

REQUEST FOR PROPOSALS (RFP) 8-1760

**CONSTRUCTION MANAGEMENT
SERVICES FOR THE ANAHEIM
CANYON METROLINK STATION
IMPROVEMENT PROJECT**



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

Key RFP Dates

Issue Date:	July 23, 2018
Pre-Proposal Conference Date:	July 26, 2018
Question Submittal Date:	August 6, 2018
Proposal Submittal Date:	August 23, 2018
Interview Date:	September 27, 2018

FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT

TABLE OF CONTENTS

SECTION I: INSTRUCTIONS TO OFFERORS 1

SECTION II: PROPOSAL CONTENT 9

SECTION III: EVALUATION AND AWARD 16

EXHIBIT A: SCOPE OF WORK..... 19

EXHIBIT B: PROPOSED AGREEMENT 20

EXHIBIT C: STATUS OF PAST AND PRESENT CONTRACTS..... 21

**EXHIBIT D: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
AND FORMS 23**

EXHIBIT E: RESTRICTIONS ON LOBBYING..... 41

EXHIBIT F: SAFETY SPECIFICATIONS 53

EXHIBIT G: CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES..... 54

EXHIBIT H: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS..... 56



NOTICE OF REQUEST FOR PROPOSALS

(RFP): 8-1760: “CONSTRUCTION MANAGEMENT SERVICES FOR THE ANAHEIM CANYON METROLINK STATION IMPROVEMENT PROJECT”

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide construction management services for the Anaheim Canyon Metrolink station improvement project.

The Authority has set an **8%** Business Enterprise (DBE) participation goal for this project.

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

1. Final 30% Design Plans – Anaheim Canyon Metrolink Station Improvement Project

Proposals must be received in the Authority’s office at or before 2:00 p.m. on August 23, 2018.

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: Michael Le, 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: Michael Le, 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 8-1760, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction Management Services
Services (General)	Inspection Services
Professional Consulting	Administration of Contracts: Summary of Work, Quality Control, Project Close
Professional Services	Architectural & Engineering Design Consulting
	Construction Consulting
	Environmental Consulting
	Inspection - Testing & Analysis
	Land Surveying

A pre-proposal conference will be held on July 26, 2018, at 9:00 a.m. at 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.

The Authority has established September 27, 2018, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held on July 26, 2018, 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:

Michael Le, Contract Administrator
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560. 5314, Fax: 714.560.5792
Email: mle1@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 August 6, 2018.
- 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: mle1@octa.net

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than August 13, 2018. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Michael Le, 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>
Construction	Construction Management Services
Services (General)	Inspection Services
	Administration of Contracts: Summary of Work, Quality Control, Project Close
Professional Consulting	Architectural & Engineering Design Consulting
	Construction Consulting
	Environmental Consulting
Professional Services	Inspection - Testing & Analysis
	Land Surveying

Inquiries received after 5:00 p.m. on August 6, 2018, 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 August 23, 2018.

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: Michael Le, 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: Michael Le, 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 with fully burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A.

L. CONFLICT OF INTEREST

All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work

identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

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

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

M. PREVAILING WAGES

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

It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. The 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. DEBARMENT & SUSPENSION

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

Unless otherwise permitted by law, any person or firm that is debarred, suspended, or voluntarily excluded, as defined in the Federal Transit Administration (FTA) Circular 2015.1, dated April 28, 1989, may not take part in any federally funded transaction, either as a participant or a principal, during the period of debarment,

suspension, or voluntary exclusion. Accordingly, the Authority, acting on behalf of the district, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A process has been established by 2 CFR Part 180, as adopted and supplemented by 2 CFR Part 1200 as a means to ensure that debarred, suspended, or voluntarily excluded persons or firms do not participate in Federally assisted projects. A person or firm that is unable to provide a positive certification as required by the solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

P. DISADVANTAGED BUSINESS ENTERPRISE

The Authority has established a 8 percent (8%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12-point font, double-spaced and submitted on 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 Michael Le, 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 labor-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. **Status of Past and Present Contracts Form**

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

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

2. **Disadvantaged Business Enterprise Program and Forms**

Offeror shall complete Exhibit D-1, Exhibit D-2, and Exhibit D-3 per the instructions set forth in "DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROVISIONS FOR DOT-ASSISTED CONTRACTS."

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 \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes, under Exhibit E, 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 F, during the term of the awarded Agreement.

5. Certification of Consultant, Commissions & Fees

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

6. Proposal Exceptions and/or Deviations Form

Offerors shall complete Exhibit H 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 September 27, 2018, 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 Transit Committee, the Offeror(s) with the highest ranking. The Transit Committee 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 will be required to submit to an audit of its financial records to confirm its financial stability and the Offeror's accounting system. The selected offeror will be required to submit to the Authority's Accounting Department a current IRS W-9 Form prior to commencing work.

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

EXHIBIT A: SCOPE OF WORK

SCOPE OF WORK

CONSTRUCTION MANAGEMENT SERVICES FOR THE ANAHEIM CANYON METROLINK STATION IMPROVEMENTS PROJECT

1.0 GENERAL DESCRIPTION OF SERVICES

The Orange County Transportation Authority (AUTHORITY) is responsible for developing a large number of transportation projects in Orange County, including projects associated with highway and rail facilities.

The AUTHORITY'S management of these projects includes construction management, material testing and inspection services. The AUTHORITY is obligated to deliver these projects using the funds available and in a timely manner. Consultant services are needed to perform these duties by providing staff assistance and technical expertise to manage the construction phase of the Anaheim Canyon Metrolink Station Improvement Project (PROJECT).

1.1 Description of the Project

The AUTHORITY, in coordination with Metrolink, operated by the Southern California Regional Rail Authority (SCRRA), and the City of Anaheim (CITY), proposes the construction of a second platform and station track to allow for more than one train to serve the station and/or pass through the station area at a time on the SCRRA's Olive Subdivision between milepost (MP) 0.80 and MP 1.35 in the City of Anaheim.

The project consists of the following features:

- Construction of approximately 3,400 linear feet of new siding track (2nd track) and two new turnouts. In the station area, the new track will be built to the west of the existing single track, then to the north of E. La Palma Avenue, the new track will transition to be built on the east side of the existing track.
- Establish two new Control Points (CPs) at the new turnouts. Associated railroad signal and communications modifications will be required to accommodate new 2nd track and pedestrian safety improvements at grade crossings.
- Construction of improvements to the existing at-grade crossings of E. La Palma Avenue and Tustin Avenue to accommodate the new 2nd track; including new street improvements, relocation of existing railroad signal warning devices and pedestrian safety improvements. Includes reconstruction and widening of sidewalk elements to accommodate the relocation of the pedestrian grade crossing warning devices, gates and channelization railing.
- Relocation or possible closure of an existing driveway along the north edge of E. La Palma Avenue, just west of the railroad tracks, to accommodate the second track and provide for grade crossing safety improvements. This work will be within CITY public right-of-way; however, a temporary construction easement is anticipated to be required for this work.

- Relocation of an existing driveway along the south edge of Tustin Avenue, just east of the railroad tracks, to accommodate the second track and provide the required area for at-grade crossing safety improvements. This work will be within the CITY public right-of-way, however a temporary construction easement is anticipated to be required for this work and the reconfiguration of parking stalls for no net loss of parking to the private property owner.
- Extension of the existing 510-foot long station platform to meet the current required Metrolink standard platform length of 680 feet, which supports an eight-car train.
- Construction of a new 680-foot long second platform and associated facilities on the west side of the new 2nd track.
- Construction of 832 linear feet of retaining wall west of new platform to accommodate the difference in grade from the top of proposed platform to existing ground and to protect excessive fill over an existing 36-inch So Cal Gas line located within a 10-foot easement along the western boundary of the railroad right-of-way.
- Construction of new ADA-compliant pedestrian pathways and sidewalks to provide pedestrian access between the existing parking lot and proposed second platform.
- Reconstruction of a portion of the existing sidewalk, curb and gutter and roadway, and associated striping to provide a Class II bike path extension across the railroad grade crossing area, along the south edge of eastbound E. La Palma Avenue up to Tustin Avenue. This work will be within AUTHORITY right-of-way and the City public right-of-way.
- Construction of a bus pad/stop on eastbound E. La Palma Avenue on the nearside of the railroad grade crossing.
- Relocation of an existing Positive Train Control communications tower located in the area proposed for the new second platform. The new location for the tower will be at the south end of new platform.
- Minor grading and drainage improvements, including a culvert extension to accommodate the second track.
- Relocate one Southern California Edison (SCE) power pole in the south east quadrant of the E. La Palma Avenue grade crossing, and relocate one SCE power pole guy wire on the east side of the railroad right-of-way between E. La Palma Avenue and Tustin Avenue.
- Extend to the west of the existing track, two existing 60-inch Reinforced Concrete Pipe with concrete collar just south of the Tustin Avenue grade crossing.

The estimated construction cost for the PROJECT is \$14,000,000.

1.3 Construction Management Approach

The CONSULTANT services shall generally include, but are not limited to, administration of the construction contract, coordination of the activities of the CONTRACTOR with the services of the project design engineer, performance of quality assurance inspections and management of independent quality assurance testing, preparation of daily construction activity reports, safety oversight and enforcement, labor compliance oversight and enforcement, communications between the CONTRACTOR and all other project participants, processing, collecting and maintaining of project communications and records, reviewing and recommending of CONTRACTOR progress payments, processing of change order requests, implementing and processing change orders, schedule reviews, Storm Water Prevention Pollution Program (SWPPP) inspections, and processing claims.

CONSULTANT, under this solicitation and Consulting Services Agreement shall function as an agent of AUTHORITY by providing specialized construction management expertise as required to effectively manage the construction PROJECT and administer the Construction Contracts in accordance with the guidelines provided in the AUTHORITY Rail Programs Department Construction Management Procedures.

1.4 Project Schedules

The current tentative project schedule for the Anaheim Canyon Metrolink Station Improvement Project will be as follows:

Project Construction

Construction Project Advertisement:	July 2019
Award of Contract:	November 2019
Construction Start:	December 2019
Construction completion:	March 2021
Project Closeouts	April 2021

1.5 Definitions

As used throughout this Agreement, the following terms shall have the meanings set forth below:

AUTHORITY shall be the ORANGE COUNTY TRANSPORTATION AUTHORITY.

PROJECT MANAGER shall mean the ORANGE COUNTY TRANSPORTATION AUTHORITY's Project Manager, being the administrator of this Agreement.

CITY shall be the City of Anaheim.

PROJECT shall mean all of the components included in the plans and specifications, existing or proposed.

CONSULTANT shall mean the firm responsible for the Construction Management and Materials testing, and construction inspection of the PROJECT.

DESIGN CONSULTANT shall mean the Architectural/Engineering firm responsible for the design of the PROJECT.

CONTRACTOR shall mean the General CONTRACTOR awarded a contract to construct the PROJECT.

TESTING AND INSPECTION shall mean the firm responsible for Soils and Material Testing and Inspection Services for the PROJECT.

2.0 SPECIFIC SCOPE OF SERVICES

2.1 General Requirements

2.1-1 The number of project personnel and duration of the assignments will vary depending on the needs of the project. The final number of personnel and exact duration of assignment will be determined by AUTHORITY. CONSULTANT personnel shall be available within two (2) weeks from written notification by AUTHORITY, and up to a maximum of three (3) months after AUTHORITY's acceptance of the construction projects.

2.1-2 As primary administrator of the construction contract, the CONSULTANT shall endeavor to insure that the CONTRACTOR meets all requirements under the terms of the agreement between the CONTRACTOR and AUTHORITY. CONSULTANT shall notify AUTHORITY promptly of any CONTRACTOR deviations from the contract requirements and make recommendations for action by AUTHORITY.

2.1-3 CONSULTANT shall assist AUTHORITY in verifying the CONTRACTOR's compliance with the safety provisions and the accident and injury prevention provisions of the construction contract.

2.1-4 CONSULTANT shall monitor the CONTRACTOR's traffic control measures and practices and work to cause any deficiencies to be remedied promptly by the CONTRACTOR.

2.1-5 All services required hereunder shall be performed in accordance with latest CITY, Metrolink, and other applicable regulations, policies, procedures, manuals and standards.

2.1-6 CONSULTANT shall furnish a Project Manager to coordinate the CONSULTANT's staffing and operations with those of the AUTHORITY and the AUTHORITY's other consultants. The Project Manager shall be responsible for all matters related to the CONSULTANT's personnel and operations. CONSULTANT's Project Manager shall be accessible to AUTHORITY at all times during AUTHORITY's normal working hours.

2.1-7 Under the direction of AUTHORITY, the CONSULTANT's Project Manager will assume the following functional responsibilities:

- a) Review, monitor, train, and provide general direction for CONSULTANT's personnel.
- b) Assign personnel to the PROJECT on an as-needed basis and as approved by the AUTHORITY.
- c) Administer personnel leave, subject to approval of the AUTHORITY.
- d) Prepare monthly reports for delivery to AUTHORITY.

2.1-8 CONSULTANT shall provide construction project management services to control and manage work of the CONTRACTOR. CONSULTANT shall perform the following administrative activities related to the work of the CONTRACTOR:

- a) Prepare, circulate and file correspondence and memos as appropriate.
- b) At the end of each month, the CONSULTANT shall report the progress of the work by the CONTRACTOR. Progress shall be based on actual work accomplished compared to estimated progress toward completion. Progress payments will be based upon work completed per the approved Schedule of Values.

- c) The CONSULTANT shall submit one copy of a monthly Progress Report to the AUTHORITY Project Manager consisting of a written narrative and an updated progress and expenditure curve. This report shall be received no later than the tenth (10th) 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.

2.1-9 To ensure an understanding of contract objectives, meetings between AUTHORITY and the CONSULTANT will be held as often as deemed necessary. All work objectives, the work schedules, the terms of the contract, and any other related issues, will be discussed and any problems will be resolved promptly by the CONSULTANT.

2.1-10 AUTHORITY will designate a Project Manager to administer the CONSULTANT Agreement and provide general direction to the CONSULTANT.

2.1-11 Detailed resumes of CONSULTANT personnel must be submitted to AUTHORITY for review and approval prior to assignment to the PROJECT. AUTHORITY and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by the CONSULTANT's personnel. If, at any time, the level of performance is below expectations, AUTHORITY shall have the right to request removal of any project personnel. AUTHORITY may request another person be assigned as needed.

2.1-12 If a CONSULTANT's employee is on a leave of absence, the CONSULTANT's Project Manager shall propose and provide an equally-qualified replacement employee until the assigned employee returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee and shall have the qualifications acceptable to the AUTHORITY.

2.1-13 The typical workday includes all hours worked by the AUTHORITY's construction CONTRACTOR, normally 40 hours per week. If ordered by the AUTHORITY, overtime and night work for the CONSULTANT's employees may be required. The Construction CONTRACTOR's operations may be restricted to specific hours during the week, which shall become the normal workday for CONSULTANT's personnel. On days when work is not performed by the Construction CONTRACTOR, such as weather days, suspension of work, holidays, etc., CONSULTANT services shall not be provided unless authorized by the AUTHORITY. The AUTHORITY will provide eight (8) hours advance notice if CONSULTANT services are not required.

2.1-14 All personnel shall be knowledgeable of, and comply with, all applicable local, and federal regulations; cooperate and consult with AUTHORITY officials during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the contract documents and project plans and specifications.

2.1-15 CONSULTANT shall keep detailed project records and document the work of the PROJECT as directed by the AUTHORITY.

2.1-16 AUTHORITY shall decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed by CONSULTANT.

2.1-17 CONSULTANT shall furnish a representative to perform the usual functions of the Resident Engineer, as the AUTHORITY's authorized representative, who will act on behalf of the AUTHORITY within the limits authorized in writing by the AUTHORITY. The Resident Engineer shall manage all field operations relating to project inspection, surveying, material testing, measurement and payment, administration, and conflict resolution.

2.1-18 AUTHORITY will provide CONSULTANT with the following:

- a) Approved project plans, technical specifications, and general and special conditions for the PROJECT.
- b) AUTHORITY manuals, standard forms and other policies and procedures to be followed by CONSULTANT's personnel in the performance of the work. Manuals and standards furnished by AUTHORITY are for CONSULTANT's use only and shall be returned at the end of the contract period or when no longer needed.
- c) Appropriate soils and materials testing quality assurance forms for inspections and the tracking and monitoring test data in accordance with the AUTHORITY's Quality Assurance Program.

2.2 Construction Management Services

2.2-1 The CONSULTANT, acting as an agent of AUTHORITY, shall provide administrative, management and related services as required to plan, monitor, coordinate and execute activities of the AUTHORITY, the Design Engineer, the CONTRACTOR, the Metrolink Railroad, utility companies, local agencies, AUTHORITY's other consultants, and AUTHORITY's vendors with each other and with the activities and responsibilities of the CONSULTANT, the AUTHORITY, and the Design Engineer to complete the PROJECT in accordance with AUTHORITY's objectives for cost, time and quality. The CONSULTANT shall provide sufficient organization, personnel and management to carry out the requirements of the AUTHORITY.

2.2-2 Budget and Cost Control. Provide monthly monitoring of the approved PROJECT Budget and PROJECT Costs, showing actual costs for activities in progress and estimates for uncompleted tasks. Identify variances between actual and budgeted or estimated costs, and immediately advise AUTHORITY whenever projected costs exceed budgets or estimates, with recommend corrective action.

2.2-3 Cost Accounting. Maintain cost accounting records on authorized PROJECT Work performed under unit costs, additional PROJECT Work performed on the basis of actual costs of labor and materials, or other PROJECT Work requiring accounting records.

2.2-4 Project Work Changes. Recommend necessary or desirable PROJECT changes to the AUTHORITY, review requests for changes by the AUTHORITY and project stakeholders and prepare change cost estimates, if necessary. Determine that changes are reasonable and appropriate, submit recommendations to the AUTHORITY, and process proposed and actual PROJECT changes in accordance with agreed procedures.

2.2-5 Administration of Construction Contract. The CONSULTANT in cooperation with the Design Engineer, shall provide administration of the Contract for Construction as set forth herein and in the Construction Contract Documents, which include the Plans, the General and Special Conditions, and the Technical Specifications.

2.2-6 CONTRACTOR Applications for Payment. Implement procedures for the review and processing of applications for payment by the CONTRACTOR, AUTHORITY's vendors and AUTHORITY's other service providers for progress and final payments. Certify Applications for Payment by the CONTRACTOR, AUTHORITY's vendors and AUTHORITY's other service providers in accordance with the Contract Documents and agreed procedures. Advise AUTHORITY of known incomplete or unsatisfactory items of Work and obtain from the CONTRACTOR, AUTHORITY's vendors or AUTHORITY's other service providers a schedule for correcting or completing such Work. With each CONTRACTOR's, AUTHORITY's vendors or AUTHORITY's other service provider's progress payment request or invoice, the CONSULTANT's Resident Engineer shall certify in writing that:

"Based on the Resident Engineer's observations at the site of the Project and on the data comprising the Application for Payment or Invoice, the Resident Engineer hereby certifies that the Work has progressed to the point indicated and that, to the best of the Resident Engineer's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Resident Engineer."

2.2-7 Certificate for Payment by the Resident Engineer. The issuance of a Certificate for Payment by the Resident Engineer shall further constitute a representation that the CONTRACTOR, AUTHORITY's vendor or AUTHORITY's other service provider is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the CONSULTANT has (1) reviewed construction means, methods, techniques, sequences or procedures, (2) ascertained how or for what purpose the CONTRACTOR has used money previously paid on account of the Contract Sum, or (3) reviewed copies of requisitions received from sub-CONTRACTORS and material suppliers to substantiate the CONTRACTOR's right to payment.

2.2-8 CONTRACTOR Insurance Requirements. Receive and review bonds and certificates of insurance from the CONTRACTOR, AUTHORITY's vendors and AUTHORITY's other service providers for compliance with their Contract and forward them to AUTHORITY. Notwithstanding the review of certificates of insurance by the CONSULTANT, the CONTRACTOR, AUTHORITY's vendors and AUTHORITY's other service providers shall remain solely liable for providing insurance in accordance with the provisions of their Contract. On behalf of the AUTHORITY, notify the AUTHORITY's vendors and AUTHORITY's other service providers or CONTRACTOR of the expiration of insurance or increases in bond values due to change order additions. CONSULTANT shall not recommend progress payments unless insurance and bonds are in full force and effect.

2.2-9 Change Orders to Construction Contract. Monitor and manage the initiation, preparation, review and justification for Change Orders to the Contracts for Work. Suggest any improvements to the process considered appropriate. Recommend appropriate division of proposed Change Order Work among the CONTRACTOR and AUTHORITY's vendors and AUTHORITY's other service providers. The CONSULTANT shall recommend to AUTHORITY PROJECT Change Orders judged by the CONSULTANT to be desirable, or necessary; review all cost estimates prepared by the Design Engineer; prepare independent cost estimates, as necessary; evaluate CONTRACTOR requests for Change Orders and express a written opinion about the CONTRACTOR's entitlement to compensation and the reasonableness of the amount

requested. Conduct negotiations with the CONTRACTOR and advise AUTHORITY of the acceptability of the CONTRACTOR's proposed adjustment to the Contract Time or Contract Sum for Change Orders. Prepare and submit for the AUTHORITY's approval the Change Order documents and supporting data.

2.2-10 Project Cost Reduction Proposals. Monitor and aggressively manage the initiation, preparation, review and justification for PROJECT cost reduction proposals submitted by the CONTRACTOR, Design Engineer, AUTHORITY, or other project participants to affect the most desirable benefit to the PROJECT. The CONSULTANT shall recommend to AUTHORITY cost reduction ideas judged by the CONSULTANT to be desirable, or necessary; review all estimates prepared by the Design Engineer and, if appropriate, suggest revisions; prepare independent cost reduction cost estimates, as necessary; evaluate CONTRACTOR cost reduction proposals and express a written opinion about the proposed adjustment to the Contract Sum or Contract Time. Conduct negotiations with the CONTRACTOR and advise AUTHORITY of the acceptability of the CONTRACTOR's proposed adjustment to the Contract Time or Contract Sum for cost reduction Change Orders. Prepare and submit for the AUTHORITY's approval the Change Order documents and supporting data.

2.2-11 Claim Review and Analysis. Provide CONTRACTOR Claim tracking and analysis and make recommendations to AUTHORITY for Claim resolution during the duration that this Agreement is in force.

2.2-12 Periodic Project Progress Reporting. Record the actual progress of the Project. Submit a written progress report to AUTHORITY, including information on the CONTRACTOR's Work, and the entire PROJECT, indicating major work activities and the percentages of completion, and the status of any RFI's, Change Orders, and Claims in process, in a format acceptable to the AUTHORITY. The reports shall also include representative photographs of the Work noted in the narrative report that was in progress or completed during the previous month. Progress Reports are generally required monthly, but the AUTHORITY may request other periodic or special reports be prepared, as events may dictate. Also see "Monthly Reports" section below.

2.2-13 Daily Project Progress Documentation. Maintain a daily log or report containing a record of weather, CONTRACTORs Work on the site, number of workers, Work accomplished, inspections and tests conducted, problems encountered, delays, other similar relevant data, documenting any significant issues in writing and with photographs, all in a format acceptable to the AUTHORITY. Make the daily log available to AUTHORITY and make copies upon AUTHORITY's request.

2.2-14 Project Meetings. Schedule meetings and prepare meeting minutes for pre-construction, construction and progress meetings, and other on-site construction related meetings of the Project's team members. Lead the meetings and coordinate Work and other activities between the CONTRACTORs and other Project participants. Prepare and promptly distribute meeting minutes within three (3) working days. During the construction phase, a regular weekly meeting shall be conducted by the CONSULTANT at the Project Site with the AUTHORITY's Project Manager, and the CONTRACTOR. Major construction sub-CONTRACTORs and representatives of other project stakeholders shall be invited to the regular weekly meetings, as needed or required.

2.2-15 CONTRACTOR Schedules. Review the CONTRACTOR's preliminary 120-day schedule, the baseline schedule and all schedule updates, schedule revisions and time impact analyses submitted by the CONTRACTOR under the terms of the Construction Contract. Respond in writing to the CONTRACTOR with review comments and an acceptance or rejection determination consistent with the requirements of the Contract Documents. Include in the monthly progress report a summary-level bar chart, in a format acceptable to the AUTHORITY, the latest CONTRACTOR submitted schedule indicating, at a minimum, all staging and phasing milestone activities and contractual completion dates.

2.2-16 Satisfactory Performance of the CONTRACTOR. CONSULTANT shall use its best efforts within the requirements of this Agreement and the Construction Contract to achieve satisfactory performance from the CONTRACTOR. Recommend courses of action to AUTHORITY when the requirements of the Contract are not being fulfilled, and the CONTRACTOR will not take satisfactory corrective action.

2.2-17 Determine Compliance of Work. Determine that the Work of each of AUTHORITY's vendors and AUTHORITY's other service providers, and CONTRACTOR is being performed in accordance with the requirements of the Contract, Purchase Order, and/or Contract Documents. Inspect and monitor the work for defects and deficiencies. As appropriate, make recommendations to the AUTHORITY regarding special inspections or testing of Work not in accordance with the provisions of the Contract Documents whether or not such Work is fabricated, installed or completed. Subject to review and approval by AUTHORITY, reject Work which does not conform to the requirements of the Contract Documents. Notify the CONTRACTOR, AUTHORITY's vendors and AUTHORITY's other service providers of observed defects and deficiencies in the Work and monitor the correction of the defects and deficiencies until corrected.

2.2-18 Quality Assurance Inspection Services. Provide continuous inspection of the Work of the CONTRACTOR at the site when being performed. Provide inspection of Work at off-site locations when required to insure compliance with Construction Contract requirements. Observe the work of the CONTRACTOR for compliance with the Contract Documents, review testing and inspection reports, and after consultation with the Design Engineer and AUTHORITY, if necessary, notify the CONTRACTOR of observed defects and deficiencies in the Work. Also see Section 2.3 "Construction Inspection Services" below.

The Construction Contract requires that the Construction CONTRACTOR develop and implement a CONTRACTOR Quality Control program that includes all contractually required material testing and special inspections to be managed and paid for by the CONTRACTOR through the use of independent third-party testing laboratories and inspectors certified and accredited by the State of California Department of Transportation.

Consistent with the AUTHORITY's Quality Assurance Program, the CONSULTANT shall perform its inspection services in a quality assurance role through continuous inspection of the Work, and through quality assurance spot-testing, when necessary. CONSULTANT shall review, log, organize, and file copies of all CONTRACTOR Quality Control tests and inspection reports to assure that the CONTRACTOR's Quality Control Program meets all of the Construction Contract requirements. CONSULTANT shall require that the CONTRACTOR take appropriate and acceptable action when failing test reports indicate defective or non-compliant work.

CONSULTANT shall maintain a tracking log that lists all notices of non-compliant or defective work issued to the CONTRACTOR and shall monitor the status of all such items until satisfactorily corrected or resolved.

2.2-19 Quality Assurance Surveys. The Construction Contract requires that the CONTRACTOR perform all required surveying and grade checking tasks necessary to accomplish the Work. The CONSULTANT shall perform quality assurance surveying checks of the CONTRACTOR's Work as deemed necessary and appropriate to ensure the CONTRACTOR's compliance with the Contract. Special surveying and engineering calculations may be required to investigate potential non-compliant Work, and to measure unit price pay item quantities, as required by the Resident Engineer.

2.2-20 Environmental Mitigation and Monitoring. The CONSULTANT shall be responsible for environmental mitigation monitoring to ensure compliance with the Mitigation Measures identified in the Phase I Environmental Site Assessment report prepared during Preliminary (35%) Design in 2016, and Phase II Environmental Site Assessment report to be completed as a part of the Final Design in the last quarter of 2018. CONSULTANT shall monitor the CONTRACTOR's operations and endeavor to assure the CONTRACTOR's compliance with the mitigation measures identified within the environmental approval document. The CONSULTANT shall observe and assist with the policing and enforcement of the environmental mitigation and monitoring program measures in accordance with the established requirements, and shall report promptly any deficiencies to the CONTRACTOR and appropriate parties. Complete appropriate documentation as needed.

2.2-21 Storm Water Pollution Prevention Program. The Construction Contract Documents describe the requirements and Work related to erosion control and storm water pollution prevention measures. CONSULTANT shall review and coordinate other required agency reviews of the CONTRACTOR's submitted Storm Water Pollution Prevention Program and provide review comments and an acceptance or rejection determination. CONSULTANT shall inspect the erosion control measures and storm water pollution prevention program work on a regular basis and cause the CONTRACTOR to immediately correct any deficiencies. Complete any necessary SMARTS Storm Water Program database documentation and submittals.

2.2-22 Safety Program. Review the CONTRACTOR's submitted Safety Program and Injury and Illness Prevention Program and provide review comments and an acceptance or rejection determination consistent with the Construction Contract requirements and AUTHORITY Safety Program requirements. Review any periodic safety inspection reports prepared by the CONTRACTOR, or others. Notify the CONTRACTOR and the AUTHORITY of safety violations observed during the CONSULTANT's inspection of Work or review of inspection reports. CONSULTANT shall monitor and enforce CONTRACTOR's Safety Program. The CONSULTANT shall also prepare, implement and enforce a Site Specific Safety Program for CONSULTANT staff. Coordinate with AUTHORITY safety staff as needed to review submittals, site safety inspections, and other safety related activities.

2.2-23 Submittals and Samples. Receive from the CONTRACTOR and review for compliance with submittal procedure requirements all Submittals and Samples. Coordinate them with information contained in related documents and transmit to the Design Engineer, or other approving authority, as appropriate. In collaboration with the Design Engineer, establish and implement procedures for expediting the processing and approval of Submittals and Samples. Prepare weekly tracking reports representing new Submittals submitted for the past week,

Submittals which have been reviewed and approved, and which Submittals are being reviewed by what party. Communicate to the AUTHORITY unsatisfactory progress on Submittals and Samples which have cost or time consequences.

2.2-24 Requests for Information. Receive from the CONTRACTOR and forward to the Design Engineer, or other appropriate party as required, any CONTRACTOR requests for information (RFI) of the meaning and intent of the Plans and Specifications or Contract requirements, and assist in the resolution of questions which may arise. The CONSULTANT shall respond to the CONTRACTOR directly if the reply can be determined CONSULTANT's review of the Contract requirements. The CONSULTANT shall refer all CONTRACTOR questions for interpretation of the design intent to the Design Engineer for its response. CONSULTANT shall receive all RFI replies, evaluate the reply for completeness and return the reply to the CONTRACTOR. CONSULTANT shall prepare weekly tracking reports listing new RFI's issued for the past week, RFI's which have been resolved, and outstanding RFI's yet to be resolved by the CONSULTANT, Design Engineer, or others. Communicate to the AUTHORITY RFI's which threaten the progress of the project or which represent cost implications.

2.2-25 Tracking Logs. Develop, or use AUTHORITY provided tracking logs, and maintain tracking logs on a daily basis indicating the current status of all action items including RFI's, change proposals, change orders, change directives, submittals, non-compliant QC tests, non-compliant or defective work, and other processes, as necessary, in a format acceptable to the AUTHORITY. Provide paper and electronic copies of log reports to the AUTHORITY and Design Engineer upon request and as required as part of periodic reports.

2.2-26 AUTHORITY-Furnished CONTRACTOR-Installed Equipment and Materials. Manage and oversee the submittal processing and coordination, receiving, storage, protection, security, inventory, turnover, commissioning and closeout of AUTHORITY-Furnished CONTRACTOR-Installed Equipment and Materials until the items are incorporated into the work.

2.2-27 AUTHORITY-Furnished AUTHORITY-Installed Equipment. Manage and oversee the submittal processing and coordination, coordination of rough-ins, receiving, storage, protection, security, inventory, installation, commissioning and closeout of AUTHORITY-Furnished AUTHORITY-Installed Equipment and ensure the cooperation and coordination between the CONTRACTOR working on Site and the AUTHORITY's vendors.

2.2-28 Project Record Documents. Maintain at the on-site Project office, on a current basis: a record copy of all Contracts, Drawings, Plans, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction; shop drawings; product data; Samples; Submittals; purchases; materials; equipment; applicable handbooks; maintenance and operating manuals and instructions; other related documents and revisions which arise out of the Contracts or Work. Make all records available to AUTHORITY and the Design Engineer. At the completion of the Project, deliver all such records to the AUTHORITY organized and boxed in a manner acceptable to the AUTHORITY.

2.2-29 Project Communications and Document Control. All written and electronic communications between the CONTRACTOR and AUTHORITY and between the CONTRACTOR and Design Engineer related to the PROJECT shall flow through the CONSULTANT. As the AUTHORITY's agent, the CONSULTANT shall manage the CONTRACTOR's communications and submissions directed to the AUTHORITY or Design Engineer, forward the submissions, inquiries and requests to the appropriate party for a

response, receive the reply, evaluate the reply for completeness, respond to the CONTRACTOR, and endeavor to ensure that the CONTRACTOR's submissions, inquiries and requests are responded to in a timely manner. CONSULTANT shall create, maintain, file and store all PROJECT correspondence, records and documents in accordance with the AUTHORITY's Document Control System.

2.2-30 Punchlist Preparation and Completion. When the CONSULTANT considers the CONTRACTOR's Work or a designated portion thereof substantially complete, the CONSULTANT shall oversee the preparation by the CONTRACTOR of a list of incomplete or unsatisfactory items and a schedule for their completion. The CONSULTANT shall conduct, with the assistance of the Design Engineer, and representatives of the CITY or applicable agencies, final inspections of the Work and the CONSULTANT shall issue the punch list in coordination with the CONTRACTOR. The CONSULTANT shall monitor the CONTRACTOR during the correction and completion of the punch list Work and coordinate re-inspections until all items are corrected or approved.

2.2-31 Equipment Commissioning. In cooperation with the AUTHORITY and participation by the City's and/or SCRRRA's maintenance personnel, observe and advise the AUTHORITY of the CONTRACTORs checkout of utilities, operational systems and equipment for readiness and assist in their proof testing, commissioning and turn-over to the City or SCRRRA having jurisdiction over the facility. Oversee and manage the commissioning process to insure a complete operating facility upon Substantial Completion.

2.2-32 Close-Out Process. Evaluate the completion of the Work of the CONTRACTOR and make recommendations to the AUTHORITY with regard to the CONTRACTOR's compliance with all project close-out requirements and final completion of all Work of the Construction Contract. Secure and transmit to AUTHORITY required guarantees, affidavits, releases, bonds, lien waivers, keys, excess stock, spare parts, operation and maintenance manuals, record drawings and other Project close-out documents required by the Construction Contract Documents.

2.2-33 Monthly Project Status Reports. Prepare written project status reports during the construction phase in a format acceptable to the AUTHORITY on a monthly basis describing the status of the Project. The data date of the report shall be the last day of the month, or other date acceptable to the AUTHORITY. Four (4) paper copies, and one electronic copy, shall be submitted to the AUTHORITY within seven (7) calendar days after the data date of the report.

Information contained in the report shall include, but not be limited to:

- a) Project summary,
- b) Project schedule status – compare actual progress to objectives, including a summary-level bar-chart showing previous update targets and current schedule update, percent complete per contract value and time.
- c) Description of the CONTRACTOR Work activities planned to be performed next month,
- d) Status of all Submittals, RFI's, Change Orders and Claims in process, including copies of tracking logs,
- e) A description of any new CONTRACTOR notices of Claim,

- f) Project budget status and estimate of probable cost,
- g) Identification of risks to the Project, and
- h) Any performance problems of the CONTRACTOR.

2.3 Construction Inspection Services

The number of CONSULTANT inspection personnel required for the PROJECT is expected to fluctuate based on the needs of the project. CONSULTANT shall perform construction inspection services, as well as office engineering and field calculations to support the construction of the PROJECT.

Inspection work shall not be performed when conditions (such as weather, traffic, and other factors) prevent a safe, efficient operation or as directed by the AUTHORITY.

Tasks and assignments to be performed by CONSULTANT personnel may include, but are not limited to, the following:

2.3-1 Perform and assist in performing the duties of construction quality assurance inspection and engineering including: rail, paving, base, and sub grade inspection, utility relocation inspection, structures inspection, electrical inspection, welding inspection, drainage system inspection, sanitary sewer and water main inspection, signing and striping inspection, landscaping inspection, quantity calculations, checking grade and alignment, monitoring construction traffic control, observing materials sampling and testing, and ensuring that all work is in compliance with project plans and specifications. Inspection will also be required for advanced utility relocations or installations as directed by the AUTHORITY.

2.3-2 Identify actual and potential problems associated with the construction project and recommending sound engineering solutions to the AUTHORITY.

2.3-3 Maintain an awareness of safety and health requirements and enforce applicable regulations and contract provisions for the protection of the public and project personnel.

2.3-4 Prepare calculations, records, reports and correspondence related to project activities.

2.3-5 Assist in the preparation of "As-Built" plans and other record documents.

2.3-6 Analyze the project plans and specifications for possible errors and deficiencies and report such findings to the Resident Engineer, who will notify the AUTHORITY. If the AUTHORITY determines that changes are necessary, CONSULTANT's personnel shall assist in implementing and processing of changes to the Work.

2.3-7 Observe the performance of a variety of field quality control tests such as relative compaction, concrete slump tests, concrete cylinders, and other required field-tests. The CONTRACTOR is required to employ and pay for the services of independent third-party testing laboratories and inspectors certified and accredited by the State of California Department of Transportation to perform all contractually-required testing and special inspections. CONSULTANT's inspectors shall observe and report on the performance of all tests and special inspections performed by the CONTRACTOR's independent third-party testing laboratories and inspectors to ensure compliance with the Construction Contract requirements.

2.3-8 Assist the Resident Engineer with quantity measurement and calculations for progress pay estimates, documentation of CONTRACTOR work performance and project events, keeping records of extra work performance, implementation of minor changes in the work, implementation of revisions to the plans and specifications, and development of estimates for contract change orders.

2.3-9 Assist in preparing Force Account extra work reports and potential claim reports and be available to attend and support any change order and claim settlements meetings.

2.3-10 Assist in review of CONTRACTOR's schedule update data and status reports.

2.3-11 Perform and assist in performing Storm Water Pollution Prevention Plan (SWPPP) compliance inspections and related duties.

2.3-12 Perform and assist in performing Environmental Mitigation Plan compliance inspections and related duties.

2.3-13 Perform and assist in performing Utility and Advanced Utility installations and relocation inspections and related duties as directed by the AUTHORITY.

2.3-14 Report promptly to the Resident Engineer and notify the CONTRACTOR of safety violations or traffic control issues observed during the inspection of Work.

2.3-15 Construction inspection and materials sampling and testing shall be in accordance with:

- a) The PROJECT Plans, Technical Specifications and Special and General Conditions.
- b) AUTHORITY Construction Management Procedures and other AUTHORITY procedures.
- c) Other applicable Standards and Procedures

2.3-16 Miscellaneous Equipment, Inspection Vehicles and Tools. CONSULTANT shall provide all necessary instruments, tools and safety equipment required for their personnel to perform their work accurately, efficiently, and safely. CONSULTANT shall provide other field materials such as measuring and testing equipment and safety equipment, manuals and resource materials as needed, for use by their staff on the project. CONSULTANT shall provide each inspector and the Resident Engineer with a mobile phone and a computer with internet and email access.

2.3-17 Personnel Safety. In addition to the requirements specified elsewhere in this contract, the following also shall apply. CONSULTANT shall conform to the safety provisions of CITY and of AUTHORITY Construction and Safety Manuals as required. CONSULTANT's personnel shall wear white safety hard hats, orange vests, rubber-soled shoes, or other approved railroad attire at all times while working in the field. CONSULTANT shall provide appropriate safety training for all CONSULTANT's personnel required to work on and near the PROJECT site including any required Rail Safety training. All safety equipment and personnel protective devices and gear shall be provided by the CONSULTANT.

2.3-18 Perform and assist in performing Labor Compliance inspections and related duties.

2.4 Quality Assurance Surveying Services

CONSULTANT shall perform quality assurance surveying services to support the construction of the PROJECT as needed.

Tasks and assignments to be performed by CONSULTANT personnel will generally include, but are not limited to, the following:

2.4-1 Construction Staking Verification. CONSULTANT shall verify CONTRACTOR's construction staking, including but not limited to verification of finished grade pad elevations and locations, building corners, and similar survey checks on primary construction elements of the PROJECT. Additional special investigative surveys may be required as requested by the Resident Engineer and authorized by the AUTHORITY.

2.4-2 Post Construction Survey Verification. CONSULTANT shall verify that primary elements of PROJECT construction have been built to the lines and grades indicated on the contract plans and established in the contract documents. Additional investigative surveys may be required by AUTHORITY for project acceptance. The Resident Engineer or person in "responsible charge" of the survey shall bring to the AUTHORITY'S attention any discrepancies between the as-constructed conditions and final design conditions.

2.4-3 Control Survey Verification. CONSULTANT shall verify horizontal and vertical controls as necessary for verification of establishment of control points and benchmarks required for construction of PROJECT. This may require but would not be limited to project control surveys, restoring, renewing, referencing, relocating, and resetting existing control monumentations initially set by the CONTRACTOR, or similar verification tasks for the PROJECT control survey.

2.4-4 As-Built Drawing Survey Support. CONSULTANT shall coordinate with CONTRACTOR's surveyor to ensure accuracy of as-built drawings produced by CONTRACTOR. This activity may include but not be limited to providing electronic record information to support the development of PROJECT as-built drawings.

2.4-5 The above QA survey activities shall be performed in accordance with the current industry standards, the Professional Land Surveyors' Act, and in accordance with the direction of the AUTHORITY. Other surveying and related activities shall be performed as needed to administer and manage the PROJECT as directed by the Resident Engineer or AUTHORITY. These activities may include but not be limited to ROW survey verification, survey marker and monumentations verification, and coordination with CONTRACTOR's surveyor as necessary.

2.4-6 Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyors' Act. In accordance with the Act, "responsible charge" for the work shall reside with a Licensed Land Surveyor or a pre-January 1, 1982, Registered Civil Engineer, in the state of California.

2.4-7 Unless otherwise specified, control surveys shall conform to the latest SCRRA Standards.

2.4-8 Additional standards for specific surveying work may be included in a special survey request by the AUTHORITY. Such standards supplement the standards specified herein. If such additional standards conflict with the standards specified herein, the survey request standard shall govern over the standards herein.

2.4-9 Quality Assurance Surveying Services Deliverables. Deliverables to be created and maintained by the CONSULTANT shall include but not be limited to:

- a) Survey points, lines, and monuments shall be established, marked identified and referenced, as required by the survey activity and the requirements herein.
- b) Survey notes, drawings, calculations and other survey documents and information shall be completed as required herein.
- c) All original survey documents resulting from this contract (including original field notes, adjustment calculations, final results, and appropriate intermediate documents) shall be delivered to AUTHORITY and shall become the property of AUTHORITY. A copy of all survey documents furnished to AUTHORITY shall be retained by CONSULTANT for future reference.
- d) When a survey is performed with a total station survey system, the original field notes shall be a hard copy listing, in a readable format, of the data (observations) as originally collected and submitted by the survey party. The party chief shall sign the listing or if the chief is not licensed, the person in "responsible charge" of the survey shall sign. Such information shall be included in project records.
- e) Survey deliverables to AUTHORITY shall follow the format specified in the AUTHORITY's procedures.

2.4-10 Survey Personnel Safety. In addition to the requirements specified elsewhere in this contract, the following also shall apply. CONSULTANT shall conform to the industry safety provisions for work areas as established by the Authority Safety Program. CONSULTANT's personnel shall wear white hard hats, orange vests and rubber-soled/safety toe work boots at all times while working in the field. CONSULTANT shall provide appropriate safety training (including rail safety) for all CONSULTANT's personnel required to work on and near the PROJECT site. All safety equipment and personnel protective devices and gear shall be provided by the CONSULTANT.

2.5 Miscellaneous Equipment, Inspection Vehicles and Tools

CONSULTANT shall provide all necessary instruments, tools, and safety equipment required for their personnel to perform their work accurately, efficiently, and safely.

2.5-1 CONSULTANT shall provide nuclear gauges for their inspection personnel to perform soils and AC relative compaction field tests. Nuclear gauges shall be calibrated in accordance with Industry Standards.

2.5-2 CONSULTANT shall provide other field materials such as testing equipment and safety equipment, as needed, for use by their staff on the project.

2.6 Construction Management, Inspection and Deliverables

CONSULTANT shall create and maintain the following documentation and deliverables:

2.6-1 Daily inspection reports and extra-work diaries.

2.6-2 Monthly CONSULTANT progress reports prepared by the CONSULTANT's project manager.

2.6-3 Monthly Project Status Reports prepared by the Resident Engineer.

2.6-4 Approved Construction Contract progress payment and quantity documents delivered to the AUTHORITY no later than five (5) working days after the day specified as the payment application cut-off date or five (5) working days after the date that all information is provided by the CONTRACTOR, whichever is later.

2.6-5 Approved final payment quantity documents delivered to the AUTHORITY no later than five (5) working days after acceptance of the completed construction project by the AUTHORITY or five (5) working days after the date that all information is provided by the CONTRACTOR, whichever is later.

2.6-6 Field measurement reports, and all reports, calculations and other applicable documents prepared for the project as required by AUTHORITY procedures.

2.6-7 All correspondence, records, and other PROJECT documents described in the section titled Construction Management Services.

2.7 Field Office Requirements

The Field Office shall be provided by the CONTRACTOR.

The CONTRACTOR shall furnish a field trailer or office area for the AUTHORITY. Area provided for AUTHORITY use will be for the exclusive use of Authority CONSULTANT representatives and be located on or near the project site. These facilities shall be made available by the CONTRACTOR prior to beginning of Work at the site and will not be removed until substantial completion of Work at the site. The space provided for the AUTHORITY's use will be lockable and secure against access from the outside.

2.8 Certified Laboratory for Soils and Material Testing Services

The CONTRACTOR shall be responsible to provide quality Assurance/Quality Control Soils and Materials Testing Services. CONSULTANT shall provide a certified laboratory to perform soils and materials testing services on an as needed basis in order to validate construction CONTRACTOR test results.

2.8-1 The laboratory, whether temporary or permanent, is to be in the general vicinity of the project area and no more than 30 miles from the field office for the project.

2.8-2 Testing shall be performed in accordance with the California Test Methods and shall meet the latest requirement of ASTM.

2.8-3 Testing machines must be calibrated annually or more frequently by impartial means using devices of accuracy traceable to the National Bureau of Standards.

2.8-4 The laboratory shall participate in the AASHTO Materials Reference Laboratory (AMRL) or Cement or Concrete Reference Laboratory (CCRL) inspection programs as appropriate. Copies of applications, correspondence, reports, and corrective actions shall be provided to AUTHORITY if requested.

2.8-5 The Laboratory shall have a quality control plan and a quality assurance plan in effect during the entire time work is being performed under the contract. The plan shall include quality control, quality assurance, and equipment calibration programs for the laboratory.

2.8-6 The Laboratory shall maintain an inventory of the testing equipment (listing the manufacturer, model serial number, calibration, and tolerances).

2.8-7 The Laboratory shall maintain a laboratory procedure manual describing the methods used for recording, processing, and reporting data, the sources of references material, standards, and test methods.

2.8-8 CONSULTANT and the Laboratory shall be responsible for all soils and materials testing performed for the project include source testing if required.

2.8-9 CONSULTANT shall perform concrete batch plant inspections.

2.8-10 Spot welds shall be tested by the CONSULTANT using a testing method approved by SCRRRA.

2.9 Signal, Communications, and PTC Coordination

The construction of the Signal, communications, and Positive Train Control (PTC) for this project will be carried out by SCRRRA On-Call Contractor under a separate contract [Contract Task Order (CTO)]. This will require close coordination between the general CONTRACTOR and the signal Contractor for the construction of this project. The CONSULTANT will work closely with both general and signal Contractors and coordinate the work, windows, equipment and other critical issues.

The CONSULTANT will coordinate all signal, communications, and PTC related activities with the general CONTRACTOR during the construction, including the following activities:

- a) SCRRRA signal Contractor performing signal installation as a part of signal cutovers that will require same or separate exclusive track work windows as the general CONTRACTOR.
- b) The relocation of cables damaged by the general CONTRACTOR to be repaired by the signal Contractor which may require delays of up to 72 hours after SCRRRA has been notified of conflicts.

- c) Performance, documentation, and commissioning of all tests and inspection of signal apparatus and signal system as required by CFR 49 regulations.
- d) Rail bonding for all new, temporary and relocated turnouts.
- e) Removal, salvage, retirement, relocation, furnishing and installation of grade crossing and control point devices.
- f) Minor deviation in location (within 10 feet) of signal facilities.
- g) General CONTRACTOR construction of track installation and removal, bridge construction, rail and track renewal within crossing, installation of track switches, clearing and grubbing that will affect signal installation.

3.0 PERSONNEL QUALIFICATIONS AND RESPONSIBILITIES

3.1 Resident Engineer

The preferred minimum qualifications for the Resident Engineer assigned to this project are as follows:

- a) Licensed Civil Engineer in the State of California.
- b) Ten years relevant construction management experience on similar construction projects.
- c) Five years experience as a Resident Engineer, acting as the Owner's representative.
- d) Ability to work independently and perform all construction management field office duties.
- e) Thorough knowledge of construction practices, and the ability to read and interpret plans and specifications.
- f) Ability to make effective decisions concerning field problems and work in progress.
- g) Proficient in the use of computer application programs Word and Excel.
- h) Current OSHA 10 Hour Certification.

Under the direction of the AUTHORITY, the Resident Engineer will assume the following functional responsibilities, and shall possess experience in all of these areas:

- a) Act as the AUTHORITY's authorized representative in matters related to the construction phase of the PROJECT.
- b) Administer the Construction Contract between the AUTHORITY and the CONTRACTOR, and any other contract for equipment or material purchases between the AUTHORITY and vendors or for services between AUTHORITY and service providers for work incorporated into the PROJECT.
- c) Perform quality assurance inspections to achieve compliance with contract plans and specifications on all phases of construction, such as paving, structures, grading, drainage, sewer, water, utility relocation, electrical installation, sign installation and landscaping items.
- d) Perform quantity calculations for progress pay estimates and keep project records.

- e) Perform independent cost estimates (ICE) for change order work the CONTRACTOR may perform. This ICE effort will be separate from the cost estimate from the CONTRACTOR in order to verify quantities and costs of this work.
- f) Perform analytical calculations for items such as basic earthwork and grading.
- g) Maintain continuous communication with the AUTHORITY's Project Manager and staff, the Design Engineer's staff, field personnel, public outreach personnel, and with project neighbors to resolve community project problems and to advise them of work conditions affecting the neighborhood.

3.2 Office Engineer - Document Controller

The preferred minimum qualifications for the Office Engineer, who will also serve as the project Document Controller, are as follows:

- a) Three years relevant experience as an office engineer working on construction projects.
- b) Experience with project documentation requirements and document filing practices on public works construction projects, and experience in using electronic document management systems, for access to, and retention of project documents of all types.
- c) Proficient in the use of computer application programs Word and Excel, and experience with document management software such as Primavera Contract Manager, Expedition, Meridian Prolog Manager, e-Builder, or other similar document control systems.
- d) Experience in managing and processing submittals, request for information, change request, change directives, change orders, payment applications, deficiency notices, and other typical duties of an office engineer-document controller.
- e) Experience with web-based systems for the storage and retrieval of shared documents and drawings.
- f) Ability to work independently and meet deadlines.

Under the direction of the Resident Engineer, the Office Engineer - Document Controller will assume the following functional responsibilities, and shall possess experience in all of these areas:

- a) Manage the flow of correspondence and all other PROJECT documentation required to be managed by the CONSULTANT.
- b) Assist the CONSULTANT staff by performing administrative tasks as instructed.
- c) Log the issuance or receipt, and the disposition and processing steps, of all documents such as RFI's, VECP's, change order requests, submittals, change directives, change orders, deficiency notices, and other documents that are required to be tracked until accepted, approved or resolved.
- d) Insure that all documentation and records are being maintained and properly stored for easy retrieval at all times in accordance with the AUTHORITY's Document Control System.
- e) Monitor the creation of documentation and reports required of the CONSULTANT staff, notify the Resident Engineer of any deficiencies, and endeavor to resolve those documentation issues and fill any gaps.

- f) Assist the AUTHORITY, Resident Engineer, Inspectors and other project participants in accessing and obtaining project documentation.

3.3 Project Controls Engineer

The preferred minimum qualifications for the Project Controls Engineer are as follows:

- a) Five years relevant construction management experience on similar construction projects.
- b) Three years experience as a Project Controls Engineer performing schedule preparation, review and analysis tasks using computerized CPM scheduling tools.
- c) Ability to work independently and meet deadlines.
- d) Ability to read and interpret plans and specifications.
- e) Proficient in the use of computer application programs Word and Excel, and the latest version of Primavera Project Management (scheduling) software.

Under the direction of the Resident Engineer, the Project Controls Engineer will assume the following functional responsibilities, and shall possess experience in all of these areas:

- a) Review all schedules of all types submitted by the CONTRACTOR in accordance with the Construction Contract requirements, conduct analyses and assessments of those schedules, and provide written review comments.
- b) Provide advice and opinions to the Resident Engineer and the AUTHORITY regarding the CONTRACTORS' schedules, schedule updates and the progress of the Work of the CONTRACTOR.
- c) Generate special schedules and customized schedule reports, utilizing the Primavera Project Management scheduling software, for use by the Resident Engineer and the AUTHORITY.

3.4 Field Inspectors

The preferred minimum qualifications for the position of Field Inspector are as follows:

- a) Four years construction experience on a similar project or other relevant experience.
- b) Knowledge of construction practices, physical characteristics and properties of roadway, railroad, structures, drainage and utility systems construction materials, and the approved methods and equipment used in making physical tests of construction materials.
- c) Ability to work independently and perform duties in the construction field office.
- d) Ability to effectively make minor decisions concerning work in progress and solving field and office problems.
- e) Proficient in the use of computer application programs Word and Excel.

Under the direction of the Resident Engineer, each Field Inspector will assume the following functional responsibilities and shall possess experience in all of these areas:

- a) Perform quality assurance inspections to achieve compliance with contract plans and specifications on all phases of construction, such as paving, structures, rail, grading, drainage, sewer, water, utility relocation, electrical installation, sign installation and landscaping items.
- b) Perform quantity calculations and measurement for progress pay estimates and keep daily project records.
- c) Perform calculations and measurement of basic earthwork, grading and construction components.
- d) Maintain continuous communication with the Resident Engineer and other field personnel and staff.

3.5 Survey Field / Office Party Chief

Minimum preferred qualifications for the position of Party Chief are as follows:

- a) Party Chief shall fulfill at least one of the three following licensing requirements.
 - A licensed Land Surveyor in the State of California.
 - A pre-January 1, 1982, Registered Civil Engineer in the State of California.
 - An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982 Registered Civil Engineer in the state of California. This direction or supervision shall be provided in a manner and with a span of control and immediacy that enables the supervisor to be in "responsible charge" of the work as defined in Chapter 15 of the Business and Professions Code (the Land Surveyors Act) and Title 16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).
- b) Five years survey experience on a similar construction projects, or other relevant experience.
- c) Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.
- d) Ability to make effective decisions concerning field problems and work in progress.
- e) Familiarity with typical coordinate geometry computer programs.

Under the direction of the Resident Engineer, the Party Chief will assume the following functional responsibilities and shall possess experience in all of these areas:

- a) Perform survey services for all stages of construction as described in the Survey Services sections above.
- b) Administer day to day activities of the survey party.
- c) Perform analytical survey calculations for items such as grading, horizontal and vertical control, right of way and minor in-field design.

- d) Maintain continuous communication with the Resident Engineer, field personnel and construction administration staff when on site.
- e) Shall be designated safety officer for the survey party field operations, and shall be trained in the principles of traffic control.

3.6 Survey Assistant

Preferred minimum qualifications for survey assistant are as follows:

- a) One year survey experience on a similar construction projects.
- b) Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.
- c) Ability to assist field and office party chiefs in all required surveying work.
- d) One survey party member must have the ability to assume temporary leadership of the survey party in the absence of the party chief.
- e) Trained in the appropriate safety areas for the job decisions each individual is required to make.

Under the direction of the Resident Engineer and the Party Chief, the survey assistants will assume the following responsibilities and shall possess experience in all of these areas:

- a) Assist field and office party chiefs in all required surveying work.
- b) Perform basic calculations to support surveying and staking work.
- c) Maintain continuous communication with the field or office party chief.

3.7 Safety Officer

The preferred minimum qualifications for the position of Safety Officer are:

- a) A minimum of seven years of heavy construction experience in administering safety programs on heavy construction job sites, the last two of which have been administering safety in the construction discipline for which the firm has contracted with the Authority.
- b) Shall possess knowledge equal to a Certified Industrial Hygienist (CIH), Certified Safety Professional (CSP), Certified Construction Health and Safety Technician (CHST) or similar professional standing.
- c) Shall have current OSHA 10-hour and 30-hour current certifications.

The CONSULTANT Safety Officer will be responsible for developing the CONSULTANT'S Project Safety Plan (PSP), reviewing the CONTRACTOR's Site Health and Safety Plan and associated Activity Hazard Analyses (AHA), performing site orientation and any other Safety training of CONSULTANT field staff, periodic monitoring of the project site, and reporting. The Safety Officer's qualifications and resumes shall be presented for review and acceptance to the AUTHORITY, along with the PSP.

The Safety Officer shall set up, carry forward, and aggressively and effectively maintain the PSP covering all phases of the project. It is expected that the Safety Officer will make periodic trips to the project site to audit the CONTRACTOR's compliance with the Site Health and Safety Plan, prepare audit reports, and if necessary, issue safety violation notices.

4.0 CONSULTANT STAFFING LEVELS

The anticipated category and quantity of CONSULTANT personnel required for the PROJECT is listed below. The number of personnel will vary depending on the needs of the PROJECT, and the CONTRACTOR's progress.

The level of effort required by the CONSULTANT under this contract is anticipated and estimated to be the Full Time Equivalent (FTE) of three (3.0) persons per year. The level of effort will be re-evaluated periodically to assure that the appropriate level of support is maintained. AUTHORITY will have sole discretion in defining and making changes in positions and tasks assigned to Consultant during the term of this Agreement.

Estimated Level of Effort

- Resident Engineer (1.0 FTE)
- Office Engineer/Project Controls Engineer (0.7 FTE)
- Document Controller (0.3 FTE)
- Field Inspector/Environmental Monitor (0.9 FTE)
- Safety Officer (0.10 FTE)
- Survey QA (As-Needed)
- Materials Testing QA (As-Needed)

CONSULTANT shall prepare a preliminary project staffing plan that performs the specified work efficiently and submit to the AUTHORITY for review and acceptance prior to the start of services. The staffing plan shall be amended and submitted for review and acceptance after review of the CONTRACTOR's baseline schedule or any significant change in the CONTRACTOR's schedule. It is anticipated that CONSULTANT personnel will be added and subtracted on an as-required basis during construction. Any changes in staffing levels shall be approved in advance by the AUTHORITY.

The level of effort will be re-evaluated periodically to assure that the appropriate level of effort is maintained.

5.0 SCHEDULE OF PERFORMANCE

It is anticipated that the Resident Engineer and Office Engineer - Document Controller will be required before the scheduled Notice of Award of the Construction Contracts to provide constructability reviews and comments on the Design documents. The review services will not be continuous but will be as-needed and as approved by AUTHORITY. Other personnel will be added when their services are required and as indicated by the CONSULTANT's accepted current staffing plan. Personnel assigned to the contracts on a full-time basis shall remain assigned to the contracts for the duration of the contracts.

EXHIBIT B: PROPOSED AGREEMENT

1 **PROPOSED AGREEMENT NO. C-8-1760**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective as of this ____ day of _____, 2019, by and between
7 the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-
8 1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and
9 _____ (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to provide construction
12 management services for the Anaheim Canyon Metrolink Station improvement project; and

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

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

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

17 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Agreement on _____;

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

20 **ARTICLE 1. COMPLETE AGREEMENT**

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

26 /

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

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," attached to and, by this
14 reference, incorporated in and made a part of this Agreement. All services shall be provided at the times
15 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.

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

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

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

7 **ARTICLE 4. TERM OF AGREEMENT**

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

10 **ARTICLE 5. PAYMENT**

11 A. For CONSULTANT's full and complete performance of its obligations under this Agreement and subject
12 to the maximum cumulative payment obligation provisions set forth in Article 7, AUTHORITY shall pay
13 CONSULTANT on a Time and Expense basis in accordance with the following provisions.

14 B. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to
15 the work actually completed by CONSULTANT. Work completed shall be documented in a monthly
16 progress report prepared by CONSULTANT, which shall accompany each invoice submitted by
17 CONSULTANT. AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B,
18 entitled "Price Summary Sheet," which is attached to and by this reference, incorporated in and made a
19 part of this Agreement. These rates shall remain fixed for the term of this Agreement and are
20 acknowledged to include CONSULTANT's overhead costs, general costs, administrative costs and profit.
21 CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to
22 substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full
23 payment until such time as CONSULTANT has documented to AUTHORITY'S satisfaction, that
24 CONSULTANT has fully completed all work required. AUTHORITY's payment in full shall constitute
25 AUTHORITY's final acceptance of CONSULTANT'S work.

26 /

EXHIBIT B

1 C. As partial security against CONSULTANT's failure to satisfactorily fulfill all of its obligations
2 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice
3 submitted for payment by CONSULTANT. All retained funds shall be released by AUTHORITY and shall
4 be paid to CONSULTANT within sixty (60) calendar days of payment of final invoice, unless AUTHORITY
5 elects to audit CONSULTANT's records in accordance with Article 16 of this Agreement. If AUTHORITY
6 elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar days of
7 completion of such audit in an amount reflecting any adjustment required by such audit. During the term
8 of the Agreement, at its sole discretion, AUTHORITY reserves the right to release all or a portion of the
9 retained amount based on CONSULTANT'S satisfactory completion of certain milestones.
10 CONSULTANT shall invoice AUTHORITY for the release of the retention in accordance with Article 5.

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

- 17 1. Agreement No. C-8-1760;
- 18 2. Specify the effort for which the payment is being requested;
- 19 3. The time period covered by the invoice;
- 20 4. Labor (staff name, hours charged, hourly billing rate, current charges, and cumulative
21 charges) performed during the billing period;
- 22 5. Total monthly invoice (including project-to-date cumulative invoice amount); and
23 retention;
- 24 6. Itemized expenses including support documentation incurred during the billing period;
- 25 7. Monthly Progress Report;
- 26 8. Certification signed by the CONSULTANT or his/her designated alternate that a) The

1 invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup
2 information included with the invoice is true, complete and correct in all material respects; c) All payments
3 due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to
4 subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The
5 invoice does not include any amount which CONSULTANT intends to withhold or retain from a
6 subcontractor or supplier unless so identified on the invoice.

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

9 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

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

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

21 C. These prompt payment provisions must be incorporated in all subcontract agreements issued
22 by CONSULTANT under this Agreement.

23 /

24 /

25 /

26 /

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 (\$ _____.00) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

ARTICLE 8. NOTICES

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

To CONSULTANT:		To AUTHORITY:	
		Orange County Transportation Authority	
		550 South Main Street	
		P.O. Box 14184	
		Orange, CA 92863-1584	
ATTENTION:		ATTENTION:	Michael Le Contract Administrator
Phone:		Phone:	(714) 560 – 5314
Email:		Email:	mle1@octa.net
		CC: Lora Cross, Project Manager Phone: 714-560-5788 Email: lcross@octa.net	

/

/

/

1 **ARTICLE 9. INDEPENDENT CONTRACTOR**

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

9 **ARTICLE 10. INSURANCE**

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

13 1. Commercial General Liability, to include Products/Completed Operations,
14 Independent Contractors', Contractual Liability, and Personal Injury, and Property Damage with a
15 minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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

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

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

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

22 6. RR Protective Liability with minimum limits of \$2,000,000 with a \$6,000,000 aggregate
23 per claim.

24 B. Proof of such coverage, in the form of an insurance company issued policy endorsement and
25 a broker-issued insurance certificate, must be received by AUTHORITY prior to commencement of any
26 work. Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from

1 the effective date of this Agreement with the AUTHORITY, its officers, directors, employees and agents
2 designated as additional insured on the general and automobile liability. Such insurance shall be primary
3 and non-contributive to any insurance or self-insurance maintained by AUTHORITY. Furthermore,
4 AUTHORITY reserves the right to request certified copies of all related insurance policies.

5 C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement
6 Number; and, the Contract Administrator's Name, Michael Le.

7 D. CONSULTANT shall also include in each subcontract the stipulation that subcontractors shall
8 maintain insurance coverage in the amounts required from CONSULTANT as provided in this Agreement.

9 E. CONSULTANT shall be required to immediately notify AUTHORITY of any modifications or
10 cancellation of any required insurance policies.

11 **ARTICLE 11. ORDER OF PRECEDENCE**

12 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
13 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 8-1760, (3)
14 CONSULTANT's technical proposal dated ____;CONSULTANT's initial cost proposal dated ____, and
15 CONSULTANT's final cost proposal dated ____; and (4) all other documents, if any, cited herein or
16 incorporated by reference.

17 **ARTICLE 12. CHANGES**

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

26 /

1 **ARTICLE 13. DISPUTES**

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

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

13 **ARTICLE 14. TERMINATION**

14 A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part,
15 by giving CONSULTANT written notice thereof. Upon termination, AUTHORITY shall pay
16 CONSULTANT its allowable costs incurred to date of that portion terminated. Said termination shall be
17 construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition
18 Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for
19 convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be
20 given to CONSULTANT in accordance with the provisions of the FAR referenced above and Article 8,
21 herein. Upon receipt of said notification, CONSULTANT agrees to comply with all applicable provisions
22 of the FAR pertaining to termination for convenience.

23 B. In the event either Party defaults in the performance of any of their obligations under this
24 Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the
25 option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Upon
26 receipt of such notice, CONSULTANT shall immediately cease work, unless the notice from AUTHORITY

EXHIBIT B

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

7 **ARTICLE 15. INDEMNIFICATION**

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

14 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

26 /

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

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

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

ARTICLE 18. CONFLICT OF INTEREST

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. 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

1 in writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for
2 the entire term of this Agreement.

3 **ARTICLE 19. CODE OF CONDUCT**

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

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

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

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

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

16 **ARTICLE 22. EQUAL EMPLOYMENT OPPORTUNITY**

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

24 **ARTICLE 23. CIVIL RIGHTS ASSURANCE**

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

EXHIBIT B

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

6 B. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the
7 Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and
8 retention of subcontractors, including procurements of materials and leases of equipment. The
9 CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section
10 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth
11 in Appendix B of the Regulations.

12 C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all
13 solicitations either by competitive bidding or negotiation made by the CONSULTANT for work to be
14 performed under a subcontract, including procurements of materials or leases of equipment, each
15 potential subcontractor or supplier shall be notified by the CONSULTANT of the CONSULTANT's
16 obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of
17 race, color, or national origin.

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

25 /

26 /

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

4 7. Withholding of payments to the CONSULTANT under the Agreement until the
5 CONSULTANT complies; and/or

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

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

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

20 H. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A)
21 through (H) in every subcontract, including procurements of materials and leases of equipment, unless
22 exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such
23 action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of
24 enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a
25 CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as
26 a result of such direction, the CONSULTANT may request the AUTHORITY to enter into such litigation

1 to protect the interests of the AUTHORITY, and, in addition, the CONSULTANT may request the United
2 States to enter into such litigation to protect the interests of the United States.

3 **ARTICLE 24. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**
4 **CONSULTANT CONTRACTS**

5 At the time of contract execution, the CONSULTANT committed to utilize DBE(s) in the
6 performance of this DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed
7 on the "DBE Participation Commitment Form Attachment A-1," perform work and/or supply materials in
8 accordance with original commitments, unless otherwise directed and/or approved by the AUTHORITY
9 prior to the CONSULTANT effectuating any changes to its race-conscious DBE participation
10 commitment(s). CONSULTANT shall comply with all the requirements set forth in Attachment "A" titled,
11 "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FEDERALLY
12 FUNDED CONTRACTS WITH DBE GOALS", which is attached to and, by this reference, incorporated
13 in and made a part of this Agreement.

14 **ARTICLE 25. PROHIBITED INTERESTS**

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

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

20 **ARTICLE 26. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

26 /

EXHIBIT B

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

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

16 **ARTICLE 27. PATENT AND COPYRIGHT INFRINGEMENT**

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

1 with other material not provided by CONSULTANT when such use in combination infringes upon an
2 existing U.S. letters patent or copyright.

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

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

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

20 B. It is expressly understood that any title to preliminary technical data is not passed to
21 AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations,
22 software design documents, layouts and comprehensives prepared by CONSULTANT solely for the
23 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given
24 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
25 AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 12, and a price shall be
26 negotiated for all preliminary data.

1 **ARTICLE 29. DESIGN WITHIN FUNDING LIMITATIONS**

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

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

22 **ARTICLE 30. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

23 All design and engineering work furnished by CONSULTANT shall be performed by or under the
24 supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the
25 State of California, by personnel who are careful, skilled, experienced and competent in their respective
26 trades or professions, who are professionally qualified to perform the work in accordance with the contract

1 documents and who shall assume professional responsibility for the accuracy and completeness of the
2 design documents and construction documents prepared or checked by them.

3 **ARTICLE 31. COVENANT AGAINST CONTINGENT FEES**

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

12 **ARTICLE 32. LOBBYING**

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

22 **ARTICLE 33. HEALTH AND SAFETY REQUIREMENTS**

23 CONSULTANT shall comply with all the requirements set forth in Exhibit F, titled "Level 1 SAFTEY
24 SPECIFICATIONS." As used therein, "Contractor" shall mean "Consultant," and "Subcontractor" shall
25 mean "Sub-consultant."

26 /

1 **ARTICLE 34. CONTRACTOR PURCHASED EQUIPMENT**

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

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

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

18 D. Any subconsultant agreement entered into as a result of this Agreement shall contain all
19 provisions of this clause.

20 **ARTICLE 35. PRIVACY ACT**

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

26 /

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

3 **ARTICLE 36. INCORPORATION OF FTA TERMS**

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

10 **ARTICLE 37. FEDERAL CHANGES**

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

15 **ARTICLE 38. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

22 **ARTICLE 39. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**
23 **RELATED ACTS**

24 A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act
25 of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil
26 Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this

1 Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has
2 made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA
3 assisted project for which this Agreement's work is being performed. CONSULTANT also acknowledges
4 that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or
5 certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil
6 Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

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

14 **ARTICLE 40. RECYCLED PRODUCTS**

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

20 **ARTICLE 41. ENERGY CONSERVATION REQUIREMENTS**

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

24 /

25 /

26 /

1 **ARTICLE 42. CLEAN AIR**

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

7 **ARTICLE 43. CLEAN WATER REQUIREMENTS**

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

13 **ARTICLE 44. FLY AMERICA REQUIREMENT**

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

24 /

25 /

26 /

1 **ARTICLE 45. SEISMIC SAFETY REQUIREMENTS**

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

8 **ARTICLE 46. DEBARMENT AND SUSPENSION**

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

13 **ARTICLE 47. FORCE MAJEURE**

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

21 /

22 /

23 /

24 /

25 /

26 /

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-8-1760 to be executed on the date first above written.

CONSULTANT

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Darrell E. 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 _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS
FEDERALLY FUNDED CONTRACTS WITH DBE GOALS**

I. DBE Participation

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

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime consultant, subconsultant, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55 that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- D. Consultant must not claim DBE participation as attained until the amount to be claimed is paid and fully adheres to DBE crediting provisions.

If the Consultant has committed to utilize DBE(s) in the performance of this DOT-assisted contract, the Consultant's submitted "DBE Participation Commitment Form" will be utilized to monitor Consultant's DBE 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"*).

Consultant must complete and submit all required DBE documentation to effectively capture all DBE utilization on the Authority's DOT-assisted contracts whether achieved race neutrally or race consciously. Even if a Consultant has not committed to utilize DBE(s) in the performance of this contract, the Consultant must execute and submit all required DBE forms and other related documentation as specified under this contract or as otherwise requested by the Authority. No changes to the Consultant's DBE Commitment must be made until proper protocols for review and approval of the Authority are rendered in writing.

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

- A. Take appropriate actions to ensure that it 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. The Consultant must apply and report its DBE goal commitments against the total Contract Value, including any contract change orders and/or amendments.

II. DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the 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, Part 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.

- A. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- B. Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- C. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- E. Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- F. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.
- G. Consultant must not discriminate on the basis of race, color, national origin, or sex in the award and performance of subconsultant.

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

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

III. Authority's DBE Policy Implementation Directives

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

The Authority 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.

A. Definitions

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

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern:
(a) which is at least 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 must 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 Authority may take enforcement action under 49 CFR, Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR, Part 31. The Authority may refer the case to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

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

B. "Social Disadvantage"

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

C. "Economic Disadvantage"

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

credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

- A. “Monthly DBE Subconsultant Commitment and Attainment Report Summary and Payment Verification ” (Form 103)

The purpose of this form is to ensure Consultant DBE commitments are attained, properly reported and credited in accordance with DBE crediting provisions based on the capacity the DBE performs the scope of work/service. This form further serves to collect DBE utilization data required under 49 CFR, Part 26.

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

The Form 103 must include the following information:

1. General Contract Information – Including Contract Number and Name, Prime Consultant and the following:
 - a) Original Contract Amount
 - b) Running Total of Change Order Amount
 - c) Current Contract Amount
 - a) Amount Paid to Consultant during Month
 - b) Amount Paid to Consultant from Inception to Date

- c) DBE Contract Goal
 - d) Total Dollar Amount of DBE Commitment
 - e) DBE Commitment as Percentage of Current Contract Amount
2. Listed and/Proposed Consultant/Subconsultant Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:
- a) DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.
 - b) DBE Firm Contract Value Information:
Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.

3. Consultant Assurance of Full Compliance with Prompt Payment Provisions

Consultant to sign the prompt payment assurance statement of compliance contained within the Form 103. Consultant is to further maintain and submit at the request of Authority a detailed running tally of related invoices submitted by DBE(s) and Non DBE(s), including dates of invoice submission, dates accepted and corresponding dates and amount of payments made. The Payment and Retention Reporting tally must also include:

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

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

4. DBE Subcontract Agreements

The Consultant must submit to the Authority copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten working days of award. The Consultant must immediately notify the Authority in writing of any

problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

5. "Monthly DBE Trucking Verification" Form

Prior to the 10th of each month, the Consultant must submit documentation on the "Monthly DBE Trucking Verification" Form to the Authority showing the amount paid to DBE trucking companies. The Consultant must also obtain and submit documentation to the Authority showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contactor may count only the fee or commission the DBE receives as a result of the lease arrangement.

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

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

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

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

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

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

V. DBE Eligibility and Commercially Useful Function Standards

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

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a Prime 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>.
 1. 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

- A. 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 must be counted.
 1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and 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.

2. 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.

3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packers 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.

4. 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.

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.

5. If the Consultant listed a non-certified 1st 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 "DBE Participation Commitment 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):

- A. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
- B. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
- C. Work requires a Consultants' license and listed DBE does not have a valid license under Consultants License Law.
- D. Listed DBE fails or refuses to perform the work or furnish the listed materials.
- E. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- F. Listed DBE delays or disrupts the progress of the work.

- G. 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 must notify the Authority by submitting "Request for Additional DBE Firm" to enable Consultant to capture all DBE participation. Consultant must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a 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 must 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 must 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 the 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 thirty (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 percent (2%) 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 must require the Subconsultant to make payments to sub-Subconsultants and suppliers in a similar manner.

XII. Administrative Remedies and Enforcement

Consultant must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. 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 must be given ten (10) working days from the date of the Cure Notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the Authority to reconsider the Authority's DBE determination. Failure to respond within the ten (10) working day period must constitute a waiver of the Consultant's right to appeal. If the Consultant files an appeal, the Authority, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the

written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If, after review of the Consultant's appeal, the Authority decides to uphold the decision to impose DBE administrative remedies on the Consultant, the written determination must 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 percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance 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: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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

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

Name

Date

Title

Last Rev. 08/26/2015

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

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

1.0 DBE Goal

To assist Proposers in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project based on their likely availability for work. The DBE Goal for this contract is **8%**.

2.0 DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (Authority) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs." The contract is subject to the following stipulated regulations. Pursuant to the intent of these Regulations, it is the policy of the Authority to:

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

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

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

Race-Neutral/Race-Conscious DBE Program Measures

The Authority will utilize both Race-Neutral and Race-Conscious means to meet its overall DBE Program goals.

Race-Neutral measures will include but are not limited to conducting outreach, training, providing other resource assistance and assessing proposal delivery schedules to ensure that DBEs interested in proposing for DOT-assisted solicitations are provided. Additional Authority Race-Neutral measures include ensuring that DBEs and other small business are afforded ample opportunity to participate in the Authority's DOT-assisted solicitations by unbundling large contracts to make them more accessible to small businesses and requiring or encouraging Prime Consultants to subcontract portions of work that they might, otherwise, perform with their own forces. Race-Neutral participation also includes any time a DBE obtains a Prime Contract through customary competitive procurement procedures or is awarded a subcontract on a Prime Contract that does not carry a DBE goal.

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

3.0 Definitions

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

- 3.1 **"Disadvantaged Business Enterprise (DBE)"** means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 3.2 **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
- 3.3 **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:
- 3.3.1 "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- 3.3.2 "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- 3.3.3 "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- 3.3.4 "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;

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

3.3.6 Women, regardless of ethnicity or race.

- 3.4 "Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
- 3.5 "Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
- 3.6 "Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- 3.7 "Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty. The Authority may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31. The Authority may refer cases of identified fraud to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.
- 3.8 "Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.

3.8.1 Social Disadvantage

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

3.8.2 Economic Disadvantage

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

With respect to the individual:

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

- available markets

With respect to the individual and the business concern:

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

4.0 DBE Proposal Submission Requirements

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

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

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

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

4.2 “Bidders List” (Exhibit D-2)

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

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

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

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

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

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

Good Faith Efforts documentation must be submitted with the proposal.

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

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

- 4.3.7 List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, and other technical assistance afforded. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
- 4.3.8 Any additional data to support demonstration of good faith efforts undertaken prior to proposal submission shall be provided.

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



DBE PARTICIPATION COMMITMENT(S) FORM

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

Proposer to Complete this Section

- 1. RFP No.: _____
- 2. Project Name/Description: _____
- 3. Prime Proposer Name: _____
- 4. Contract DBE Goal %: _____

DBE Commitment Information

5. Proposed DBE Firm (Name and Address)	6. DBE Certification Number	7. Description of Scope of Services/Work to be Provided	8. Dollar Value (\$) and/or Percentage (%) Of Contract	9. Percentage (%) of Work to be Performed by DBE Firm(s)

Note: The proposer shall also submit, for each DBE to perform under this contract a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract proposal can serve in lieu of the written confirmation).

10. Total Value Claimed (\$) \$ _____	11. Total DBE (%) Claimed towards Goal: _____ %
---	---

Proposer Assurance: The information on this form is complete and accurate and the proposer certifies that all DBE certifications and written confirmation documentation has been submitted to support the proposed DBE Commitment.

12. Preparer's Name (Print)

13. Preparer's Signature

14. Preparer's Title

15. Date

16. (Area Code) Tel. No.

17. Email Address

INSTRUCTIONS - DBE Participation Commitment(s) Form

Consultant Section

The Consultant shall:

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

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

BIDDERS LIST

Proposer: _____

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

Prime Proposer's Information:	
Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Provide the following information for every firm (DBE and non-DBE) that submitted proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract:

Firm Name:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Firm Name:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): ___ African American ___ Asian Pacific American ___ Native American ___ Woman ___ Hispanic American ___ Subcontinent Asian American ___ Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

If necessary, this "Bidders List" form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.

Failure of the Proposer to submit the required "Bidders List" form may deem the Proposer non-responsive.

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

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

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

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

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

- D. Publication Efforts Made to Advertise the Projects to Solicit DBE Participation; names and dates of each publication in which a request for DBE participation for this project was placed by the Bidder (please attach copies of advertisements or proof of publications). (Please note: If IFB due date is extended, Bidder is to re-advertise new bid due date.)

Publications	Dates of Advertisement

- E. Agencies, Organizations, or Groups contacted to provide assistance in Contracting, Recruiting, and Using DBEs; the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received), as follows:

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

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

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

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

EXHIBIT E: RESTRICTIONS ON LOBBYING

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

1. Authority, as used in this clause, means the Orange County Transportation Authority, acting on behalf of the Orange County Transit District.
2. Covered Federal action, as used in this clause, means any of the following Federal actions:
 - a. The awarding of any Federal contract.
 - b. The making of any Federal grant.
 - c. The making of any Federal loan.
 - d. The entering into of any cooperative agreement.
 - e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
3. Indian tribe and tribal organization, as used in this clause, have the meaning provided in Section 450b of the Indian self-determination and Education Assistance Act (25 U.S.C. 450) and include Alaskan Natives.
4. Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
5. Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
6. Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:
 - a. An individual who is appointed to a position in the Government under title 5, United States code, including a position under a temporary appointment.
 - b. A member of the uniformed services, as defined in the subsection

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

- c. A special Government employee, as defined in Section 202, Title 18, United States Code.
 - d. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix section 3.
7. Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 8. Reasonable compensation, as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
 9. Reasonable payment, as used in this clause means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
 10. Recipient, as used in this clause, includes the 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)

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.

Approved by
OMB
003480045

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction

EXHIBIT F: SAFETY SPECIFICATIONS

LEVEL 1 SAFETY SPECIFICATIONS

CONSTRUCTION MANAGEMENT SERVICES FOR THE ANAHEIM CANYON METROLINK STATION IMPROVEMENTS PROJECT - RFP 8-1760

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

- A. The Consultant/Contractor, its sub-tier Consultants, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) policies, 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 Consultants or its sub-tier contractors may be cause for termination of scope, contracts, 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 for all Consultant personnel, sub-tier Consultants, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Consultant shall ensure that all Consultant vehicles, including those of its sub-tier Consultants, 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 Consultant is encouraged to exceed minimum requirements. When the Consultant safety requirements exceed statutory standards, and the more stringent requirements shall be achieved for the safeguard of public and workers.

G. INJURY AND ILLNESS PREVENTION PLAN

The Consultant 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 Consultant and its sub-tier contractors, suppliers, and vendors.

H. Consultant shall submit to the Authority a copy their company's **Substance Abuse Prevention Policy**.

I. Consultant shall submit to the Authority a copy their company's **Safety Policy and Procedures Manual**.

1.2 HAZARD COMMUNICATION

A. Consultant shall comply with CCR Title 8, Section 5194, Hazard Communication Standard. Prior to use on Authority property and/or project work areas Consultant shall provide the Authority Project Manager copies of SDS for all chemical 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 HEAT ILLNESS PREVENTION PROGRAM

A. Contractor shall provide a copy of their Company Heat Illness Prevention Program in accordance with CCR Title 8 Standards, Section 3395, Heat Illness Prevention.

1.4 INCIDENT NOTIFICATION AND INVESTIGATION

A. The Authority shall be promptly notified of any damage to the Authority's property, or incidents involving third party property damage, or reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration) to Authority employees and agents; Consultant, contractor, vendor employees or visitors and members of the general public that occurs or arises from the performance of Authority's contract work. A comprehensive investigation and written report shall be submitted to Authority's Project Manager within 24 hours of the incident.

B. A serious injury or incident may require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven 7 calendar days of the incident. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1.4 PERSONAL PROTECTIVE EQUIPMENT

A. The Consultant, its sub-tier Consultants, suppliers, and employees are required to comply with the Authority's personal protective equipment (PPE) policy while performing work at any Authority facility, i.e. eye protection policy, hearing protection policy, head protection, safety vests, Work Shoe Policy.

- B. The Consultant, its sub-tier Consultants, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, class 3 high visibility reflective safety clothing, or other PPE required to perform their work safely on Authority projects. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.5 HSE REPRESENTATIVE

- A. The minimum qualifications for the position of Health, Safety and Environmental (HSE) Representative are;
- B. The HSE Representative shall be a Certified Safety Professional (CSP) with current certification from the Board of Certified Safety Professionals (BCSP), or a Construction Health and Safety Technician (CHST) with current certification from the BCSP.
- C. The HSE Representative shall have a minimum of seven (7) years of heavy construction field experience in administering enforcement of HSE programs on heavy construction highway project sites, the last two (2) years of which have been administering HSE in a similar rail construction discipline for which the firm has contracted with the Authority.
- D. The Consultant HSE Representative will be responsible for developing the CONSULTANT'S Project Safety Plan (PSP), reviewing the Contractor's Site Health and Safety Plan and associated Job Hazard Analysis (JHA) or Activity Hazard Analysis (AHA), performing site orientation and other HSE training of CONSULTANT field staff, periodic weekly monitoring of the project site, and reporting observations in written reports. The Consultant HSE Representative's qualifications and resume shall be presented for review and acceptance to the Authority, along with the PSP.
- E. The HSE Representative shall set up, carry forward, aggressively and effectively maintain the CONSULTANT'S PSP covering all phases of the project. It is expected that the HSE Representative will make periodic trips (*i.e., a minimum of weekly, and possibly daily trips at times to ensure Contractor's regulatory compliance in a quality assurance role*) to the project site to audit the CONTRACTOR's compliance with the Site Health and Safety Plan, prepare audit reports, and if necessary issue HSE observation of non-compliance notices to the Resident Engineer. The HSE Representative shall participate in regular project team HSE compliance reviews (generally monthly), and generally support the HSE program and project team.
- F. The HSE Representative shall prepare a monthly project report that includes number of workers on project, a list of subcontractors, work hours (month, year to date, & project cumulative) of each contractor, labor designation, OSHA Recordable injuries and illnesses segregated by medical treatment cases, restricted workday cases, number of restricted days, lost workday cases, and number of lost work days, and recordable incident rate.

- G. The HSE Representative shall maintain a log of all incidents on the project including but not limited to; injuries, property damage, theft, fire, third party incidents, and similar project related events.
- H. The HSE Representative shall coordinate with the Metrolink EIC and monitor CONTRACTOR'S compliance with rail worker safety requirements including but not limited to; Form B requirements, Cell Phone limitations, PPE requirements, Daily EIC Safety Briefings, roadway worker rules identified in 49 CFR, Part 214, CCR Title 8, Southern California Regional Rail Authority (SCRRA), the California Department of Transportation (CalTrans), and OCTA Level 3 Safety Specifications.
- I. The HSE Representative shall participate in regular scheduled project meetings, monitor for compliance of the Storm Water Pollution Prevention Program, Environmental Mitigation and Monitoring requirements, South Coast Air Quality Management District (SCAQMD), and assist the CONSULTANT'S Project Manager and Resident Engineer.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Title 40, Code of Federal Regulations (40 CFR)
- E. USACE Construction Quality Management Manuel (EM 385-1-1)
- F. Construction Industry Institute (CII)
- G. CalTrans Construction Management Procedures

END OF SECTION

EXHIBIT G: CERTIFICATION OF CONSULTANT, COMMISSIONS & 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 H: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

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

Offeror: _____

RFP No.: _____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

- Scope of Work (Technical) _____
- Proposed Agreement (Contractual) _____

Reference Section/Exhibit: _____ Page/Article No. _____

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:

_____ _____
