name: _____ Original Contract Award Amount: _____ Title: _____ Contract Award Date: _____ Current Contract Value: _____ Report reviewed by: _____ Prime Name: _____ % of Project Complete: _____ Signature: _____ Address: _____ OCTA Payment This Month: _____ Title: _____ Telephone Number: ( ) _____ Total \$ Paid to Prime to date: _____ Date of Last Progress Payment rec'd from OCTA: _____ Contract DBE Goal: ____% (% of total Contract) Total \$ Paid to DBEs this Reporting Period: _____ Prime's DBE Commitment: ____% Total \$ Paid to DBEs to date: _____ DBE Goal Attainment to date: ____%							
DBE SUB CONTRACTORS	Dollar Amount Paid This Month	Dollar Amount Paid to Date	Type of Work Performed (Scope)	Original Dollar Amount Committed to DBE at Contract Award	\$ +/- resulting from Change Order Activity	% of Work Completed	FOR AUTHORITY] USE ONLY
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: ( ) _____ Subcontractor <sup>1</sup> Broker <sup>1</sup> _____ Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup> _____ Attach verification of payment							
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: ( ) _____ Subcontractor <sup>1</sup> Broker <sup>1</sup> _____ Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup> _____ Attach verification of payment							
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: ( ) _____ Subcontractor <sup>1</sup> Broker <sup>1</sup> _____ Supplier: Regular Dealer <sup>1</sup> or Manufacturer <sup>1</sup> _____ Attach verification of payment							
<b>Comments/Issues and/or documented Good Faith Efforts performed during this reporting period:</b> _____ _____ _____							

If necessary, this form can be duplicated to list all DBE subcontractors paid in this reporting period.

Form 103 (rev. 07/12)

**EXHIBIT F: REQUEST FOR DBE SUBCONTRACTOR SUBSTITUTION**



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**REQUEST FOR DBE SUBCONTRACTOR/SUPPLIER SUBSTITUTION**

Substitution of subcontractors shall be in accordance with the Contract Specifications. If a listed or approved DBE Subcontractor is unable to perform the work in accordance with the Contract Specifications, the Prime Contractor shall replace the Subcontractor with another DBE Subcontractor, or make good faith efforts to do so in accordance with the Contract Specifications. Such request for substitution is subject to approval by the Authority.

Project No.:	Project Name:		
Prime Contractor:			
Business Address:			
<b>Please Provide the Following Information for the Listed or Approved DBE Subcontractor:</b>			
Subcontractor Name:		DBE Certification No:	
Address:			
Contact Person:		Phone:	
Email Address:			
Description of work:			
Original Contract Value:		Current Contract Value:	
Reason for Substitution:			
<b>Prime Contractor to select either Option A or B to meet substitution requirements:</b>			
p A. Please provide the following information if Contractor elects to substitute a DBE subcontractor with another DBE subcontractor.			
Subcontractor Name:		DBE Certification No:	

Address:	
Contact Person:	Phone:
Description of work:	
Bid Item Number(s):	Proposed Subcontractor Bid Amount:

☐ **B.** Please provide Good Faith Efforts undertaken to replace the originally proposed DBE subcontractor with another DBE subcontractor by attaching supporting documentation.

I certify under penalty of perjury that the above information is complete and correct.

Contract Representative Signature	Title
Business Phone Number	Date

**CONCURRENCE BY ORIGINALLY PROPOSED DBE FIRM:**

\_\_\_\_\_  
**Signature**

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

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Date**

**AUTHORITY APPROVAL:**

Date Request Received: \_\_\_\_\_

Date Letter Sent to Original DBE Subcontractor: \_\_\_\_\_

Authority's Approval of Request for Substitution?    ☐ Yes    ☐ No

If no, please state reason:

\_\_\_\_\_

\_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

**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

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

## LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

### PART I – GENERAL

#### 1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

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

#### G. INJURY AND ILLNESS PREVENTION PLAN

The Contractor shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP

shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

- H. Contractor shall provide a copy of the Policy or Program of Company's Substance Abuse Prevention Policy that complies with the 1988 Drug Free Workplace Act.

## **1.2 HAZARD COMMUNICATION**

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

## **1.3 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 immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of 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.

## **1.4 PERSONAL PROTECTIVE EQUIPMENT**

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

## **PART II – SPECIFIC REQUIREMENTS – NOISE AND SURVEY CREWS**

### **Level 2 Safety Specification Requirements for Noise and Survey Crew Tasks**

#### **2.0 DESIGNATED SAFETY 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 schedule and budget impacts.
- B. The Contractor shall provide the Authority's Project Manager a resume outlining the qualifications, or job experience of Contractor's On-Site HSE Representative assigned to the project. The Contractor's On-Site 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.
- C. The Contractor's On-Site HSE Representative shall have, as a minimum, a 30 hour OSHA training certificate, and five (5) years of experience of HSE compliance on similar projects. The Authority reserves the right to allow for an exception of these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and the HSEC Department Manager.
- D. A Competent or Qualified Individual means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

#### **2.1 ORIENTATION**

- A. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 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.

- B. A Job Hazard Analysis (JHA) shall be prepared for the activities preformed.
- C. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

### **PART III – SPECIFIC REQUIREMENTS – HAZARDOUS SUBSTANCES SURVEY**

Level 3 Safety Specifications for Geotechnical Activities, Aerial Deposited Lead Survey, Asbestos Survey, Boring Activity, and Survey for Potential Hazardous Substances

#### **3.0 A COMPREHENSIVE PROJECT SPECIFIC (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. Site Specific HSE Plan: Indicate methods, procedures, equipment, and sequence of tasks as listed on the project schedule. 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.

#### **3.1 DESIGNATED SAFETY REPRESENTATIVE**

- A. **QUALIFICATIONS** – On Capital Programs, the Contractor shall submit the resume of the full time, of the On-site 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 five (5) 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 CHST with current standing from the BCSP or a CIH with current



standing from the ABIH, or similar professional HSE Certificate of standing acceptable to the Authority. The Contractor's On-site HSE Representative(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.

### **3.2 SITE HSE ORIENTATION**

- A. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 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.
- B. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

### **3.3 TRAINING DOCUMENTATION**

- A. 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.

### **3.4 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).

#### **PART IV - REFERENCES**

- A. CCR Title 8 Standards (Cal/OSHA)
- B. CFR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Construction Industry Institute (CII)
- E. OCTA Construction Management Procedures Manual

END

**EXHIBIT I: CERTIFICATION OF CONSULTANT COMMISSION AND FEES**

**CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES**

I HEREBY CERTIFY that I am the \_\_\_\_\_, and duly authorized representative of the firm of \_\_\_\_\_, whose address is \_\_\_\_\_, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this contract.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this contract involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature)

**EXHIBIT J: CONSULTANT CERTIFICATION OF CONTRACT COSTS AND  
FINANCIAL MANAGEMENT SYSTEM**

**EXHIBIT 10-J CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL  
MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of  
DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at  
[http://www.dot.ca.gov/hq/LocalPrograms/DLA\\_OB/DLA\\_OB.htm](http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm) in lieu of this form.)*

**Certification of Final Indirect Costs:**

Consultant Firm Name: \_\_\_\_\_

Indirect Cost Rate: \_\_\_\_\_ Date of Proposal Preparation (mm/dd/yyyy): \_\_\_\_\_

Fiscal Period Covered for Indirect Cost Rate Developed (mm/dd/yyyy to mm/dd/yyyy): \_\_\_\_\_

Contract Number: \_\_\_\_\_ Project Number: \_\_\_\_\_

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed as of the date of proposal preparation noted above.

**Certification of Financial Management System:**

I, the undersigned, certify to the best of my knowledge and belief that our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

**Certification of Dollar Amount for all A&E contracts:**

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$\_\_\_\_\_ and the number of States in which the firm does business is \_\_\_\_\_.

**Certification of Direct Costs:**

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 –Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

**Subconsultants (if applicable)**

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ \_\_\_\_\_

**Prime Consultants (if applicable)**

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ \_\_\_\_\_

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

\* Consultant Certification Signature: \_\_\_\_\_

Consultant Certifying (Print Name and Title):

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

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

Consultant Contact Information:

Email: \_\_\_\_\_

Phone number: \_\_\_\_\_

Date of Certification (mm/dd/yyyy): \_\_\_\_\_

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

Note: *Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.*

**Distribution:** 1) Original to Caltrans Audits and Investigations  
2) Retained in Local Agency Project Files

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



**PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

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

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

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

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

Check one:

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

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

Complete Description of Deviation or Exception:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Rationale for Requesting Deviation or Exception:

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Area Below Reserved for Authority Use Only:

\_\_\_\_\_

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