

Sheet 7

Base Contract and Optional Extensions
Estimated Pass-Through Cost Summary

Item #	Description of Items	Total Annual Cost (\$)
BASE CONTRACT		
1	Year 1 of Operations	
2	Year 2 of Operations	
3	Year 3 of Operations	
4	Year 4 of Operations	
5	Year 5 of Operations	
6	Year 6 of Operations	
Total Base Contract Cost (Operation Years 1-6)		\$ -
OPTIONAL EXTENSIONS		
7	Option Term 1 - Year 7 of Operations	
8	Option Term 1 - Year 8 of Operations	
9	Option Term 1 - Year 9 of Operations	
Total Option Term 1 Cost (Operation Years 7-9)		\$ -
10	Option Term 2 - Year 10 of Operations	
11	Option Term 2 - Year 11 of Operations	
Total Option Term 2 Cost (Operation Years 10-11)		\$ -
Total Optional Extensions Cost (Operation Years 7-11)		\$ -
Total Base and Optional Extensions Cost (Operation Years 1-11)		\$ -

**Sheet 8
Milestone Payment Schedule**

A. Payments for System Costs (Excluding Hardware, Equipment and Off-the-Shelf Software)				
Payment Number	Payment Milestone	% Paid	Cum % Paid	\$
A-1	Notice to Proceed (Mobilization)	5.00%	5.00%	\$
A-2	Baseline Project Management Plan, Baseline Implementation Schedule, Software Development Plan and Quality Assurance Plan Approved	4.00%	9.00%	\$
A-3	I-405 CSC and WIC Facility Design Inputs	2.00%	11.00%	\$
A-4	Requirements Traceability Matrix Approved	3.00%	14.00%	\$
A-5	Business Rules Approved	3.00%	17.00%	\$
A-6	System Detailed Design Document Approved	8.00%	25.00%	\$
A-7	Approval of all Remaining BOS Design, Installation, End of Agreement Transition, Training, Disaster Recovery, Business Continuity, Maintenance Plans	5.00%	30.00%	\$
A-8	CSC Operations and Facility Mobilization Plan, Staffing and Human Resources Plan, Reporting and Reconciliation Plan and SOPs Approved	4.00%	34.00%	\$
A-9	Master Test Plan Approved	4.00%	38.00%	\$
A-10	All Manuals and Third-Party Documentation	2.00%	40.00%	\$
A-11	Software Walkthrough and Update of RTM Approved	4.00%	44.00%	\$
A-12	Unit Testing Approved	4.00%	48.00%	\$
A-13	System Integration Testing Approved	4.00%	52.00%	\$
A-14	User Acceptance Testing Approved	5.00%	57.00%	\$
A-15	Approval of all Training Plans Materials and Manuals	3.00%	60.00%	\$
A-16	Training Completed	3.00%	63.00%	\$
A-17	Achieve Commencement or Ramp-up/Customer Services	3.00%	66.00%	\$
A-18	Onsite Installation and Commissioning Testing (includes updated SDDD, traceability matrix and business rules documents), and Go-Live Testing Approved	5.00%	71.00%	\$
A-19	Acceptance of Operational Readiness Demonstration	4.00%	75.00%	\$
A-20	Go-Live	10.00%	85.00%	\$
A-21	Operational and Acceptance Testing Approved	10.00%	95.00%	\$
A-22	BOS Acceptance	5.00%	100.00%	\$

B. Payments for Hardware, Equipment and Off-the-Shelf Software				
Payment Number	Payment Milestone	% Paid	Cum.% Paid	\$
B-1	Ordering Approved by Agencies and Verified	10.00%	10.00%	\$
B-2	Verified Received	45.00%	55.00%	\$
B-3	Verified Installed in Final Configuration and Location	45.00%	100.00%	\$

EXHIBIT E: PROPOSED AGREEMENT

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15 **EXHIBITS**

- 16 Exhibit A – Definitions and Acronyms
- 17 Exhibit B - Scope of Work and Requirements
- 18 Exhibit C - Preliminary Implementation Schedule
- 19 Exhibit D - Contractor Price Proposal
- 20 Exhibit E – Milestone Payment Schedule
- 21 Exhibit F - Level 1 Health, Safety and Environmental Specifications
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23 **ATTACHMENTS**

- 24 Attachment A - DBE Participation Commitment Form
- 25
- 26

PROPOSED AGREEMENT NO. C-X- XXXX

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

THIS AGREEMENT is effective as of this _____ day of _____, 2021 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584, a public entity (hereinafter referred to as "AUTHORITY"), _____, _____, _____ (hereinafter referred to as "CONTRACTOR") each individually known as "Party" and collectively known as the "Parties".

WITNESSETH:

WHEREAS, AUTHORITY requires assistance from CONTRACTOR to design, implement, install and maintain a Back Office System (BOS) and to operate a Customer Service Center (CSC) for the planned 405 Express Lanes (the "Project"); and

WHEREAS, the Work necessary to implement the Project cannot be performed by the regular employees of AUTHORITY; and

WHEREAS, CONTRACTOR has represented that it has the requisite personnel and experience, and is capable of performing the Work; and

WHEREAS, CONTRACTOR wishes to perform the Work; and

WHEREAS, AUTHORITY has entered into a cooperative agreement with the State of California, acting by and through its Department of Transportation ("Caltrans"), AUTHORITY AGREEMENT No. C-4-1847, for, among other things, the development of a new tolled express facility on Interstate 405 generally between State Route 73 and Interstate 605 ("405 Express Lanes "); and

WHEREAS, pursuant to Streets and Highways Code § 143, AUTHORITY has entered into a Toll Operating AGREEMENT with Caltrans wherein AUTHORITY will, among other things, lease the 405 Express Lanes for a term of 40 years and operate and maintain a toll collection system on the 405 Express

1 Lanes; and

2 **WHEREAS**, AUTHORITY has entered into a contract with OC 405 Partners, Joint Venture
3 ("Design-Build Contractor"), to design and construct the 405 Express Lanes pursuant to AUTHORITY
4 Contract No. C-5-3843 (the "Design-Build Contract"); and

5 **WHEREAS**, AUTHORITY has entered into a contract with Kapsch TrafficCom USA, Inc. for the
6 405 Express Lanes Electronic Toll Collection System; and

7 **WHEREAS**, AUTHORITY will enter into a procurement for a roadside service contractor for the
8 I-405; and

9 **WHEREAS**, The Parties intend for this AGREEMENT to be a comprehensive agreement
10 obligating CONTRACTOR to perform all Work, as more particularly described in the AGREEMENT and
11 all attached documents; and

12 **WHEREAS**, the AUTHORITY's Board of Directors authorized this AGREEMENT on_____.

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

15 **ARTICLE 1. COMPONENTS OF AGREEMENT/INTERPRETATION**

16 A. AGREEMENT: This AGREEMENT, including all attached documents, as defined in the
17 attached Exhibit A, entitled "Acronyms & Definitions", constitutes the complete and exclusive statement
18 of the terms and conditions of the agreement between AUTHORITY and CONTRACTOR for the Work
19 and supersedes all prior representations, understandings and communications. The invalidity in whole
20 or in part of any term or condition of this AGREEMENT shall not affect the validity of other terms or
21 conditions. Terms capitalized herein shall, unless otherwise defined herein, have the same meaning as
22 set forth in Exhibit A. Where this AGREEMENT uses the term "including" it shall mean including but not
23 limited to, unless otherwise specifically indicated.

24 B. AGREEMENT Interpretation: This AGREEMENT and each of the attached documents
25 are an essential part of the Parties' agreement and should be interpreted in a manner which harmonizes
26 their provisions. However, if an actual conflict exists, the following descending order of precedence shall

1 apply:

- 2 1. AGREEMENT amendments adopted in accordance with this AGREEMENT;
- 3 2. This AGREEMENT;
- 4 3. All Exhibits attached hereto;
- 5 4. RFP X-XXX, which is incorporated herein by reference; and0-2352
- 6 5. The Contractor Proposal dated XXX yy, 2020 which is incorporated herein by
- 7 reference.

8 C. In the case of conflict, and notwithstanding the order of precedence, the most stringent
9 requirement as determined by the AUTHORITY shall govern, unless otherwise agreed-to in writing by
10 the AUTHORITY.

11 D. Performance by Parties: A Party's failure to insist in any one or more instances upon the
12 other Party's performance of any terms or conditions of this AGREEMENT shall not be construed as a
13 waiver or relinquishment of that Party's right to such performance by the defaulting Party or to future
14 performance of such terms or conditions and that Party's obligation in respect thereto shall continue in
15 full force and effect. This AGREEMENT may be amended or modified only by mutual written agreement
16 of the Parties.

17 E. CONTRACTOR shall only commence work covered by an amendment after the
18 amendment is executed and notification to proceed has been provided by AUTHORITY.

19 **ARTICLE 2. AUTHORIZED DESIGNEES**

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

22 B. In its letter of transmittal accompanying CONTRACTOR's Proposal, the CONTRACTOR
23 designated [name] _____ as an officer of the CONTRACTOR, who
24 shall be authorized to sign this AGREEMENT and any amendments to this AGREEMENT and to speak
25 for and make commitments on behalf of the CONTRACTOR.

26 **ARTICLE 3. SCOPE OF WORK AND REQUIREMENTS**

1 A. CONTRACTOR shall perform the Work in accordance with the attached Exhibit B, entitled
2 "Scope of Work and Requirements", in a manner satisfactory to AUTHORITY.

3 B. In performing this AGREEMENT, CONTRACTOR shall be responsible for developing,
4 operating, and maintaining a BOS that handles the funds of others, documents, and processes financial
5 transactions, and maintains the integrity of customer personal information and financial records. With
6 respect to its obligations under this paragraph B, the CONTRACTOR shall have a fiduciary duty to
7 AUTHORITY, its customers, and to the users of the BOS. The CONTRACTOR shall exercise its
8 responsibilities prudently and shall institute all appropriate mechanisms for the custody and administration
9 of funds and records.

10 C. CONTRACTOR shall provide all resources, personnel, Equipment, Software and supplies
11 necessary to perform the Work. The CONTRACTOR shall provide the Work in a competent and
12 professional manner, in conformance with the highest industry standards, to the satisfaction of
13 AUTHORITY. AUTHORITY shall be entitled to full and prompt cooperation by CONTRACTOR in all
14 aspects of the Work. The AUTHORITY shall have the right to inspect the performance of such Work at
15 any time, and CONTRACTOR shall fully and promptly cooperate with the AUTHORITY in the execution
16 of such inspections.

17 **ARTICLE 4. CONTRACTOR'S PERSONNEL**

18 A. Non-Key Personnel:

19 1. CONTRACTOR agrees that it will at all times employ, maintain and assign a
20 sufficient number of competent and qualified professionals and other personnel to perform the Work in a
21 timely manner.

22 2. CONTRACTOR warrants and represents that its staff personnel and
23 Subcontractors have the proper skill, training, background, knowledge, experience, rights, authorizations,
24 integrity, character, and licenses necessary to perform the Work in a competent and professional manner.

25 B. At the request of AUTHORITY, in its sole discretion, CONTRACTOR shall promptly
26 remove from assignment to the performance of Work pursuant to this AGREEMENT any employee,

Subcontractor, or any other person performing Work hereunder. AUTHORITY's request to remove an employee or Subcontractor shall have no bearing on CONTRACTOR's decision to retain the employee or Subcontractor for work outside of this AGREEMENT. AUTHORITY shall bear no responsibility for any such decision by CONTRACTOR.

C. Key Personnel:

1. CONTRACTOR's Project Manager identified in the Proposal is a "Key Personnel" and shall act as the primary point of contact in all matters on behalf of CONTRACTOR. The Project Manager shall assign other individuals as contacts with regard to specific functional areas of the Work, subject to the Approval of the AUTHORITY.

2. CONTRACTOR shall provide the personnel listed below, which are hereby designated as Key Personnel under this AGREEMENT:

Name	Function

3. Exhibit B, Scope of Work and Requirements, identifies certain other job categories as Key Personnel for the AGREEMENT. CONTRACTOR identified Key Personnel assigned to this Project in its Proposal, who shall be Approved as part of the Project Management Plan. CONTRACTOR acknowledges that the award of this AGREEMENT to CONTRACTOR was based in significant part on the qualifications of such Key Personnel and CONTRACTOR's representation that they will be made available to perform the Work to completion, which availability is a material term of this AGREEMENT. Key Personnel shall be required to work in the position indicated in the Proposal and in the approved Project Management Plan.

4. No Key Personnel shall be removed or replaced by CONTRACTOR, or have any change in function or any significant reduction in the level of commitment, without the prior written consent of AUTHORITY. Should AUTHORITY determine during the Term of the AGREEMENT that the list of Key Personnel does not include personnel essential to the successful performance of the Work, the

1 AUTHORITY may require the CONTRACTOR to add any existing job category/function to such list.

2 5. If AUTHORITY becomes dissatisfied with the performance of any person
3 designated as Key Personnel, AUTHORITY shall notify CONTRACTOR in writing. Within fourteen (14)
4 Business Days of receipt of such Notice, the CONTRACTOR shall either propose a replacement person
5 for evaluation and Approval by AUTHORITY or present to AUTHORITY a thirty (30) Calendar Day plan
6 for correcting the incumbent's performance deficiencies. If AUTHORITY rejects the replacement person
7 for evaluation, then CONTRACTOR shall propose another replacement person within fourteen (14)
8 Business Days, which process shall be followed until CONTRACTOR proposes a replacement person
9 acceptable to AUTHORITY. If AUTHORITY rejects the plan of correction, or Approves the plan of
10 correction, but the incumbent's performance deficiencies are not corrected to AUTHORITY's satisfaction
11 within thirty (30) Calendar Days of AUTHORITY's Approval of the correction plan, then the
12 CONTRACTOR shall, propose to AUTHORITY a replacement person for evaluation and Approval by
13 AUTHORITY within the time and manner set forth above.

14 6. Should the services of any Key Personnel become no longer available to
15 CONTRACTOR, CONTRACTOR shall, within one (1) Business Day from the day CONTRACTOR
16 becomes aware that the Key Personnel is or will no longer be available, provide Notice to AUTHORITY.
17 The resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for
18 Approval as soon as possible, but in no event later than fourteen (14) Business Days after
19 CONTRACTOR becomes aware that the Key Personnel is or will not be available. AUTHORITY will
20 respond to CONTRACTOR within seven (7) Business Days following receipt of these qualifications
21 concerning Approval of the replacement. As used in this paragraph, "no longer available to
22 CONTRACTOR" means that the Key Personnel is no longer employed by CONTRACTOR or is otherwise
23 physically unable to perform as required by this AGREEMENT for reasons such as health, for a period of
24 more than thirty (30) Calendar Days. In the event a Key Personnel member was rendered physically
25 unable to perform, but later is physically able to perform, CONTRACTOR shall notify AUTHORITY and
26 may return such Key Personnel to his or her position, subject to the AUTHORITY's reasonable Approval.

1 CONTRACTOR inability to provide a suitable replacement for a period of more than thirty (30) Calendar
2 Days whatever the reason, shall trigger the liquidated damages for Unavailability set forth in Article 18.C.2
3 or 18.C.3, depending upon the position.

4 7. Reassignment by CONTRACTOR of a Key Personnel member without the
5 express Approval of AUTHORITY will automatically trigger liquidated damages for Unavailability set forth
6 in Article 18.C. 2 or 18.C.3, depending upon the position.

7 **ARTICLE 5. TERM OF AGREEMENT**

8 A. Initial Term: This AGREEMENT shall commence upon the Effective Date, and shall
9 continue in full force and effect for a period of up to eight (8) years through _____ ("Initial Term"),
10 unless earlier terminated or extended as provided in this AGREEMENT. The Initial Term is composed of
11 an Implementation Phase, and an Operations and Maintenance (O&M) Phase, beginning at Go-Live, of
12 six (6) years.

13 B. Extensions: AUTHORITY, at its sole discretion, may elect to extend the Initial Term of
14 this AGREEMENT up to an additional thirty-six months (36) months or any portion thereof ("Option Term
15 1"), and thereupon require CONTRACTOR to provide the Work and otherwise perform in accordance
16 with the Scope of Work and Requirements, and at the rates set forth in Exhibit D, entitled "Contractor's
17 Price Proposal." AUTHORITY, at its sole discretion, may elect to extend the Initial Term, as extended by
18 Option Term 1, up to an additional twenty-four (24) months or any portion thereof ("Option Term 2"), and
19 thereupon require CONTRACTOR to continue to provide Work and otherwise perform in accordance with
20 the Scope of Work and Requirements and at the rates set forth in Exhibit D, CONTRACTOR's Price
21 Proposal. The Initial Term and any extensions thereof shall be referred to as "Term" in this
22 AGREEMENT.

23 C. Extensions Not Constituting Waiver: AUTHORITY's election to extend the Initial Term
24 under Option Term 1 and/or Option Term 2, shall not diminish its right to terminate the AGREEMENT for
25 AUTHORITY's convenience or CONTRACTOR's default as provided elsewhere in this AGREEMENT.
26 The maximum Term of this AGREEMENT shall be thirteen (13) years from the Effective Date.

ARTICLE 6. TIME AND SCHEDULE/COMPLETION DATES

A. Schedule and Submittals:

1. CONTRACTOR's Submittal requirements and Submittal schedule shall be as set out in CONTRACTOR's Approved Project Management Plan and CONTRACTOR's Approved Baseline Implementation Schedule, in accordance with the Scope of Work and Requirements.

2. AUTHORITY's written Approval will be required for Submittals.

3. Within fifteen (15) Calendar Days from the Effective Date CONTRACTOR shall submit a Baseline Implementation Schedule in a format acceptable to AUTHORITY for AUTHORITY's review and Approval. The Preliminary Implementation Schedule at the time of the execution of the AGREEMENT, included as Exhibit C, shall be the basis for the development of CONTRACTOR's submitted Baseline Implementation Schedule. The Baseline Implementation Schedule shall propose dates by which CONTRACTOR will (a) submit required permits, documents, applications, and design; and (b) develop; deliver; install; test, and implement the required BOS, including all necessary documents, Submittals, and Deliverables in support thereof. Sufficient information shall be shown on the Baseline Implementation Schedule to enable proper control and monitoring of the tasks and subtasks in the Scope of Work and Requirements.

4. Upon completion of the Baseline Implementation Schedule by the CONTRACTOR to the satisfaction of AUTHORITY, the AUTHORITY will Approve the schedule, and it will thereafter be deemed the Approved Baseline Implementation Schedule and will constitute the schedule for the submittals set forth in paragraph 5 of this Article 6.

5. Progress of Work shall be measured against the Approved Baseline Implementation Schedule and submitted to AUTHORITY monthly until the Project Implementation Phase has been completed. Submission of monthly progress updates to the schedule shall not release or relieve CONTRACTOR from full responsibility for completing the Work within the time set forth in the Approved Baseline Implementation Schedule.

6. CONTRACTOR shall furnish sufficient resources to ensure the performance of

1 the Work in accordance with the Approved Baseline Implementation Schedule. If CONTRACTOR falls
2 behind in the performance of the Work as indicated in the Approved Baseline Implementation Schedule,
3 CONTRACTOR shall take such steps as may be necessary to improve its progress to ensure its
4 performance in accordance with the Approved Baseline Implementation Schedule. CONTRACTOR shall
5 manage the risks to the Approved Baseline Implementation Schedule to avoid any potential delays or
6 make every effort to work around any potential delays and mitigate the impact of delay.

7 7. CONTRACTOR shall be responsible for all delays in the Approved Baseline
8 Implementation Schedule, except delays in Approvals caused by Force Majeure events. However,
9 nothing in this section relieves CONTRACTOR of its responsibility to provide complete and accurate
10 Submittals and Deliverables that meet the requirements of the Scope of Work and Requirements.
11 Submittals rejected by AUTHORITY due to the CONTRACTOR's failure to meet the requirements of the
12 Submittal or Deliverable or to address the previous comments provided by AUTHORITY are not Force
13 Majeure events or otherwise excused events and CONTRACTOR shall be held responsible for all
14 associated delays.

15 8. If comments forms are established in the Project Management Plan to be used for
16 the resolution of questions and issues on a Submittal, the Submittal shall not be considered Approved
17 until all written comments are addressed to the satisfaction of the AUTHORITY. Such lack of Approval
18 shall be considered a rejection until such time as the comments are fully resolved.

19 B. Guaranteed Completion Dates:

20 In executing this AGREEMENT CONTRACTOR is guaranteeing that the BOS will be fully
21 operational by the following specified dates, "Guaranteed Completion Dates", subject to any extensions
22 thereof Approved by AUTHORITY in accordance with this AGREEMENT:

23 1. The BOS shall have achieved Commencement of Ramp-up/Customer Services
24 as determined by AUTHORITY, within thirty (30) Calendar Days of Notice to Proceed for Ramp-
25 up/Customer Services, with such Notice to Proceed not provided by AUTHORITY earlier than five
26 hundred sixty-four (564) Calendar Days from the Effective Date.

1 2. The 405 Express Lanes BOS shall have achieved Readiness for Go-Live as
2 determined by AUTHORITY, within six hundred eighty-four (684) Calendar Days from the Effective Date.

3 3. In addition to all other rights and remedies available to AUTHORITY, if
4 CONTRACTOR fails to meet a Guaranteed Completion Date, as such Guaranteed Completion Date may
5 be extended pursuant to this AGREEMENT, the CONTRACTOR shall be subject to liquidated damages
6 as specified in Article 18, Liquidated Damages.

7 C. Delays:

8 1. If at any time CONTRACTOR fails to complete any activity by the completion date
9 in the Approved Baseline Implementation Schedule, unless previously excused by AUTHORITY in
10 writing, CONTRACTOR will be required, within seven (7) Calendar Days of AUTHORITY's request, to
11 submit to AUTHORITY a statement as to how it plans to return to compliance, including a recovery
12 schedule if directed by AUTHORITY.

13 2. If CONTRACTOR fails or refuses to implement measures sufficient to bring its
14 Work back into conformity with the Approved Baseline Implementation Schedule, it shall be considered
15 an Event of Default and AUTHORITY may exercise all rights provided herein therefor, including permitting
16 CONTRACTOR to proceed under specified conditions required by AUTHORITY.

17 3. No AUTHORITY review or Approval of a schedule submitted by CONTRACTOR
18 shall release or relieve CONTRACTOR from full responsibility for the accurate, complete and timely
19 performance of the Work, including the accuracy and completeness of the schedules, or any other duty,
20 obligation or liability imposed on it by this AGREEMENT. AUTHORITY's Approval of a schedule shall
21 not constitute a representation by AUTHORITY that CONTRACTOR will be able to proceed or complete
22 the Work in accordance with the dates contained in said schedule.

23 **ARTICLE 7. START AND PHASES OF WORK**

24 A. Implementation Phase: The Implementation Phase shall commence upon the Effective
25 Date and shall continue until Final Acceptance. CONTRACTOR shall not begin performing Work until the
26 Effective Date and shall not be entitled to any compensation for any Work performed or costs incurred

1 prior to the Effective Date.

2 B. Conditions precedent to AUTHORITY executing the AGREEMENT are CONTRACTOR
3 furnishing the Form I, Performance Bond, Form J, Payment Bond, and applicable certificates of insurance
4 and endorsements thereof as required by this AGREEMENT. CONTRACTOR shall furnish said
5 documents within ten (10) Business Days after notification of award of this AGREEMENT from
6 AUTHORITY.

7 C. O&M Phase: The O&M Phase shall commence upon achieving commencement of Ramp-
8 up/Customer Services and shall continue through the end of the Term.

9 **ARTICLE 8. PAYMENT**

10 A. Payment of AUTHORITY Maximum Obligation: AUTHORITY shall pay to
11 CONTRACTOR up to its Maximum Obligation amount, for CONTRACTOR's full and complete
12 performance of its obligations under this AGREEMENT on a fixed and variable unit price basis in
13 accordance with the following provisions set forth in paragraphs B through M of this Article 8.

14 B. Payments for Implementation Phase: Payments to CONTRACTOR for the
15 Implementation Phase will be in the amounts and percentages as indicated in the CONTRACTOR Price
16 Proposal, and Exhibit E, Milestone Payment Schedule. Payments for BOS design, development,
17 integration and testing, installation and other Deliverables will be made using fixed prices for completed
18 and Approved Deliverables as provided in the Milestone Payment Schedule and the CONTRACTOR
19 Price Proposal.

20 C. Payments for Maintenance: Payments for Maintenance will be made on a monthly basis,
21 based on variable unit prices in accordance with the CONTRACTOR Price Proposal. Adjustments to
22 these payments may be made for CONTRACTOR performance which falls below required Performance
23 Measures as further set forth in the Scope of Work and Requirements.

24 D. Payments for Operations: Payments for Operations will be made on a monthly basis, ,
25 based on variable unit prices and Approved pass-through costs, in accordance with the CONTRACTOR
26 Price Proposal. Adjustments to these payments (excluding pass-through costs) may be made for

1 CONTRACTOR performance which falls below required Performance Measures as further set forth in
 2 the Scope of Work and Requirements.

3 E. Full and Complete Compensation: All Work performed by CONTRACTOR in meeting the
 4 requirements of the AGREEMENT shall be paid under one of the above payment methods, which shall
 5 constitute full compensation for the Work, including but not limited to: (a) the cost of all insurance and
 6 bond premiums, home office, job site and other overhead, and profit relating to CONTRACTOR's
 7 performance of the Work; (b) the cost of performance of each and every portion of the Work (including all
 8 costs of all Work provided by Subcontractor(s) and third-party licenses and Software; (c) the cost of
 9 obtaining all governmental approvals; (d) all costs of compliance with and maintenance of such
 10 governmental approvals; (e) all risk of inflation, unless otherwise noted, currency risk, interest and other
 11 costs of funds associated with the payment terms for the Work as provided herein; and (f) payment of
 12 any taxes, duties, permits and other fees and/or royalties imposed with respect to the Work and any
 13 Equipment, materials or labor included therein.

14 F. Schedule of Fixed Payment for Implementation: The following schedule shall establish
 15 the firm fixed payment to CONTRACTOR by AUTHORITY for the Implementation Phase set forth in the
 16 Scope of Work and Requirements:

TYPE OF PAYMENT	PAYMENT AMOUNT (\$)
Fixed Price	\$0.00
Total Implementation Phase	\$0.00

17
 18
 19
 20 G. Schedule of variable price and pass-through payment for O&M: The following schedule
 21 shall establish the basis for payment to CONTRACTOR by AUTHORITY for the O&M Phase set forth in
 22 the Scope of Work and Requirements. The schedule also shows the Maximum Obligation of AUTHORITY
 23 for the combined Implementation and Operation and Maintenance Phases, established in Article 9,
 24 Maximum Obligation.
 25
 26

TYPE OF PAYMENT	PAYMENT AMOUNT (\$)
Variable Costs Based on Unit Prices	\$0.00
Pass through Costs	\$0.00
Total O&M Phase	\$0.00
MAXIMUM OBLIGATION FOR IMPLEMENTATION AND O&M PHASES	\$0.00

H. During the Implementation Phase: CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding to the Work actually completed by CONTRACTOR and Approved by AUTHORITY and in accordance with the payment methods as set forth in paragraph B of this Article 8.

I. Invoice requirements following commencement of Ramp-up/Customer Service and Go-Live: CONTRACTOR shall invoice AUTHORITY in accordance with the payment methods as set forth in paragraphs C and D of this Article 8. Such payments shall be monthly in arrears, beginning one month after commencement of Ramp-up/Customer Services.

J. Deliverables completed and Approved by AUTHORITY and Work performed shall be documented in a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. At its sole discretion, AUTHORITY may decline to make full payment for any Deliverable or Work performed until such time as CONTRACTOR has documented to AUTHORITY's satisfaction, that CONTRACTOR has completed all Work required under the invoice. AUTHORITY's payment in full for any task or Deliverable completed shall not constitute AUTHORITY's Final Acceptance of CONTRACTOR's Work under such invoice.

K. Retention: As partial security against CONTRACTOR's failure to satisfactorily fulfill all of its obligations under this AGREEMENT, AUTHORITY shall retain ten percent (10%) of the amount of each Implementation Phase invoice submitted for payment by CONTRACTOR. During the Term at its sole discretion, AUTHORITY reserves the right to release all or a portion of the retained amount based on CONTRACTOR's satisfactory completion of certain milestones. CONTRACTOR shall invoice AUTHORITY for the release of the retention in its final Implementation Phase invoice following

1 Implementation Phase Final Acceptance in accordance with Article 23. All retained funds will be released
2 by AUTHORITY and will be paid to CONTRACTOR within sixty (60) Calendar Days of payment of final
3 Implementation Phase invoice, unless AUTHORITY elects to audit CONTRACTOR's records in
4 accordance with Article 44, Audit and Inspection of Records. If AUTHORITY elects to audit, retained
5 funds will be paid to CONTRACTOR within thirty (30) Calendar Days of completion of such audit in an
6 amount reflecting any adjustment required by such audit.

7 L. Submission of Invoices: Invoices shall be submitted by CONTRACTOR in duplicate to
8 AUTHORITY's Accounts Payable office. CONTRACTOR may also submit invoices electronically to
9 AUTHORITY's Accounts Payable at vendorinvoices@octa.net. Each invoice shall be accompanied by
10 the monthly progress report specified in paragraph J of this Article, and the Scope of Work and
11 Requirements. AUTHORITY shall remit payment within thirty (30) Calendar Days of the receipt and
12 Approval of each invoice. Each invoice shall include the following information:

- 13 1. AGREEMENT No. C-X-XXXX;0-2352
- 14 2. The specific phase number for which payment is being requested;
- 15 3. BOS generated reports to validate quantities for the unit priced items, where
16 applicable;
- 17 4. AUTHORITY Project Manager's Approval of the payment request;
- 18 5. Identification of the relevant line item price in the Price Proposal, and if milestone
19 payment, identification of the milestone name, number, and amount in the Payment Schedule;
- 20 6. The time period covered by the invoice;
- 21 7. Total monthly invoice (including Project-to-date, cumulative invoice amount) and
22 retention for the time period covered by the invoice and cumulative retention held, if applicable;
- 23 8. Monthly Progress Report and Approved Baseline Implementation Schedule
24 during Implementation Phase or, Monthly Operations Report during the O&M Phase;
- 25 9. Weekly certified payroll for personnel subject to prevailing wage requirements, if
26 applicable;

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

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

10 M. Failure to comply with AUTHORITY's direction: CONTRACTOR shall not be entitled to
11 have any invoices processed or to have any payment made for Work performed if it has failed to comply
12 with any lawful or proper direction from AUTHORITY concerning the Work, following receipt of Notice
13 from AUTHORITY that the CONTRACTOR has failed to comply and that the AUTHORITY will exercise
14 its right to withhold payment of invoices within five (5) Business Days of the date of such Notice, unless
15 and until such time as compliance is achieved.

16 **ARTICLE 9. MAXIMUM OBLIGATION**

17 Notwithstanding any provisions of this AGREEMENT to the contrary, AUTHORITY and
18 CONTRACTOR mutually agree that AUTHORITY's maximum cumulative payment obligation (including
19 obligation for CONTRACTOR's profit) for all Work during the Initial Term shall be _____ Dollars
20 (\$____.00) (the "Maximum Obligation"). This is based on fixed and variable price components and
21 includes, but is not limited to, all amounts payable by AUTHORITY to CONTRACTOR for its subcontracts,
22 leases, pass-throughs, materials and costs arising from, or due to termination of, this AGREEMENT and
23 as further set forth in Article 8, Payment.

24 **ARTICLE 10. PROMPT PAYMENT CLAUSE**

25 A. AUTHORITY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to
26 facilitate timely payment to all Subcontractors in accordance with regulatory mandates. Pursuant to 49

1 CFR Part 26.29, AUTHORITY will include the following clause in each U.S. DOT-assisted contract:

2 B. "CONTRACTOR agrees to pay each Subcontractor under this Contract for satisfactory
3 performance of its contract no later than seven (7) days from the receipt of each payment CONTRACTOR
4 receives from AUTHORITY. CONTRACTOR agrees further to return retainage payments to each
5 Subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and
6 accepted including incremental acceptances of portions of the Agreement work by AUTHORITY. Any
7 delay or postponement of payment from the above referenced time frame may take place only for good
8 cause and with AUTHORITY's prior Approval." CONTRACTOR shall incorporate this clause verbatim,
9 set forth above, in all subcontract, broker, dealer, vendor, supplier, purchase order or other source
10 agreements issued to both DBE and non-DBE firms.

11 C. Any violation of the provisions listed above shall subject the violating CONTRACTOR to the
12 penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and
13 Professions Code. This requirement shall not be construed to limit or impair any contractual,
14 administrative or judicial remedies otherwise available to CONTRACTOR or Subcontractor in the event
15 of a dispute involving late payment or nonpayment by CONTRACTOR; deficient Subcontractor
16 performance and/or noncompliance by a Subcontractor.

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

21 **ARTICLE 11. NOTICES**

22 All Notices hereunder and communications regarding the interpretation of the terms of this
23 AGREEMENT, or changes thereto, shall be effected by delivery of said Notices in person or by depositing
24 said Notices in the U.S. mail, registered or certified mail, returned receipt requested, postage prepaid or
25 (c) sent by electronic e-mail; provided that the recipient of the electronic Notice acknowledges receipt of
26 such transmission by email. Personal or courier delivery shall be deemed given upon actual delivery to

1 the intended recipient at the designated address. Mailed Notices shall be deemed given upon the date
 2 of the actual receipt as evidenced by the return receipt. Electronic e-mail Notice shall be deemed given
 3 upon the date the email is acknowledged as received by the recipient; provided that if acknowledgement
 4 is received after 5 p.m., delivery shall be deemed received as of 8 a.m. the following Business Day. Any
 5 Notice shall be sent, transmitted or delivered, as applicable, to the applicable Party the following address:

To: CONTRACTOR	To: Orange County Transportation Authority
	550 South Main Street P.O. Box 14184 Orange, CA 92863-1584
ATTENTION:	Mr. Robert Webb Senior Contract Administrator and Ms. Ellen Lee Project Manager
	R Webb Phone: (714) 560-5743 E Lee Phone: (714) 560-5988
	Email: rwebb@octa.net ; elee@octa.net

ARTICLE 12. INDEPENDENT CONTRACTOR

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

26 B. Should CONTRACTOR's personnel or a state or federal agency allege claims against
 AUTHORITY involving the status of AUTHORITY as employer, joint or otherwise, of said personnel, or

1 allegations involving any other independent contractor misclassification issues, CONTRACTOR shall
2 defend and indemnify AUTHORITY in relation to any allegations made.

3 **ARTICLE 13. BONDS**

4 A. All bonds required by this AGREEMENT shall be issued by sureties authorized to do
5 business in the State of California with an A.M. Best Rating of A-, Class VIII, or better, or as otherwise
6 Approved by AUTHORITY in its sole discretion, referred to hereinafter as "Eligible Surety".
7 Notwithstanding any other provision set forth in this AGREEMENT, performance by a surety of any
8 obligations of CONTRACTOR shall not relieve CONTRACTOR of any of its obligations under this
9 AGREEMENT.

10 B. As partial security against CONTRACTOR's failure to satisfactorily fulfill all Work and
11 obligations under this AGREEMENT, CONTRACTOR shall submit and keep in place until both 1) Go-
12 Live and 2) CONTRACTOR provision of applicable Operations and Maintenance Bond (hereinafter
13 referred to as an "O&M Bond") as described in paragraphs C and D below, a Performance Bond, and a
14 Payment Bond referred to hereinafter as "Bonds", in the forms respectively set forth in Forms I and J, and
15 attached to this AGREEMENT. The Bonds shall each be in the sum of one-hundred (100%) percent of
16 the Total Firm Fixed Price for the Implementation Phase (as shown in Sheet 1 of the CONTRACTOR
17 Price Proposal entitled Project Summary, cell E7, Grand Total Cost. If the Total Firm Fixed Price for the
18 Implementation Phase is increased in connection with an amendment, AUTHORITY may, in its sole
19 discretion, require a corresponding increase in the amount of the Bonds or new Bonds covering the
20 Amendment.

21 C. An O&M Bond shall be required for the BOS in the form of Form K, attached to this
22 AGREEMENT, as a condition of Go-Live. The initial bonding level for the O&M Phase shall be provided
23 at one-hundred (100%) percent of Years 1 to 3 of O&M (not including pass-through costs) as shown on
24 CONTRACTOR Price Proposal Sheet 4, Projected Bond Amounts Table (cell C25).

25 D. The O&M Bond (not including pass-through costs) shall be renewed each year at the
26 anniversary date of Go-Live through the end of the Term. For subsequent years after the first year of

1 O&M, the renewed O&M Bond shall be submitted to AUTHORITY at least fifteen (15) Business Days
2 prior to the anniversary date of Go-Live. Upon Approval thereof, AUTHORITY will release the prior year's
3 Bonds.

4 E. The value of the O&M bond for years 2 through 6 and shall be determined as follows:

5 1. Year 2 O&M bond = Estimated total combined cost of O&M for years 2 and 3 (not
6 including pass-through costs) as shown on Sheet 4, Projected Bond Amounts table (cell C26).

7 2. Each of Years 3 through 6 O&M bond = Estimated cost of total combined cost of
8 O&M for upcoming year only as provided on Sheet 4, Project Bond Amounts Table for the respective
9 upcoming year (cells C27, C28, C29, CC30, as applicable).

10 F. The estimated value of the O&M costs for any given year with regard to bonded amount
11 shall be based on the value presented in the CONTRACTOR Price Proposal for total O&M costs for the
12 referenced year(s) as provided in paragraph E of this article, as adjusted for any Approved change orders
13 that have affected these Price Proposal cells and any updates in the estimated O&M volumes for the
14 year(s) provided by AUTHORITY at its sole determination.

15 G. If any Bond previously provided becomes ineffective, or if the Eligible Surety that provided
16 the Bond no longer meets the AGREEMENT requirements, CONTRACTOR shall provide a replacement
17 Bond in the same form issued by an Eligible Surety within five (5) Business Days of CONTRACTOR's
18 knowledge of same. CONTRACTOR shall provide Notice to AUTHORITY promptly following such Bond
19 being rendered ineffective or when such Bond's surety is no longer an Eligible Surety, in no case later
20 than three (3) Business Days thereafter.

21 H. Additionally, the Performance Bond shall meet the following requirements:

22 1. Identify AUTHORITY and AGREEMENT No. C-X-XXXX for which
23 the0-2352

24 Performance Bond is provided; and

25 2. Upon Notice by AUTHORITY that CONTRACTOR has defaulted under this
26 AGREEMENT, the Eligible Surety will have ten (10) Business Days to make a determination on the claim
and to notify AUTHORITY accordingly.

1 **ARTICLE 14. INDEMNIFICATION**

2 A. CONTRACTOR shall indemnify, defend and hold harmless AUTHORITY, Caltrans,
3 FHWA, and their officers, directors, employees and agents, (hereafter, the "Indemnitees") from and
4 against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement)
5 for any loss or damages, bodily injuries, including death, damage to or loss of use of property caused by
6 the negligent acts, omissions or willful misconduct by CONTRACTOR, its officers, directors, employees,
7 agents, Subcontractors or Suppliers in connection with or arising out of the performance of this
8 AGREEMENT. In addition to any other defense and indemnity obligations that CONTRACTOR has
9 assumed under this AGREEMENT, CONTRACTOR shall defend, indemnify and hold harmless the
10 Indemnitees from and against any and all liabilities, actions, suits, claims, and legal expenses, including
11 attorneys' fees, which arise out of any claim asserting a cause of action for trespass, inverse
12 condemnation or any other unlawful entry onto property by CONTRACTOR, its Subcontractors, agents
13 or employees. Any monies owed may be deducted from any monies due or to become due to
14 CONTRACTOR hereunder or under any other agreement between CONTRACTOR and AUTHORITY.

15 B. Intellectual Property:

16 1. CONTRACTOR shall be liable and responsible without limitation for any and all
17 claims made against AUTHORITY for infringement of Intellectual Property rights, by the use or supplying
18 of any Equipment or Software in the course of performance or completion of, or in any way connected
19 with, the Work, or AUTHORITY's continued use of such Equipment or Software. The CONTRACTOR
20 shall indemnify AUTHORITY against and save it harmless from all loss and expense incurred in the
21 defense, settlement or satisfaction of any claims in the nature of Intellectual Property infringement arising
22 out of or in connection with AUTHORITY's use, pursuant to this AGREEMENT, of the Equipment and
23 Software.

24 2. Without limiting any other rights or remedies available to AUTHORITY under the
25 AGREEMENT, in law and/or equity, in the event that any Intellectual Property, Equipment or Software
26 employed to provide Work pursuant to this AGREEMENT, or portion thereof, is held to constitute an

1 infringement and its use is or may be enjoined, the CONTRACTOR shall have the obligation at
2 AUTHORITY's option to do one or more of the following:

3 a. Require CONTRACTOR to, at its own expense, supply, temporarily or
4 permanently, replace the Intellectual Property, Equipment or Software of similar quality and function
5 which is not subject to such an infringement or injunction;

6 b. Require CONTRACTOR to, at its own expense, remove all such
7 Intellectual Property, Equipment and Software and refund to AUTHORITY the cost thereof or equitably
8 adjust compensation;

9 c. Take such steps as is necessary to ensure compliance by AUTHORITY
10 with such injunction;

11 d. Modify, or require that the applicable Subcontractor or Supplier modify, the
12 alleged infringing Intellectual Property at its own expense, without impairing in any respect the
13 functionality or performance thereof that is non-infringing; and/or

14 e. Procure for AUTHORITY, at CONTRACTOR's expense, the rights
15 provided under this AGREEMENT to use the infringing Intellectual Property, Equipment or Software.

16 3. CONTRACTOR shall be solely responsible for determining and informing
17 AUTHORITY whether a prospective Supplier or Subcontractor is a party to any litigation involving
18 Intellectual Property infringement or misappropriation or any injunction related to thereto, or arising out of
19 any Intellectual Property, Equipment and/or Software provided hereunder. The CONTRACTOR shall
20 enter into agreements with all Suppliers and Subcontractors at its own risk. AUTHORITY may reject any
21 Intellectual Property, Equipment or Software, which it believes to be the subject of any such litigation or
22 injunction, or if, in AUTHORITY's judgment, use thereof does not meet the objectives of Work, restricts
23 or impairs AUTHORITY's rights in any Intellectual Property, or is unlawful.

24 **ARTICLE 15. INSURANCE**

25 A. CONTRACTOR shall procure at its own expense and maintain during the Term of this
26 AGREEMENT or longer as provided herein, insurance coverage as specified in this Article 15 or as

1 otherwise agreed to by AUTHORITY. CONTRACTOR shall provide the following insurance coverage:

2 1. Commercial General Liability at least as broad as Insurance Services Office
3 Commercial General Liability Coverage (occurrence form CG 0001 or equivalent) with a minimum limit of
4 \$5,000,000.00 per occurrence and \$10,000,000.00 general aggregate. and is acceptable to
5 AUTHORITY;

6 2. Automobile Liability at least as broad as Insurance Services Office Business Auto
7 Coverage (form CA 0001, code 1, any auto, or equivalent), with a minimum combined single limit of
8 \$5,000,000.00 per occurrence and is acceptable to AUTHORITY;

9 3. Workers' Compensation insurance as required by the State of California and
10 Employer's Liability Insurance. Employer's liability limits shall be no less than \$1,000,000 each accident,
11 each employee for bodily injury, and policy limit for bodily injury. The policy shall be endorsed to waive
12 the insurer's right of subrogation against the AUTHORITY and its respective officers, directors,
13 employees and agents;

14 4. Commercial Crime with limits no less than \$5,000,000 per claim and in the
15 aggregate to include: Employee dishonesty, Forgery & Alteration, Monies & Securities, Computer
16 Crime; and

17 5. Technology Errors & Omissions Including Privacy and Network Security- covering
18 liability for errors or omissions in rendering computer or information technology services including 1)
19 systems analysis 2) systems programming 3) data processing 4) systems integration 5) outsourcing
20 development and design 6) systems design, consulting, development and modification 7) training
21 services relating to computer Software or Hardware 8) management, repair and maintenance of computer
22 products, networks and systems 9) marketing, selling, servicing, distributing, installing and maintaining
23 computer Hardware or Software 10) data entry, modification, verification, maintenance, storage, retrieval
24 or preparation of data output, and 11) Privacy and Network Security (Cyber Liability) insurance covering
25 liability arising from a) hostile action, or a threat of hostile action ("ransomware"), b) "malware" including
26 computer viruses, Trojan horses, worms and any other type of malicious or damaging code c) dishonest,

1 fraudulent, malicious, or criminal use of a computer system by a person, whether identified or not, and
2 whether acting alone or in collusion with other persons, d) denial of service for which the insured is
3 responsible that results in the degradation of or loss of access to internet or network activities or normal
4 use of a computer system e) loss of service that results in the inability of a third-party, who is authorized
5 to do so, to access a computer system and conduct normal activities. The policy limit shall be not less
6 than fifteen million dollars (\$15,000,000) per claim and annual aggregate.

7 B. Proof of such coverage, in the form of a certificate of insurance, a copy of the insurance
8 policy and/or an insurance company issued policy endorsement shall be provided to AUTHORITY. Proof
9 of insurance coverage and endorsements evidencing the requirements for additional insureds must be
10 received by AUTHORITY within ten (10) Calendar Days from notification of award of this AGREEMENT.
11 Such insurance shall be primary and non-contributory to any insurance or self-insurance maintained by
12 AUTHORITY. AUTHORITY reserves the right to request certified copies of all related insurance policies.

13 C. CONTRACTOR shall include on the face of the Certificate of Insurance the AGREEMENT
14 Number and AUTHORITY'S Contract Administrator's Name, Robert Webb, Senior Contracts
15 Administrator.

16 D. AUTHORITY and the California Department of Transportation, their officers, directors,
17 employees and agents (the "Indemnitees") must be named as additional insured on Commercial General
18 Liability and Automobile Liability Certificates and on the insurance policy endorsement with respect to
19 performance hereunder.

20 E. CONTRACTOR shall also include in each subcontract the requirement that
21 Subcontractors shall maintain appropriate insurance coverage in the amounts as required by
22 CONTRACTOR and include the Indemnitees as additional insureds on general and automobile liability
23 policies. Such coverage shall be in effect at all times that a Subcontractor is performing Work under the
24 Contract. CONTRACTOR shall have responsibility to enforce Subcontractor compliance with these or
25 similar insurance requirements provided that CONTRACTOR shall upon AUTHORITY'S request provide
26 acceptable evidence of insurance for any Subcontractor. The CONTRACTOR shall assume all

1 responsibility for risks or casualties of every description, for any and all damage, loss or injury, to persons
2 or property arising out of the nature of the Work, including but not limited to the negligence or failure of
3 its Subcontractors (as well as CONTRACTOR's employees) to comply with this AGREEMENT.

4 F. CONTRACTOR shall be required to immediately notify AUTHORITY of any modifications
5 or cancellation of any required insurance policies.

6 G. CONTRACTOR shall at all times during the Term of this AGREEMENT maintain
7 insurance in such form as is satisfactory to AUTHORITY, and will furnish AUTHORITY with continuing
8 evidence of insurance as provided below. All insurance policies shall be issued by companies licensed
9 to do business in the State of California, with an A.M. Best Rating of A-, Class VII, or better, or as
10 otherwise approved by AUTHORITY. CONTRACTOR shall at all times comply with the terms of such
11 insurance policies, and all requirements of the insurer under any such insurance policies, except as they
12 may conflict with existing California laws or this AGREEMENT.

13 H. CONTRACTOR shall provide AUTHORITY with certificates showing the required
14 coverage to be in effect and a copy of the insurance policy or endorsements evidencing the requirements
15 for the additional insureds. Such policies shall provide that the insurance shall not be materially modified
16 or cancelled except upon thirty (30) Calendar Days prior written Notice to AUTHORITY. Copies of all
17 insurance policies and endorsements shall be provided to AUTHORITY upon request.

18 I. AUTHORITY reserves the right to review all insurance coverage and amounts of
19 insurance coverage on an annual basis and to require the CONTRACTOR to adjust the insurance
20 coverage and amounts of insurance coverage based on industry standards for contracts of this size and
21 type. CONTRACTOR shall timely pay all premiums and deductibles when due for all insurance coverage
22 required herein. The above insurance shall not contain a self-insurance retention (SIRs) unless Approved
23 by AUTHORITY.

24 J. Pertaining to the above paragraphs J. regarding professional liability, technology errors and
25 omissions, and cyber liability insurance, if coverage is written on a claims made basis, such insurance
26 shall be maintained in force at all times during the Term and for a period of three (3) years thereafter for

1 Work completed during the Term. Additionally, if a sub-limit applies to any elements of coverage, the
2 policy endorsement evidencing the coverage above must specify the coverage section and the amount
3 of the sub-limit.

4 K. Providing and maintaining adequate insurance coverage described herein is a material
5 obligation of the CONTRACTOR and is of the essence for this AGREEMENT. The limits of coverage
6 under each insurance policy maintained by CONTRACTOR shall not be interpreted as limiting the
7 CONTRACTOR's liability and obligations under the AGREEMENT.

8 L. Subcontractors' Insurance: CONTRACTOR shall either require each Subcontractor to
9 obtain and maintain Workers' Compensation Insurance, Commercial General Liability, Business
10 Automobile Liability and Professional Liability coverage similar to those required above in this section for
11 the CONTRACTOR, or any other coverage deemed necessary to the successful performance of the
12 AGREEMENT, or cover Subcontractors under the CONTRACTOR's policies. Such coverage shall be in
13 effect at all times that a Subcontractor is performing Work under the Contract. The CONTRACTOR shall
14 have responsibility to enforce Subcontractor compliance with these or similar insurance requirements;
15 provided the CONTRACTOR shall upon AUTHORITY's request provide acceptable evidence of
16 insurance for any Subcontractor. The CONTRACTOR shall assume all responsibility for risks or casualties
17 of every description, for any and all damage, loss or injury, to persons or property arising out of the nature
18 of the Work, including but not limited to the negligence or failure of its Subcontractors (as well as
19 CONTRACTOR's employees) to comply with this AGREEMENT.

20 M. Waivers: AUTHORITY and CONTRACTOR waive all rights against each other, against
21 each of their agents and employees and their respective members, directors, officers, employees, agents
22 and consultants for any claims to the extent covered by insurance obtained pursuant to this Article 15,
23 except such rights as they may have to the proceeds of such insurance. CONTRACTOR shall require all
24 Subcontractors to provide similar waivers in writing in favor of AUTHORITY and its respective officers,
25 officials, employees and volunteers except as otherwise agreed to by AUTHORITY.

26 **ARTICLE 16. CHANGES**

1 A. By written Notice or order, AUTHORITY may, from time to time, order Work suspension,
2 add or deduct Work and/or make changes in the general Scope of Work and Requirements of this
3 AGREEMENT hereinafter collectively referred to as "Changes". Changes include, but are not limited to,
4 the Work furnished to AUTHORITY by CONTRACTOR as described in the Scope of Work and
5 Requirements.

6 B. Any such Changes to Work that are considered by AUTHORITY to be a Change(s) to the
7 current Scope of Work and Requirements shall result in the issuance of an Amendment signed by both
8 AUTHORITY and the CONTRACTOR. No Change shall be compensated or time extensions therefore
9 permitted, except pursuant to an Approval. A Work suspension issued by AUTHORITY, via a stop notice,
10 which results in an increase or decrease to the maximum obligation due CONTRACTOR, will require an
11 Amendment.

12 C. Any Change considered by AUTHORITY to be within the current Scope of Work but that
13 has not been specifically tasked or separately identified in CONTRACTOR's Price Proposal, will not
14 require a Contract Amendment and will be identified as an Additional Work Order, subject to Approval by
15 AUTHORITY.

16 D. If any such suspension of Work or Change causes an increase or decrease in the price
17 of this AGREEMENT or in the time required for its performance, CONTRACTOR shall promptly notify
18 AUTHORITY thereof and assert its claim for adjustment within (10) calendar days after the Change or
19 Work suspension is ordered, and an equitable adjustment shall be negotiated. However, nothing in this
20 clause shall excuse CONTRACTOR from proceeding immediately with the requested Change.

21 E. In determining additional compensation to be paid for Change, the Parties shall use the
22 labor, Equipment, unit and material costs and rates included in the Price Proposal for labor and material
23 in preparing the Amendment, including the Price Proposal's labor rates for additional Work.
24 CONTRACTOR is required to use the overhead and profit rate identified in the Price Proposal Sheet 6,
25 cell C2. For Equipment, applications, tools and/or materials not covered or anticipated in the Price
26 Proposal, a catalog or market price of a commercial product sold in substantial quantities shall be used

1 as the basis for proposed costs.

2 F. If the cost of Change cannot be established on this basis or on the basis of prices set by
3 the AGREEMENT, law or regulation, CONTRACTOR shall submit detailed cost breakdowns, including
4 information on Equipment, Software, labor and materials costs and other direct costs.

5 G. CONTRACTOR agrees that it will accept as full compensation for the Change, a price
6 mutually agreed upon in writing, via an Amendment by the AUTHORITY and CONTRACTOR or in the
7 case of paragraph C, an Additional Work Order by the AUTHORITY and CONTRACTOR.

8 H. If the CONTRACTOR disagrees with the amount of compensation or time extension
9 proposed by AUTHORITY in the Amendment, AUTHORITY may issue a Work Directive. CONTRACTOR
10 shall submit a written dispute to AUTHORITY within fifteen (15) Calendar Days after the receipt of the
11 Work Directive. Notwithstanding CONTRACTOR'S disagreement, CONTRACTOR shall proceed
12 diligently with performance if directed by AUTHORITY. The dispute shall state the points of disagreement
13 and, if possible, the AGREEMENT Scope of Work and Requirements references, quantities and costs
14 involved. If a written dispute is not submitted within the above period, payment will be made as set forth
15 in the Work Directive and such payment shall constitute full compensation for all Work included therein
16 or required thereby. An undisputed Work Directive will be considered as executed Amendment.

17 I. CONTRACTOR shall promptly notify AUTHORITY in writing when it receives direction,
18 instruction, interpretation or determination from any source other than AUTHORITY that may lead to or
19 cause change in the Work. Authority shall Approve before CONTRACTOR acts on said direction,
20 instruction, interpretation or determination.

21 J. CONTRACTOR shall only commence Work covered by an Amendment after the
22 Amendment is executed by AUTHORITY.

23 **ARTICLE 17. DISPUTES**

24 A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact
25 arising under this Agreement which is not disposed of by supplemental agreement shall be decided by
26 AUTHORITY'S Director, Contracts Administration and Materials Management (CAMM), who shall reduce

1 the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of
2 the Director, CAMM, shall be final and conclusive.

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

9 **ARTICLE 18. LIQUIDATED DAMAGES**

10 A. If CONTRACTOR fails to: (1) complete the Work by the Guaranteed Completion Dates or
11 any Approved extension thereof, or (2) provide Key Personnel in accordance with the AGREEMENT, or
12 (3) meet the O&M Performance Measures of the AGREEMENT established in the Scope of Work and
13 Requirements, the actual damage to AUTHORITY will be difficult or impossible to determine. Therefore,
14 the Parties have agreed to stipulate to the amount payable to the AUTHORITY as liquidated damages in
15 order to fix and limit CONTRACTOR's costs and to avoid later disputes over what amount of damages
16 are proper. The Parties agree that the amount of liquidated damages are reasonable in light of the
17 anticipated or actual damage to the AUTHORITY and do not constitute a penalty. Liquidated damages
18 may be assessed at the Authority's sole discretion as follows:

19 B. **Implementation Phase Delays:**

20 1. In the event that CONTRACTOR has not completed the Work required for Ramp-
21 up/Customer Services by the Guaranteed Completion Date, CONTRACTOR shall be assessed per
22 Calendar Day on a cumulative basis, commencing the day following the Guaranteed Completion Date as
23 follows:

- 24 • 1-30 Calendar Days following Guaranteed Completion Date: \$2,300 per Calendar Day
- 25 • 31-60 Calendar Days following Guaranteed Completion: \$5,700 per Calendar Day
- 26 • Greater than 60 days following the Guaranteed Completion Date: \$11,400 per Calendar

Day

2. In the event that CONTRACTOR has not completed the Work required for Implementation of the 405 BOS and has not achieved Readiness for Go-Live by the Guaranteed Completion Dates, CONTRACTOR shall be assessed \$45,000 per Calendar Day, commencing the day following the Guaranteed Completion Date. Upon commencement of assessment of the liquidated damages for not achieving Readiness for Go-Live under this paragraph B. 2, any liquidated damages provided for in B. 1 for not meeting the Guaranteed Completion Date for Ramp-up/Customer Services shall cease to continue to accrue; however, any cumulative Ramp-up/Customer Services' liquidated damages incurred prior to that date in accordance with the above sub-paragraph B-1 shall still be in effect.

C. Key Personnel:

1. CONTRACTOR acknowledges that the award of this AGREEMENT by AUTHORITY was based in significant part on the qualifications and experience of the Key Personnel listed in CONTRACTOR's Proposal and representation that they would be available to perform the Work.

2. In the event that CONTRACTOR Project Manager and/or other Personnel identified in Table below become Unavailable to perform the Work, subject to the conditions set forth in Article 4, CONTRACTOR's Personnel, AUTHORITY may assess CONTRACTOR liquidated damages for each occasion of such Unavailability as follows:

Key Personnel Liquidated Damages

POSITION	LIQUIDATED AMOUNT
Project Manager – Implementation Phase	\$ 150,000
Project Manager - O&M Phase	\$150,000
Operations Manager	\$ 50,000
Installation Manager	\$ 25,000

3. In addition to the amounts payable for positions identified in the above table,

1 CONTRACTOR shall pay AUTHORITY a further liquidated amount of \$20,000, if any other Key
2 Personnel is Unavailable.

3 4. The amounts payable under this Article 18 for Unavailability apply for each
4 occasion of Unavailability for each of the Key Personnel.

5 D. Failure to Meet Performance Measures:

6 1. Performance Measures establish a minimum level of service for O&M Phase
7 Work. These Performance Measures include compliance with Security Standards identified in the
8 Scope of Work and Requirements, including but not limited to data security, payment card industry
9 (PCI), and Personally Identifiable Information (PII) standards.

10 2. Failure to meet such Performance Measures shall result in the assessment of
11 liquidated damages in the form of Adjustments as set forth in the Scope of Work and Requirements.
12 These Adjustments shall result in a reduction of the amount of the monthly fee AUTHORITY would
13 otherwise pay to CONTRACTOR for the Work. Standard reports shall be developed by
14 CONTRACTOR to measure whether the Performance Measures have been met. The' format and
15 content of such reports shall be Approved during the design period, shall be generated by the BOS,
16 and shall be run on a scheduled basis by CONTRACTOR and provided to AUTHORITY on a monthly
17 basis, unless another frequency is otherwise specified in the Scope of Work and Requirements or as
18 otherwise directed by AUTHORITY.

19 E. AUTHORITY may deduct liquidated damages from any monies due or that may become
20 due to CONTRACTOR under the AGREEMENT. AUTHORITY is not obligated, however, to make such
21 a deduction or to provide notice thereof. If such deducted monies are insufficient to recover the liquidated
22 damages owing, CONTRACTOR or CONTRACTOR's Surety shall pay to AUTHORITY any deficiency
23 prior to Final Acceptance of Implementation Phase or closeout of O&M Phase, as applicable, or upon
24 termination of this AGREEMENT.

25 F. The failure of AUTHORITY to assess any liquidated damages authorized under this Article
26 18 shall not constitute a waiver of AUTHORITY's right to assess such Adjustments or liquidated damages

1 at a future date. Further, failure to impose liquidated damages does not constitute a waiver of
2 CONTRACTOR's obligations to perform in accordance with the AGREEMENT and Scope of Work and
3 Requirements.

4 G. Liquidated damages are separate and cumulative and are not in lieu of Actual Damages
5 covered under Article 19, Actual Damages.

6 **ARTICLE 19. ACTUAL DAMAGES**

7 A. During the O&M Phase, CONTRACTOR shall reimburse AUTHORITY for lost revenue
8 which AUTHORITY or CONTRACTOR identifies as having been lost due to the fault of the
9 CONTRACTOR. Lost revenue includes, but is not limited to, such events as processing errors, lost
10 transactions, lost images, unprocessed transactions, lost data, revenue lost due to data security breach,
11 and transactions that are not able to be collected due to failures or delays in transaction processing. If
12 actual data is available for the affected time period, such data will be considered in the calculation of
13 actual damages as applicable. If AUTHORITY does not have actual transactional, financial, or other
14 relevant operational data from the affected period, such actual damages shall be calculated based on a
15 determination of a comparable period made by AUTHORITY, and shall consider the day, month, time of
16 day, location, season, whether the day is a weekday, weekend or Holiday, and such other factors as are
17 reasonable. AUTHORITY may choose, in its sole discretion, to recover such lost revenue from the
18 CONTRACTOR by deducting such amounts from payments otherwise due and owing from AUTHORITY
19 to the CONTRACTOR.

20 B. In addition to other actual damages, CONTRACTOR shall be responsible for all
21 additional costs associated with any PII, PCI, data or security breach associated with CONTRACTOR's
22 provision of Work, including but not limited to, special mailings notifying customers of a mistake in their
23 monthly statements due to inaccurate reporting of information by CONTRACTOR and providing credit
24 monitoring services to customers.

25 **ARTICLE 20. RISK OF LOSS**

26 A. CONTRACTOR shall bear all risk of damage or loss to the BOS except for damage and

1 loss caused by the sole negligence or willful misconduct of AUTHORITY or Force Majeure.

2 B. In the case of damage or loss that AUTHORITY agrees was caused by the sole
3 negligence or willful misconduct of AUTHORITY or Force Majeure, CONTRACTOR shall promptly
4 replace the damaged or lost portions of the System at CONTRACTOR's cost after such cost is pre-
5 Approved by AUTHORITY, and submit the amount(s) thus expended to AUTHORITY for reimbursement
6 as a clearly identified, separate item on its next invoice to AUTHORITY.

7 **ARTICLE 21. DEFAULT**

8 A. Event of Default:

9 1. An "Event of Default" shall mean a material breach of this AGREEMENT by the
10 CONTRACTOR. Without limiting the generality of the foregoing and in addition to those instances
11 referred to elsewhere in this AGREEMENT as a breach, an Event of Default shall include the following:

12 a. CONTRACTOR fails to timely remit or credit revenues due AUTHORITY
13 pursuant to this AGREEMENT;

14 b. CONTRACTOR fails to timely deliver and/or maintain Deliverables to
15 AUTHORITY, which Deliverables include, but are not limited to, all insurance, bonds or other performance
16 security required by this AGREEMENT or to maintain in force and effect any such insurance, bonds or
17 performance security;

18 c. CONTRACTOR fails to promptly perform the Work following Effective
19 Date of AGREEMENT; to diligently perform the Work in accordance with the Approved Baseline
20 Implementation Schedule; suspends or otherwise ceases to perform the Work (excepting therefrom
21 excused suspensions directed by AUTHORITY or due to Force Majeure); or promptly resume
22 performance of the Work which have been suspended as directed by AUTHORITY;

23 d. CONTRACTOR fails to perform the Work in accordance with this
24 AGREEMENT, including, but not limited to, the Requirements;

25 e. CONTRACTOR fails to supply enough properly skilled workers or proper
26 materials to perform the Work required under this AGREEMENT;

1 f. CONTRACTOR fails to make prompt payment to Subcontractors or
2 Suppliers in accordance with this AGREEMENT absent a valid dispute as between the CONTRACTOR
3 and its Subcontractors or Suppliers;

4 g. CONTRACTOR fails to make any payment due AUTHORITY under this
5 AGREEMENT, including but not limited to, liquidated damages;

6 h. CONTRACTOR commences any suit or any suit is commenced against
7 CONTRACTOR, under any bankruptcy, insolvency or similar law to liquidate, reorganize or dissolve
8 CONTRACTOR, or which seeks the appointment of a receiver, trustee, custodian or other similar official
9 to attach, execute or such similar process for any substantial part of CONTRACTOR's assets; or
10 CONTRACTOR assigns the proceeds received from this AGREEMENT for the benefit of its creditors, or
11 it has taken advantage of any insolvency statute or debtor/creditor law or if the CONTRACTOR's property
12 or affairs have been put in the hands of a receiver; or any of the foregoing events occur with respect to
13 any Surety, which Surety is not promptly replaced by CONTRACTOR;

14 i. CONTRACTOR fails to obtain the Approval of AUTHORITY where
15 required by this AGREEMENT;

16 j. CONTRACTOR fails to provide adequate assurances as required under
17 paragraph 2. below;

18 k. CONTRACTOR has failed in the representation of any warranties stated
19 herein;

20 l. Any person authorized to act on CONTRACTOR's behalf makes a
21 statement to any person authorized to act on AUTHORITY's behalf, indicating that CONTRACTOR
22 cannot or will not perform any one or more of its obligations under this AGREEMENT;

23 m. CONTRACTOR has a pattern of repeated failures to provide the Work and
24 meet the Scope of Work and Requirements of this AGREEMENT;

25 n. CONTRACTOR fails to remedy Pervasive Defects; or

26 o. The suspension or revocation of any license, permit, or registration

1 necessary for the performance of the CONTRACTOR's obligations under this AGREEMENT.

2 2. When, in the opinion of AUTHORITY, reasonable grounds for uncertainty exist
3 with respect to the CONTRACTOR's ability to perform the Work or any portion thereof, AUTHORITY may
4 request that the CONTRACTOR, within the time frame set forth in AUTHORITY's request, provide
5 adequate assurances to AUTHORITY, in writing, of CONTRACTOR's ability to perform in accordance
6 with the terms of this AGREEMENT. Until AUTHORITY receives such assurances, AUTHORITY may
7 suspend all payments or portions thereof to CONTRACTOR. In the event that CONTRACTOR fails to
8 provide to AUTHORITY the requested assurances within the prescribed time frame, AUTHORITY may:

- 9 a. Treat such failure as an Event of Default;
- 10 b. Resort to any remedy for breach provided herein or at law or equity,
11 including, but not limited to, taking over the performance of the Work or any part thereof either by itself or
12 through others;
- 13 c. Remove all technical documentation deposited with the Escrow Agent
14 pursuant to the Escrow Agreement executed in accordance with Article 25, Intellectual Property, and
15 Article 26, Intellectual Property Escrow, with the purpose of competitively procuring any Equipment or
16 Software or providing any Work based on such documentation; and
- 17 d. Terminate CONTRACTOR's performance hereunder.

18 3. The enumeration in this Article or elsewhere in this AGREEMENT of specific rights
19 or remedies of AUTHORITY shall not be deemed to limit any rights or remedies which AUTHORITY
20 would have in the absence of such enumeration and no exercise by AUTHORITY of any right or remedy
21 shall operate as a waiver of any other of AUTHORITY's rights or remedies not inconsistent therewith or
22 to stop AUTHORITY from exercising such other rights or remedies.

23 B. Notice of Default - Chance to Cure:

24 If, in the determination of AUTHORITY, an Event of Default has occurred, AUTHORITY will
25 notify CONTRACTOR by delivery of a Notice hereinafter referred to as "Default Notice" specifying the
26 default claimed, and advising the CONTRACTOR that such default must be cured as set forth therein

1 or this AGREEMENT may be terminated. Prior to declaring an Event of Default AUTHORITY shall
 2 allow the CONTRACTOR to cure the default to AUTHORITY's reasonable satisfaction within fifteen
 3 (15) Calendar Days, or such shorter time if the default requires it; provided that AUTHORITY is not
 4 required to issue a Default Notice if there is an Event of Default which by nature cannot be cured.
 5 Failure to provide a Default Notice shall not preclude AUTHORITY from exercising other available
 6 remedies short of termination. AUTHORITY may extend the opportunity to cure beyond the fifteen
 7 (15) Calendar Day period if the default is one AUTHORITY agrees requires additional time to cure, so
 8 long as the CONTRACTOR has commenced curing such default and is effectuating a cure with
 9 diligence and continuity during such fifteen (15) Calendar Day period extension thereof which
 10 AUTHORITY prescribes.

11 C. Remedies in the Event of Default:

12 1. If CONTRACTOR does not cure the Event of Default within the time prescribed or
 13 the default is not subject to cure, AUTHORITY may declare an Event of Default, which shall be in writing
 14 and provided to CONTRACTOR, and, as appropriate the Surety. In addition to all other rights and
 15 remedies under this AGREEMENT and/or the bonds, AUTHORITY shall, upon declaration of an Event
 16 of Default, have the right to terminate this AGREEMENT, in whole or in part, pursuant to issuance of a
 17 Notice of Termination for Cause, specifying the effective date thereof and/or perform or cause to be
 18 performed the Work or any portion thereof, which are required of CONTRACTOR. In exercising such
 19 rights, AUTHORITY may immediately take possession of, and CONTRACTOR shall deliver, all applicable
 20 Equipment, Software and data, and facilities that house such items as AUTHORITY may direct.
 21 AUTHORITY shall also have the right to complete the Work with CONTRACTOR's Subcontractors as
 22 AUTHORITY directs and CONTRACTOR shall assign such subcontracts as AUTHORITY directs.
 23 AUTHORITY, as part of its right to complete the Work, may take possession of and use, and
 24 CONTRACTOR shall be required to deliver to AUTHORITY, any or all of the materials, plants, tools,
 25 Equipment, Hardware, supplies, and property of every kind, provided, purchased, maintained, leased,
 26 owned, or rented by CONTRACTOR, including but not limited to all technical specifications, drawings,

1 source code, and object code placed into Escrow. AUTHORITY may make available such escrowed
2 materials to third parties; third party licenses and Software, and/or procure other materials, plant, tools,
3 Equipment, Hardware, and supplies. AUTHORITY may charge CONTRACTOR and the CONTRACTOR
4 shall be liable to AUTHORITY for the expense of said labor, materials, plant, tools, Equipment, Hardware,
5 supplies and property reasonably necessary in performing or completing the Work.

6 2. If AUTHORITY declares an Event of Default, CONTRACTOR shall be liable for
7 those damages provided herein resulting from the default, including but not limited to:

- 8 a. Losses as defined in Article 20, Risk of Loss;
- 9 b. The difference between the actual costs incurred by AUTHORITY in
10 completing the Work and the compensation AUTHORITY would otherwise have paid CONTRACTOR
11 under this AGREEMENT for completing such Work;
- 12 c. Liquidated damages; and
- 13 d. Actual damages.

14 The CONTRACTOR shall remain liable for any other liabilities and claims related to
15 CONTRACTOR's default. All damages and costs may be deducted and paid out of any monies due
16 from AUTHORITY to CONTRACTOR.

17 D. If an Event of Default occurs, CONTRACTOR and any Surety shall be jointly and
18 severally liable to AUTHORITY for all losses and damages incurred by AUTHORITY. Upon the
19 occurrence of an Event of Default and for so long as it occurs, AUTHORITY may withhold all of any
20 portion of further payments to CONTRACTOR until the date that AUTHORITY accepts the Project as
21 complete at which time AUTHORITY will determine if CONTRACTOR is entitled to any further
22 payments. AUTHORITY will deduct, from any moneys due or which become due to CONTRACTOR
23 or its surety, all costs and charges incurred by AUTHORITY, including attorneys, accountants and
24 expert witness fees and costs. If AUTHORITY's losses or damages exceed payments owing
25 CONTRACTOR, then the CONTRACTOR and its Surety shall be liable and pay such amount to
26 AUTHORITY within ten (10) Calendar Days of AUTHORITY's written demand. If CONTRACTOR or

1 its Surety fail to pay such demand within such timeframe, AUTHORITY may collect interest thereon
2 at the lesser of 10% per annum or the maximum rate allowed under State law from the date of the
3 written demand.

4 E. In the event that it is later determined that the AGREEMENT was terminated upon
5 grounds which did not justify a termination for Event of Default, such termination shall be deemed a
6 termination for convenience pursuant to Article 22, Termination for Convenience.

7 F. Performance by Surety: Upon receipt of a demand from AUTHORITY requiring Surety
8 to complete the Work, Surety shall diligently and promptly take charge of the Work and complete this
9 AGREEMENT pursuant to its terms at its own expense, receiving the balance of the funds due
10 CONTRACTOR, minus any permissible deductions under this AGREEMENT. In the event
11 AUTHORITY undertakes to complete the Work with its own forces or by way of contract, all costs
12 incurred by AUTHORITY shall be deducted from the amounts due or may become due to
13 CONTRACTOR. If such expense exceeds the sum payable under this AGREEMENT, then
14 CONTRACTOR and Surety shall be jointly and severally liable for the amount of the excess expense
15 up to the amount of the Performance Bond in existence at the time this AGREEMENT is terminated.

16 **ARTICLE 22. TERMINATION FOR CONVENIENCE**

17 AUTHORITY may terminate this AGREEMENT for its convenience at any time in whole or in part,
18 by giving CONTRACTOR written notice thereof. AUTHORITY shall terminate by delivering to
19 CONTRACTOR a written Notice of Termination for Convenience specifying the extent of termination and
20 its effective date. Upon termination, CONTRACTOR shall discontinue performance of all or that portion
21 of Work, as set forth in such Notice and AUTHORITY shall pay CONTRACTOR its allowable costs
22 incurred to date of that portion terminated. The rights, duties and obligations of the parties shall be
23 construed in accordance with the applicable provisions of CFR Title 48, Chapter 1, Part 49, of the
24 Federal Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to
25 termination for convenience. If AUTHORITY sees fit to terminate this AGREEMENT for convenience,
26 said notice shall be given to CONTRACTOR in accordance with the provisions of the FAR referenced

1 above and Article 11, Notices, herein. Upon receipt of said notification, CONTRACTOR shall immediately
2 proceed with all obligations, regardless of any delay in determining or adjusting any amounts due under
3 this Article, and agrees to comply with all applicable provisions of the FAR pertaining to termination for
4 convenience. Thereafter, CONTRACTOR shall have no further claims against AUTHORITY under this
5 AGREEMENT.

6 **ARTICLE 23. ACCEPTANCE**

7 A. **BOS Acceptance of Implementation Phase:**

8 1. The phases of the Project are set forth in Article 7, Start and Phases of Work.
9 2. AUTHORITY, in its sole discretion, may grant BOS Acceptance of the
10 Implementation Phase if it deems that the Work on the Implementation Phase is substantially complete,
11 and the following conditions have been met:

12 a. CONTRACTOR has passed the On-Site Installation and Commissioning
13 Test, and Go-Live has been Approved in accordance with the Scope of Work and Requirements;

14 b. CONTRACTOR has substantially passed and has been given
15 conditional Approval of the BOS Acceptance test; and

16 c. CONTRACTOR has completed all punch list items and provided proof
17 to AUTHORITY's satisfaction thereof.

18 3. AUTHORITY shall issue a written Notice of BOS Acceptance for the
19 Implementation Phase upon satisfaction of the conditions listed above in items 2a through 2c. The
20 occurrence of BOS Acceptance shall not relieve CONTRACTOR of any of its continuing obligations
21 hereunder.

22 B. **Final Acceptance of Implementation Phase:**

23 Final Acceptance of an Implementation Phase shall be deemed to have occurred when all of the
24 following conditions have been met:

25 1. CONTRACTOR has provided a Final Acceptance letter certification to close out
26 the Implementation Phase. The certification shall include but not be limited to: total costs associated with

1 the Implementation Phase, date of Work completion for that phase and any additional required
2 information contained in items 2 through 8 below:

3 2. Any and all punch list items have been satisfactorily completed and Approved by
4 AUTHORITY and final Approval of the Acceptance Test, has been granted by AUTHORITY;

5 3. Escrowed Software has been delivered to AUTHORITY in accordance with the
6 Escrow Agreement;

7 4. CONTRACTOR has delivered and AUTHORITY has Approved all Deliverables,
8 including As-Built Documentation/Drawings, as defined in the Scope of Work and Requirements;

9 5. An affidavit has been delivered to AUTHORITY signed by the CONTRACTOR,
10 stating all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

11 6. All CONTRACTOR claims for the Implementation Phase are deemed to be
12 resolved by AUTHORITY, and the CONTRACTOR has submitted a statement that no such requests or
13 disputes will be applied for; any and all claims under this AGREEMENT are resolved, and that no such
14 claims will be made;

15 7. All of CONTRACTOR's other obligations, including payment of liquidated
16 damages under the Implementation Phase shall have been satisfied in full or waived in writing by
17 AUTHORITY; and

18 8. AUTHORITY shall have delivered to the CONTRACTOR a Notice of Final
19 Acceptance for the phase.

20 C. Closeout of O&M Phase:

21 Closeout of the O&M Phase shall be deemed to have occurred when all of the following conditions
22 have been met:

23 1. The CONTRACTOR shall have provided a letter certification to close out the O&M
24 Phase. The certification shall include but not be limited to: total costs associated with the phase, date of
25 phase completion and any additional required information contained in items 2 through 10 below:

26 2. Delivery by the CONTRACTOR and Approval by AUTHORITY of all Deliverables,

1 including As-Built Documentation/Drawings, as required in the Scope of Work and Requirements;

2 3. The CONTRACTOR has met all transition and succession requirements pursuant
3 to the Scope of Work and Requirements;

4 4. All licenses and leases subject to transfer or assignment to AUTHORITY have
5 been transferred or assigned;

6 5. Any and all CONTRACTOR action items associated with the phase have been
7 satisfactorily completed and Approved by AUTHORITY;

8 6. An affidavit has been delivered to AUTHORITY signed by CONTRACTOR, stating
9 all debts and claims of Suppliers and Subcontractors have been paid and/or settled;

10 7. All CONTRACTOR claims for the phase are deemed to be resolved by
11 AUTHORITY, and CONTRACTOR has submitted a statement that no such requests or disputes will be
12 applied for; any and all claims under this AGREEMENT are resolved, and that no such claims will be
13 made;

14 8. The CONTRACTOR shall provide AUTHORITY with all required materials,
15 fixtures, furnishings, Equipment and Software; documentation and manuals, either owned by or licensed
16 to AUTHORITY, pursuant to this AGREEMENT. All such materials have been verified by AUTHORITY
17 to be in good working order;

18 9. All of CONTRACTOR's other obligations under the O&M Phase, including
19 liquidated damages, shall have been satisfied in full or waived in writing by AUTHORITY; and

20 10. AUTHORITY shall have delivered to CONTRACTOR a Notice of Closeout for the
21 phase.

22 D. AUTHORITY's beneficial use of the Deliverables during any phase prior to AGREEMENT
23 closeout shall not constitute Acceptance of any Deliverable, nor shall such use give rise to a claim for
24 equitable adjustment.

25 **ARTICLE 24. INSPECTION**

26 A. All Work, Sites, and Facilities shall be subject to inspection and testing by AUTHORITY

1 at all reasonable times. Any inspection, test or Approval is for the sole benefit of AUTHORITY and shall
2 not relieve CONTRACTOR of the responsibility of providing quality control measures to assure that the
3 Work strictly complies with requirements of this AGREEMENT. No inspection or test or Approval by
4 AUTHORITY or its representative shall be construed as constituting or implying Acceptance unless all
5 criteria for Acceptance have been met in accordance with Article 23, Acceptance. Inspection or test or
6 Approval shall not relieve CONTRACTOR of responsibility for damage to or loss of the material prior to
7 Acceptance, nor in any way affect the continuing rights of AUTHORITY after Acceptance of the completed
8 Work.

9 B. CONTRACTOR shall furnish promptly, without additional charge, all facilities, labor,
10 Equipment and material reasonably needed for performing inspection and testing in a safe and
11 convenient manner as may be required by AUTHORITY and as further set forth in the Scope of Work
12 and Requirements. All inspections and tests by AUTHORITY shall be performed in such manner as to
13 not unnecessarily delay the Work. AUTHORITY reserves the right to charge to CONTRACTOR any
14 additional cost of inspection or test when material or workmanship is not ready at the time specified by
15 CONTRACTOR for inspection or test or when re-inspection or retest is necessitated by prior rejection.

16 **ARTICLE 25. INTELLECTUAL PROPERTY**

17 A. Project Intellectual Property:

18 1. CONTRACTOR acknowledges and agrees that all Intellectual Property
19 authored, created, and invented under this AGREEMENT and/or for the purposes of the Project, in
20 any medium, is either owned by AUTHORITY or specially ordered or commissioned by AUTHORITY
21 including works made for hire in accordance with Section 101 of the Copyright Act of the United States
22 ("Project Intellectual Property"), CONTRACTOR hereby irrevocably and exclusively assigns to
23 AUTHORITY, immediately upon creation, authorship, development or invention of the Project
24 Intellectual Property and without any restriction or condition precedent, (i) all rights, title and interest
25 in and to such Intellectual Property and (ii) physical possession and all rights, title and interest in any
26 executable code and all Source Code, programmer notes, and other documentation and other relevant

1 Software (collectively, the "IP Materials"). To perfect or register AUTHORITY Intellectual Property
 2 rights under this Section, CONTRACTOR agrees to execute such further documents and to do such
 3 further acts as may be necessary to perfect, register, or enforce AUTHORITY ownership of such rights,
 4 in whole or in part. If CONTRACTOR fails or refuses to execute any such documents, CONTRACTOR
 5 hereby appoints AUTHORITY as CONTRACTOR's attorney-in-fact (this appointment to be irrevocable
 6 and a power coupled with an interest) to act on CONTRACTOR's behalf and to execute such documents.
 7 AUTHORITY hereby grants to CONTRACTOR a limited, non-exclusive license to use, exploit,
 8 manufacture, distribute, reproduce, adapt and display AUTHORITY Intellectual Property developed and
 9 owned by AUTHORITY independently of this AGREEMENT ("AUTHORITY Intellectual Property") and
 10 Project Intellectual Property, solely in connection with and limited to: (a) incorporation of relevant
 11 Intellectual Property into the Project or Work; (b) performance, provision, furnishing and discharge of the
 12 Work; and (c) licensing to other entities (to the extent required for interoperability). Except as provided in
 13 this Article 25, no Intellectual Property rights of AUTHORITY, including the AUTHORITY's name and
 14 other trademarks, are granted to CONTRACTOR and all other rights are reserved to AUTHORITY. All
 15 rights granted in this Article shall terminate at the expiration of the Term.

16 2. CONTRACTOR shall deliver to AUTHORITY all AUTHORITY Materials,
 17 documents, results and related materials created in the development of Project Intellectual Property as
 18 soon as (i) incorporated into Project, or any Deliverable, Work, service(s), and/or Software, including any
 19 Upgrades or Updates, (ii) required by the AGREEMENT or Scope of Work and Requirements, or (iii)
 20 reasonably practicable, provided that all such IP Materials, shall be delivered to AUTHORITY not later
 21 than the effective termination date of this AGREEMENT, including expiration date of the Term.

22 B. CONTRACTOR Intellectual Property:

23 1. CONTRACTOR hereby grants to AUTHORITY an irrevocable, perpetual, non-
 24 exclusive, transferable (solely to an AUTHORITY assignee or successor in interest), fully paid-up right
 25 and license to use, distribute, reproduce, adapt and display, and prepare derivative works of the
 26 CONTRACTOR Intellectual Property solely for the Project or any Deliverable, Work, service(s), and/or

1 Software, including any Upgrades or Updates. CONTRACTOR Intellectual Property shall mean
2 Intellectual Property authored, created or invented by CONTRACTOR either (a) prior to the Effective Date
3 or (b) independently of the AGREEMENT. The rights granted herein shall survive the termination,
4 expiration or cancellation of this AGREEMENT or any rights related thereto.

5 2. CONTRACTOR shall identify and disclose all CONTRACTOR Intellectual
6 Property required by, incorporated in or integrated into the Project, or any Deliverable, Work,
7 service(s), and/or Software, including any Upgrades or Updates, including (when reasonably available):
8 full and specific information detailing Intellectual Property claimed, date of authorship, creation and/or
9 invention, date of application(s), application number(s) and registering entity(ies), date of registration(s),
10 registration number(s) and registering entity(ies), if any, and owner including person or entity name and
11 address. Subject to the Intellectual Property deposit requirements of Article 27, CONTRACTOR shall not
12 be required to identify or disclose CONTRACTOR Intellectual Property only to the extent that doing so
13 would eliminate or substantially limit the legal protections for such Intellectual Property.

14 C. Third Party Intellectual Property:

15 1. CONTRACTOR shall secure license(s) in the name of AUTHORITY to use,
16 execute, perform, sublicense, distribute, reproduce, adapt, display, and prepare derivative works of Third
17 Party Intellectual Property in connection with or any Deliverable, Work, Service(s), and/or Software,
18 including any Upgrades or Updates, including a representation and warranty that the Third Party
19 Intellectual Property does not infringe the rights, including Intellectual Property rights, of any other
20 person or entity. Third Party Intellectual Property shall mean Intellectual Property owned by any person
21 or entity unrelated to CONTRACTOR which is incorporated into the Project, Work or services.
22 AUTHORITY shall review and Approve, in its sole discretion, any license(s) pursuant to this Article
23 and in no event shall CONTRACTOR incorporate Third-Party Intellectual Property into the Project, or
24 any Deliverable, Work, service(s), and/or Software, including any Upgrades or Updates without first
25 securing such licenses and subject to AUTHORITY's prior review and Approval.

26 2. CONTRACTOR shall Identify and disclose to AUTHORITY all Third Party

1 Intellectual Property contained, or included, i) in the Project Intellectual Property, including (when
2 reasonably available): or (ii) in the Project, or any Deliverable, Work, service(s), and/or Software, including
3 any Upgrades or Updates, including (when reasonably available): full and specific information detailing
4 Intellectual Property claimed; date of authorship, creation and/or invention; date of application(s);
5 application number(s) and entity(ies); date of registration(s), registration number(s) and registering
6 entity(ies), if any, and owner, including person or entity name and address.

7 3. CONTRACTOR shall obtain from each owner of the Third Party Intellectual
8 Property prior consent to have the relevant Third Party Intellectual Property deposited into an Escrow in
9 accordance with Article 26, Intellectual Property Escrows, or, to the extent the owner of the relevant Third
10 Party Intellectual Property has not provided such consent, obtain AUTHORITY's prior written Approval
11 for a waiver of this requirement.

12 4. CONTRACTOR shall not incorporate Third Party Intellectual Property into the
13 Project without first obtaining (a) the licenses described in Article 25.C.1 and (b) consent for the delivery
14 or deposit of IP Materials from each owner of the Third-Party Intellectual Property, or unless such
15 requirement is waived by AUTHORITY in accordance with Article 25.C.3. The rights granted in Article
16 25.C.1 shall survive the termination, expiration or cancellation of this AGREEMENT or any rights related
17 thereto.

18 D. Delivery of IP Materials: CONTRACTOR shall deliver CONTRACTOR and Third-Party IP
19 Materials into Escrow in accordance with Article 26, Intellectual Property Escrow and Article 27, Escrow
20 Agreement Dates.

21 E. Payments Inclusive: CONTRACTOR acknowledges and agrees that the payments
22 provided for in Article 8 include all royalties, fees, costs and expenses arising from or related to the Project
23 Intellectual Property, including without limitation any fees pursuant to Articles 25, 26, and 27.
24 CONTRACTOR acknowledges that AUTHORITY is a public agency subject to state laws, including the
25 California Public Records Act (California Government Code §6250, et seq.) (the "Public Records Act").
26 Notwithstanding any designation or communication by CONTRACTOR that any CONTRACTOR

1 information or materials provided under this AGREEMENT may be confidential or proprietary,
2 CONTRACTOR consents in advance to AUTHORITY's disclosure of the same if AUTHORITY
3 determines that it is required by law to disclose. Such disclosure shall not constitute a breach of this
4 AGREEMENT. AUTHORITY will provide reasonable notice to CONTRACTOR of any request for
5 disclosure of information or materials identified by CONTRACTOR as "confidential", "trade secret" or
6 "proprietary" or otherwise considered confidential under this AGREEMENT. If CONTRACTOR wishes to
7 oppose any such disclosure, CONTRACTOR shall assume the opposition to such disclosure(s) or shall
8 indemnify AUTHORITY for all costs incurred (including attorneys' fees and court costs) in connection with
9 any opposition to such disclosure.

10 **ARTICLE 26. INTELLECTUAL PROPERTY ESCROW**

11 A. CONTRACTOR acknowledges that AUTHORITY must be ensured access to
12 CONTRACTOR and Third-Party IP Materials at any time and must be assured that such IP Materials are
13 delivered to Escrow pursuant to Article 26 and Articles 27.

14 B. CONTRACTOR or an owner of Third-Party Intellectual Property shall deposit the IP
15 Materials with an Escrow Agent. AUTHORITY and CONTRACTOR shall: (a) mutually select an escrow
16 company ("Escrow Agent") engaged in the business of receiving and maintaining escrows of software
17 source code and/or other intellectual property; (b) establish an Escrow (with the Escrow Agent on terms
18 and conditions substantially similar terms and conditions to the Form of Intellectual Property Escrow
19 AGREEMENT, Form H, for the deposit, retention, upkeep, authentication, confirmation and release of IP
20 Materials to AUTHORITY pursuant to this AGREEMENT; (c) adhere to the deposit dates set forth in
21 Article 27 and (c) determine a process for releasing from Escrow the IP Materials to be delivered to
22 AUTHORITY pursuant to this AGREEMENT. Intellectual Property Escrows also may include Affiliates
23 as parties and may include deposit of their Intellectual Property.

24 C. CONTRACTOR shall be responsible for the fees and costs of establishing and
25 maintaining the Escrow Agent for the Term. AUTHORITY shall be responsible for all costs arising in
26 connection with the maintenance of the Escrow referred to in this Article beyond the Term.

1 D. The Escrow shall survive expiration or earlier termination of this AGREEMENT regardless
2 of the reason.

3 E. The IP Materials shall be released and delivered to AUTHORITY in any of the following
4 circumstances:

- 5 1. This AGREEMENT is terminated for any reason including expiration of the Term;
- 6 2. A voluntary or involuntary bankruptcy or insolvency of CONTRACTOR occurs;
- 7 3. CONTRACTOR is dissolved or liquidated; and
- 8 4. CONTRACTOR or any third party, pursuant to a license under Article 25.C.2, (a)
9 fails or ceases to provide services as necessary to permit continued use of any such Intellectual Property
10 or (b) otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying,
11 maintaining and servicing the software, product, part or other item containing the IP Materials pursuant
12 to a license or any sublicense thereof.

13 F. Any CONTRACTOR Intellectual Property released and delivered to AUTHORITY under
14 the terms of this AGREEMENT shall be deemed confidential and not disclosed or distributed to any third
15 party without a non-disclosure agreement to ensure such confidentiality. Without limiting the license
16 grants provided in this Article and subject to the confidentiality obligations of this section, any and all rights
17 to CONTRACTOR Intellectual Property granted to AUTHORITY pursuant to paragraph B of Article 25
18 shall include the right to sublicense and disclose such CONTRACTOR Intellectual Property to Authority
19 employee, agent, representative, vendor, assignee or affiliate in its sole discretion.

20 **ARTICLE 27. ESCROW AGREEMENT**

21 A. Within forty-five (45) Calendar Days from the Effective Date, AUTHORITY, an Escrow
22 Agent, and CONTRACTOR shall enter into an Escrow AGREEMENT substantially as set forth in Article
23 26.

24 B. AUTHORITY may at its sole discretion require an initial deposit of the complete
25 CONTRACTOR IP Materials within sixty (60) Calendar Days of AGREEMENT Effective Date.

26 C. Additional deposits shall be made to the Escrow within ten (10) Calendar Days of Go-Live

1 and within ten (10) Calendar Days of BOS Acceptance.

2 D. In the event CONTRACTOR updates, revises or supplements any of the IP Materials
3 deposited or revises, supplements or creates additional information, CONTRACTOR shall deposit a
4 complete set of such revised, supplemented, or additional information with the Escrow Agent as soon as
5 reasonably practicable, but in no event more than thirty (30) Calendar Days of such revision, supplement
6 or addition and shall indicate with each deposit what information and which documents and pages have
7 been revised, supplemented or added since the last deposit.

8 E. CONTRACTOR shall make deposits of the complete set of IP Materials current at the time
9 of deposit, at a minimum of semi-annually if no deposits provided for in paragraph D have occurred within
10 the relevant preceding six-month period.

11 **ARTICLE 28. WARRANTIES**

12 A. CONTRACTOR warrants the following:

13 1. All guarantees and warranties made herein are fully enforceable by AUTHORITY
14 acting in its own name.

15 2. The Equipment, Hardware, and Software CONTRACTOR installs and places into
16 operation will not result in any damage to existing facilities, walls or other parts of adjacent, abutting or
17 overhead buildings, railroads, bridges, roadway, structures, surfaces, or cause any physical or mental
18 injury to any person.

19 3. All provided Hardware and Equipment is new unless otherwise specifically
20 Approved by AUTHORITY.

21 B. **BOS Warranty:**

22 The CONTRACTOR shall provide a full BOS warranty on all System Equipment, Hardware, and
23 Software beginning from the date of Readiness for Go-Live through the end of the O&M Phase hereinafter
24 referred to as "BOS Warranty Period", warranting that the full System shall be as set forth in the Scope
25 of Work and Requirements. During the BOS Warranty Period, AUTHORITY shall not be charged for any
26 Maintenance or Software Support Services performed on the BOS, other than Maintenance payments

1 identified in the Price Proposal. In the period after installation and prior to the commencement of the O&M
2 Phase, all Maintenance and Software Support Services shall also be at CONTRACTOR's sole expense.
3 Further, at all times during the Term, CONTRACTOR shall promptly repair or replace, at its own cost or
4 expense, including, the cost of removal, installation and transportation, any unit of Equipment, Hardware,
5 or Software, or part or component thereof, which proves defective or otherwise fails to comply with Exhibit
6 B, Scope of Work and Requirements, such that it complies with the Scope of Work and Requirements.
7 All fees associated with restocking cancelled or returned orders shall be the responsibility of
8 CONTRACTOR.

9 C. Software Warranties:

10 CONTRACTOR warrants that the Software needed to operate the BOS shall be as set forth in
11 the Scope of Work and Requirements, and that commencing upon Go-Live, and for the Term, the
12 Software and each module or component and function thereof shall:

13 1. Be free from defects in materials and workmanship under normal use;
14 2. Remain in good working order, be free from viruses; trap doors; disabling devices;
15 Trojan horses; disabling codes; back doors; time bombs; drop-dead devices; worms, and any other type
16 of malicious or damaging code or other technology or means which has the ability to interfere with the
17 use of the BOS by AUTHORITY or its designees, or permit access to AUTHORITY's computing systems
18 without its knowledge or contrary to its system connectivity policies or procedures;

19 3. Not interfere with toll collection;
20 4. Operate and function fully, properly and in conformity with the warranties in this
21 AGREEMENT;

22 5. Operate fully and correctly in the operating environment identified in the Scope of
23 Work and Requirements, including by means of the full and correct performance of the Software, and all
24 Updates, Enhancements, or new releases of the Software, on or in connection with the Equipment, any
25 Updates, Enhancements, or new releases to such Equipment, and any other Software used by or in
26 connection with any such Equipment;

1 6. Be fully compatible and Interface completely and effectively with the Equipment,
2 including other Software programs provided to AUTHORITY hereunder, such that the Software and other
3 Equipment combined will perform and continuously attain the standards identified in the Scope of Work
4 and Requirements; and

5 7. Accurately direct the Operation of the BOS, as required by the Scope of Work and
6 Requirements, and the descriptions, specifications and documentation set forth therein and herein.

7 D. Software Maintenance Services:

8 During the Term, CONTRACTOR shall, at its own cost and expense, provide Maintenance and
9 Software Support Services to keep the Software in good working order and free from defects such that
10 the BOS shall perform in accordance with this AGREEMENT, including Scope of Work and
11 Requirements.

12 1. The CONTRACTOR shall provide technical support and shall, at its own cost and
13 expense, timely remedy any failure, malfunction, defect or non-conformity in Software, in accordance with
14 Scope of Work and Requirements.

15 2. CONTRACTOR shall provide AUTHORITY the most current release of all
16 Software available on the date of delivery of the BOS Software to maintain optimum performance
17 pursuant to this AGREEMENT.

18 3. CONTRACTOR shall promptly provide Notice to AUTHORITY in writing of any
19 defects or malfunctions in the Software, regardless of the source of information. CONTRACTOR shall
20 promptly correct all defects or malfunctions in the Software or documentation discovered and shall
21 promptly provide AUTHORITY with corrected copies of same, without additional charge. If Software can
22 only be corrected in conjunction with additional or revised Hardware, CONTRACTOR shall provide such
23 Hardware to AUTHORITY, and the cost of such Hardware shall be borne by CONTRACTOR, and not be
24 reimbursable by AUTHORITY.

25 a. No Updates, Upgrades, or Enhancements shall adversely affect the
26 performance of the BOS, in whole or in part, or result in any failure to meet any Requirements of the

1 Scope of Work and Requirements.

2 b. The CONTRACTOR shall ensure continued satisfactory performance by
3 the current operating system of the Software in accordance with all provisions of this Article.

4 c. In the event that the Software does not satisfy the conditions of
5 performance set forth in the Scope of Work and Requirements, the CONTRACTOR is obligated to
6 promptly repair or replace such Software at the CONTRACTOR's sole cost and expense or, if expressly
7 agreed to in writing by AUTHORITY, provide different Software, and perform Work required to attain the
8 performance Requirements set forth in the Scope of Work and Requirements.

9 d. In the event of any defect in the media upon which any tangible portions
10 of the Software are provided, the CONTRACTOR shall provide AUTHORITY with a new copy of the
11 Software.

12 e. Without releasing the CONTRACTOR from its obligations for warranty
13 (during an applicable warranty period), support or Maintenance of the Software, AUTHORITY shall have
14 the right to use and maintain versions of the Software provided by the CONTRACTOR which are one or
15 more levels behind the most current version of such Software and to refuse to install any Updates or
16 Enhancements if, in AUTHORITY's discretion, installation of such Updates or Enhancements would
17 interfere with its Operations. CONTRACTOR shall not, however, be responsible or liable for the effect of
18 any error or defect in the version of the Software then in use by AUTHORITY that occurs after the
19 CONTRACTOR has both (i) offered, by written Notice to AUTHORITY, a suitable correction (by way of
20 Update, Upgrade, Enhancement, or otherwise) of such error or defect and (ii) provided AUTHORITY a
21 reasonable opportunity to implement such existing correction, provided that the CONTRACTOR
22 establishes that neither the implementation nor the use of such correction would limit, interfere with,
23 adversely affect, or materially alter the interoperability, functionality or quality of the BOS.

24 E. Third-Party Warranties

25 CONTRACTOR shall assign to AUTHORITY, and AUTHORITY shall have the benefit of, any and
26 all Subcontractors' and Suppliers' warranties and representations with respect to the BOS and Work

1 provided hereunder. The CONTRACTOR's agreements with Subcontractors, Suppliers and any other
2 third parties shall require that such parties (a) consent to the assignment of such warranties and
3 representations to AUTHORITY, (b) agree to the enforcement of such warranties and representations by
4 AUTHORITY in its own name, and (c) furnish to AUTHORITY, the warranties set forth herein. The
5 CONTRACTOR shall obtain Maintenance agreements for third-party Software. CONTRACTOR shall
6 secure such Maintenance agreements for the same duration and upon the same terms and conditions
7 as the Maintenance provisions between the CONTRACTOR and AUTHORITY. At AUTHORITY's
8 request, CONTRACTOR shall provide supporting documentation which confirms that these warranties
9 are enforceable in AUTHORITY's name.

10 F. Data Accuracy

11 The CONTRACTOR acknowledges and understands that the data and/or information it collects,
12 processes and/or provides to AUTHORITY will be relied upon by AUTHORITY and other persons or
13 entities that are now or will in the future be under AGREEMENT with AUTHORITY in accordance with
14 the Scope of Work and Requirements. Should CONTRACTOR become aware that information derived
15 and provided by CONTRACTOR is inaccurate and may cause AUTHORITY to incur damages or
16 additional expenses, the CONTRACTOR shall immediately place any applicable insurance carrier on
17 Notice of a potential claim. This provision shall survive termination of this AGREEMENT, and the
18 CONTRACTOR agrees to waive any applicable limitation periods consistent with enforcement of this
19 provision.

20 G. Neither Final Acceptance of the Implementation Phase of the BOS and Work or payment
21 therefor, nor any provision in this AGREEMENT, nor partial or entire use of the BOS and Work by
22 AUTHORITY shall constitute Approval of Work not performed in accordance with this AGREEMENT or
23 relieve the CONTRACTOR of liability for any express or implied warranties or responsibility for faulty
24 materials or workmanship.

25 H. The obligations set forth in this Article shall be in addition to any other warranty obligations
26 set forth in this AGREEMENT. All provisions of this Article, referring or relating to obligations to be

1 performed pursuant to an applicable warranty period that extends beyond the Term, shall survive the
2 expiration, cancellation or earlier termination of this AGREEMENT.

3 **ARTICLE 29. ADDITIONAL CONTRACTOR WARRANTIES**

4 A. CONTRACTOR warrants that it is fully experienced and properly qualified, licensed,
5 equipped, organized and financed to perform all the Work.

6 B. CONTRACTOR warrants that all Work will be provided in accordance with this
7 AGREEMENT.

8 C. CONTRACTOR warrants that (1) all Work performed and all Equipment, Software,
9 Hardware and other material provided under this AGREEMENT by CONTRACTOR or any of its
10 Subcontractors or Suppliers conforms to the requirements herein and is free of any defects; and (2)
11 Equipment, Software, and Hardware furnished by CONTRACTOR or any of its Subcontractors or
12 Suppliers at any tier, shall be of modern design, in good working condition, and fit for use of its intended
13 purpose. For any Equipment, Software, or Hardware purchased within twelve (12) months of the end of
14 the Term, such warranty shall continue for a period of one (1) year from the end of the Term or for the
15 manufacturer's standard warranty, whichever is longer.

16 **ARTICLE 30. DEFECTS/FAILURE**

17 A. Upon discovery of any defect or failure in the Software, Equipment or Hardware,
18 CONTRACTOR shall promptly provide AUTHORITY Notice thereof and repair or replace same at its sole
19 cost and expense. If expressly agreed to in writing by AUTHORITY, CONTRACTOR may provide
20 different Software, Equipment or Hardware. In the event of any defect in the media upon which any
21 tangible portions of the Software are provided, the CONTRACTOR shall provide AUTHORITY with a new
22 copy of the Software. In addition, CONTRACTOR shall remedy at its own expense any damage to
23 AUTHORITY owned or controlled real or personal property, when that damage arises out of such defects.

24 B. In the event AUTHORITY determines there is a defect or failure in the Software,
25 Equipment or Hardware or damage to AUTHORITY property, AUTHORITY shall notify CONTRACTOR
26 in writing within a reasonable time after the discovery of same. CONTRACTOR has seven (7) Calendar

1 Days from receipt of Notice from AUTHORITY to respond and indicate how CONTRACTOR will remedy
2 the failure, defect, or damage. If AUTHORITY is not satisfied with CONTRACTOR'S proposed remedy,
3 CONTRACTOR and AUTHORITY shall, within three (3) Business Days, meet and mutually agree when
4 and how CONTRACTOR shall remedy such violation. In the case of an emergency requiring immediate
5 corrective action, CONTRACTOR shall implement such action necessary to remedy the defect, failure or
6 damage as required by AUTHORITY.

7 C. Should CONTRACTOR fail to remedy any failure, defect or damage within a reasonable
8 time to the reasonable satisfaction of AUTHORITY, AUTHORITY shall have the right with its own forces
9 or other contractors, to replace, repair or otherwise remedy such failure, defect or damage at
10 CONTRACTOR's expense. In addition, CONTRACTOR shall be liable for all damages arising out its
11 failure to promptly remedy the defect, failure or damage.

12 D. CONTRACTOR agrees to promptly remedy, at no cost to AUTHORITY, any defects
13 determined by AUTHORITY to be Pervasive, such that if AUTHORITY determines that any Equipment,
14 Hardware, component, sub-component or Software is experiencing continued or repetitive failure that
15 requires constant replacement or repair, CONTRACTOR agrees that a "Pervasive Defect" shall be
16 deemed to be present in such affected types of Equipment, Hardware, or Software. CONTRACTOR shall
17 perform an investigation of the issues and prepare a report that includes a reason for the failure and its
18 plan for resolution. This report and a resolution plan shall be produced by CONTRACTOR and submitted
19 to AUTHORITY within seven (7) Calendar Days of notification by AUTHORITY of the Pervasive Defect.
20 The report and plan shall include the investigation results, remediation steps performed to-date, and a
21 plan and schedule to complete the Pervasive Defect resolution. Such resolution shall be in a manner
22 satisfactory to AUTHORITY and that permanently addresses the problem and corrects the defect so that
23 such defect does not continue to occur. The status shall be updated and briefed in weekly meetings until
24 resolution is complete. Notwithstanding the foregoing, AUTHORITY does not waive any of their other
25 rights enumerated in paragraphs A through C of this article.

26 E. The obligations set forth in this Article shall be in addition to any warranty obligations set

1 forth in this AGREEMENT. The provisions of this Article shall survive the expiration or earlier termination
2 of this AGREEMENT.

3 F. All Subcontractors, manufacturers, and Suppliers' warranties, expressed or implied,
4 respecting any Work, Equipment, Software or Hardware furnished hereunder, shall, at the direction of
5 AUTHORITY, be enforced by CONTRACTOR for the benefit of AUTHORITY.

6 G. If directed by AUTHORITY, CONTRACTOR shall require any such warranties to be
7 executed in writing to AUTHORITY.

8 H. The obligations and remedies specified in this Article shall not limit AUTHORITY's rights
9 and remedies provided elsewhere in this AGREEMENT.

10 **ARTICLE 31. COORDINATION WITH OTHER CONTRACTORS**

11 A. During the course of this AGREEMENT, AUTHORITY may undertake or award other
12 agreements for additional work, including but not limited to separate agreements with different contractors
13 related to the Scope of Work and Requirements, including the Electronic Tolling and Traffic Management
14 (ETTM) System CONTRACTOR, the Design-Build Contractor for the 405 Improvement Project, and the
15 Roadway Service Contractor for the I-405. It is critical that close coordination with interfacing contractors
16 occurs throughout the Term. CONTRACTOR shall fully cooperate with AUTHORITY and the parties to
17 all other contracts and carefully integrate and schedule its own Work with said contractors.

18 B. CONTRACTOR shall be required to perform Work in the AUTHORITY's CSC Facility(ies).
19 CONTRACTOR shall be subject to and shall comply with the terms of any associated leases and shall
20 coordinate with the landlord in all aspects of its occupancy and operations at the Facility(ies).

21 C. Should problems in coordination with other contractor(s) occur the CONTRACTOR
22 shall make AUTHORITY aware of these problems immediately and shall take steps to address
23 the problems and mitigate any delays or additional costs.

24 D. CONTRACTOR shall cooperate with such other contractors or forces performing
25 construction or work of any other nature within or adjacent to the Sites specified in order to avoid
26 any delay or hindrance to such other contractors or forces. AUTHORITY reserves the right to

1 perform other or additional work at or near the Site (including material sources) at any time, by
2 the use of other forces.

3 E. CONTRACTOR shall be responsible to other contractor(s) for all damage to work,
4 to persons or property caused by CONTRACTOR, its Subcontractor(s), or its Suppliers, and
5 losses caused by unnecessary delays or failure to finish the Work within the time specified for
6 completion. Any damage to Work, persons or property of CONTRACTOR by other contractors
7 shall be the responsibility of other contractor(s) and CONTRACTOR shall have no claim against
8 AUTHORITY or Caltrans.

9 F. CONTRACTOR's responsibility for design. Upon Approval of the design, including
10 Project infrastructure, construction, or installation design, CONTRACTOR shall assume
11 responsibility for the design to the extent that if the Work is installed as designed and the BOS or
12 CSC does not meet the Performance Measurements of this AGREEMENT, the CONTRACTOR
13 shall be responsible for the costs of redesign, civil rework, and additional Equipment costs and
14 any other costs associated with the sub-standard performance.

15 **ARTICLE 32. INSPECTION OF SITE**

16 CONTRACTOR acknowledges that it has investigated and satisfied itself as to the conditions
17 affecting the Work including, but not restricted to, building locations, Facilities, conditions, size, layout,
18 parking, transportation, disposal, availability of labor, roads, and other similar physical conditions at the
19 Sites, and the character of Equipment and Facilities needed preliminary to and during prosecution of the
20 Work Any failure by CONTRACTOR to acquaint itself with the available information will not relieve it
21 from responsibility for the difficulty or cost of successfully performing the Work. AUTHORITY assumes
22 no responsibility for any conclusions or interpretations made by CONTRACTOR on the basis of the
23 information made available by AUTHORITY.

24 **ARTICLE 33. REQUIREMENTS FOR REGISTRATION OF DESIGNERS**

25 All design and engineering Work furnished by CONTRACTOR shall be performed by or under the
26 supervision of persons licensed to practice architecture, engineering or surveying (as applicable) in the

1 State of California, by personnel who are careful, skilled, experienced and competent in their respective
2 trades or professions, who are professionally qualified to perform the work in accordance with the contract
3 documents and who shall assume professional responsibility for the accuracy and completeness of the
4 design documents and construction documents prepared or checked by them.

5 **ARTICLE 34. SEISMIC SAFETY REQUIREMENTS**

6 CONTRACTOR agrees to ensure that all Work performed under this AGREEMENT including
7 work performed by a Subcontractor is in compliance with the standards required by the Seismic Safety
8 Regulations.

9 **ARTICLE 35. ASSIGNMENTS AND SUBCONTRACTS**

10 A. Nothing contained in this AGREEMENT or otherwise, shall create any contractual
11 relation between AUTHORITY and any Subcontractor(s), and no subcontract shall relieve
12 CONTRACTOR of its responsibilities and obligations hereunder. CONTRACTOR agrees to be
13 as fully responsible to AUTHORITY for the acts and omissions of its Subcontractor(s) and of
14 persons either directly or indirectly employed by any of them as it is for the acts and omissions of
15 persons directly employed by CONTRACTOR. CONTRACTOR's obligation to pay its
16 Subcontractor(s) is an independent obligation from AUTHORITY's obligation to make payments
17 to the CONTRACTOR.

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

23 C. The CONTRACTOR shall perform the Work contemplated with resources available
24 within its own organization; and no portion of the Work pertinent to this AGREEMENT shall be
25 subcontracted without written authorization by AUTHORITY's Contract Administrator, except that,
26 which is expressly identified in the Approved Cost Proposal.

1 D. CONTRACTOR shall pay its Subcontractors within seven (7) calendar days from
2 receipt of each payment made to CONTRACTOR by AUTHORITY.

3 E. All subcontracts in excess of \$25,000 entered into as a result of this AGREEMENT
4 shall contain all of the provisions stipulated in this AGREEMENT to be applicable to
5 Subcontractors.

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

8 G. AUTHORITY hereby consents to CONTRACTOR's subcontracting portions of the Scope
9 of Work and Requirements to the parties identified below with their subcontract amounts described below.
10 CONTRACTOR shall include in the subcontract agreement the stipulation that CONTRACTOR, not
11 AUTHORITY, is solely responsible for payment to the Subcontractor for the amounts owing, and that the
12 Subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors,
13 employees or sureties for nonpayment by CONTRACTOR.

Subcontractor Name/Addresses	Subcontractor Function

14
15
16
17
18
19 H. CONTRACTOR shall engage the Collection Agency(ies) and Merchant Services
20 Providers identified above as Subcontractors. The subcontracts between CONTRACTOR and such
21 Collection Agency(ies) and Merchant Service Provider(s) shall name the AUTHORITY as an intended
22 third-party beneficiary or alternatively as a party to the subcontract, as determined by AUTHORITY, and
23 shall incorporate requirements for Collection Agency(ies) and Merchant Services Provider(s) set forth in
24 the Scope of Work and Requirements. Notwithstanding paragraph G of this Article, payment to the
25 Collections Agency(ies) and Merchant Services Provider(s) shall be as set forth in the subcontracts for
26 this Work.

I. AUTHORITY shall have the right to Approve all of the terms and conditions of the

1 Collection Agency(ies) and the Merchant Service Provider(s) agreements prior to execution.

2 **ARTICLE 36. TRANSITION AND SUCCESSION**

3 A. CONTRACTOR acknowledges that the Work and Scope of Work and Requirements are
4 vital to AUTHORITY and must be continued without interruption. Upon termination of the AGREEMENT,
5 a successor(s) (AUTHORITY or a new contractor(s)) may be responsible for providing this Work. The
6 CONTRACTOR agrees to exercise its best efforts and cooperation to affect an orderly and efficient
7 transition to a successor(s).

8 B. Upon expiration of the Term or termination of the AGREEMENT, whether for cause or
9 convenience, CONTRACTOR shall have accomplished a complete transition of the Work being
10 terminated from CONTRACTOR and any Subcontractors to the successor(s) without any interruption of
11 or adverse impact on the Work or any other services provided by third parties (the "Disentanglement").
12 CONTRACTOR shall cooperate with AUTHORITY and any successor(s) and otherwise promptly take all
13 steps required to assist AUTHORITY in effecting a complete Disentanglement. CONTRACTOR shall
14 provide all information regarding the Work or as otherwise needed for Disentanglement, including data
15 conversion, files, interface specifications, training staff assuming responsibility, and related professional
16 services, to the successor(s), all included as a part of its Price Proposal. CONTRACTOR shall provide
17 for the prompt and orderly conclusion of all Work, as AUTHORITY may direct, including completion or
18 partial completion of projects, documentation of Work in process, and other measures to assure an
19 orderly transition to the successor(s). All Work related to Disentanglement as may reasonably be
20 requested by AUTHORITY shall be deemed a part of the base Work and shall be performed by
21 CONTRACTOR at no additional cost to AUTHORITY. CONTRACTOR's obligation to provide the Work
22 shall not cease until Disentanglement is satisfactory to AUTHORITY, including the performance by
23 CONTRACTOR of all asset-transfers and other obligations of CONTRACTOR provided in this section,
24 has been completed.

25 C. The Disentanglement process shall begin on any of the following dates: (i) the date prior
26 to end of AGREEMENT, which AUTHORITY has provided in its Notice that CONTRACTOR should

1 commence Disentanglement (ii) the date, prior to the end of any initial or extended term when
2 AUTHORITY provides Notice to CONTRACTOR that AUTHORITY elected not to extend pursuant to the
3 AGREEMENT, or (iii) the date at which any Termination Notice is delivered, if AUTHORITY elects to
4 terminate any or all of the Work pursuant to this AGREEMENT.

5 D. CONTRACTOR and AUTHORITY shall discuss in good faith a plan for executing
6 CONTRACTOR's Disentanglement obligations and for the transfer of Work in accordance with the Scope
7 of Work and Requirements, however, CONTRACTOR's obligation under this AGREEMENT to provide
8 all Work necessary for Disentanglement shall not be lessened in any respect. CONTRACTOR shall
9 develop with the new provider and/ or AUTHORITY staff, an End of Agreement Transition Plan as set
10 forth in the Scope of Work and Requirements describing the nature and extent of transition Work required.
11 An updated End of Agreement Transition Plan and dates for transferring responsibilities for each division
12 of Work shall be submitted within thirty (30) Calendar Days of Notice provided under Paragraph C of this
13 Article. Upon completion of AUTHORITY review, all parties will meet and resolve any additional
14 requirements/differences. CONTRACTOR shall be required to perform its Disentanglement obligations
15 on an expedited basis, as determined by AUTHORITY, if AUTHORITY terminates the AGREEMENT for
16 cause.

17 E. Specific Obligations

18 The Disentanglement shall include the performance of the following specific obligations:

19 1. Third-Party Authorizations:

20 Without limiting the obligations of CONTRACTOR pursuant to any other clause herein,
21 CONTRACTOR shall, subject to the terms of any third-party contracts and licenses provided by
22 CONTRACTOR, procure at no charge to AUTHORITY any third-party authorizations necessary to grant
23 AUTHORITY the use and benefit of any third-party contracts and licenses between CONTRACTOR and
24 third-party contractors used to provide the Work, pending their assignment to AUTHORITY.

25 2. Transfer of Assets:

26 CONTRACTOR shall convey to AUTHORITY all AUTHORITY assets in

1 CONTRACTOR's possession and other CONTRACTOR Project assets as AUTHORITY may select, or
2 dispose of such assets in accordance with the Article 42, Disposition of BOS as a Service.

3 3. Transfer of Leases, Licenses, and Contracts:

4 CONTRACTOR, at its expense, shall convey or assign to AUTHORITY such leases,
5 licenses, and other contracts used by CONTRACTOR, AUTHORITY, or any other person in connection
6 with the Work, as AUTHORITY may select. CONTRACTOR's obligation described herein, shall include
7 CONTRACTOR's performance of all obligations under such leases, licenses, and other contracts to be
8 performed by it with respect to periods prior to the date of conveyance or assignment and CONTRACTOR
9 shall reimburse AUTHORITY for any losses resulting from any claim that CONTRACTOR did not perform
10 any such obligations. CONTRACTOR shall also obtain for AUTHORITY the right, upon Disentanglement,
11 to obtain maintenance (including all Enhancements and Upgrades) and support with respect to the assets
12 that are the subject of such leases and licenses at the price at which, and for so long as, such
13 maintenance and support is made commercially available to other customers of such third parties whose
14 consent is being procured hereunder. CONTRACTOR shall transfer intellectual property in accordance
15 with Articles 25, 26, and 27.

16 4. Delivery of Documentation:

17 CONTRACTOR shall deliver to AUTHORITY all documentation and data related to
18 AUTHORITY, including AUTHORITY data held by CONTRACTOR. CONTRACTOR shall retain all data
19 necessary to comply with the requirements for record retention and audit established in this
20 AGREEMENT.

21 5. Hiring of CONTRACTOR Employees:

22 CONTRACTOR shall cooperate with (and shall cause its Subcontractors to cooperate
23 with) AUTHORITY in offering employment, at the sole discretion of AUTHORITY, to any or all skilled or
24 specially trained CONTRACTOR employees (and to any or all employees of CONTRACTOR's
25 Subcontractors) that are substantially involved in the provision of Work whether such offers are made at
26 the time of, after, or in anticipation of expiration or termination of the AGREEMENT Term.

1 6. Maintenance of Assets:

2 CONTRACTOR shall maintain all Hardware, Software, Systems, networks, technologies,
3 and other assets utilized in providing Work to AUTHORITY (including leased and licensed assets) in good
4 condition and in such locations and configurations as to be readily identifiable and transferable to
5 AUTHORITY or its designees in accordance with the provisions of this AGREEMENT; additionally,
6 CONTRACTOR shall insure such assets in accordance with this AGREEMENT.

7 7. Continued Provision of Staffing:

8 CONTRACTOR shall provide sufficient experienced personnel in each division of Work
9 during the entire transition period to ensure that the Work is maintained at the level of proficiency required
10 by the AGREEMENT.

11 F. CONTRACTOR shall remain obligated to provide Work at AUTHORITY's request for up
12 to twelve (12) months after completion and Approval of the Disentanglement Work enumerated above,
13 and AUTHORITY shall pay for this Work at the rates set forth in the AGREEMENT for additional services.
14 This paragraph F expressly survives the Term.

15 **ARTICLE 37. CONFLICT OF INTEREST**

16 A. CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational
17 conflict of interest means that due to other activities, relationships or contracts, CONTRACTOR is unable,
18 or potentially unable to render impartial assistance or advice to AUTHORITY; CONTRACTOR's
19 objectivity in performing the Work identified in the Scope of Work and Requirements is or might be
20 otherwise impaired; or CONTRACTOR has an unfair competitive advantage or is engaging in activities
21 that AUTHORITY considers adverse to the 405 Express Lanes. CONTRACTOR is obligated to fully
22 disclose to AUTHORITY in writing Conflict of Interest issues as soon as they are known to
23 CONTRACTOR. All disclosures must be submitted in writing to AUTHORITY pursuant to the Notice
24 provision herein. This disclosure requirement is for the entire Term of this AGREEMENT.

25 B. CONTRACTOR shall disclose any financial interests it may have in the 405 Express
26 Lanes and any other financial, business, or other relationship with AUTHORITY that may have an impact

1 upon this AGREEMENT, or any ensuing AUTHORITY planned or current project. CONTRACTOR shall
2 also list current clients who may have a financial interest in the outcome of this AGREEMENT, or any
3 ensuing AUTHORITY planned or current project, which will follow.

4 C. CONTRACTOR hereby certifies that it does not now have, nor shall it acquire any financial
5 or business interest that would conflict with the performance of Work under this AGREEMENT.

6 **ARTICLE 38. PROHIBITION**

7 A. The firm, including all Subcontractors (at any tier), regardless of the level of service
8 provided by said Subcontractor(s), awarded the program management services contract for the Highway
9 Delivery Department, may not perform Work under this AGREEMENT.

10 B. The firm, including all Subcontractors (at any tier), regardless of the level of service
11 provided by said Subcontractor(s), awarded the program management consultant contract for the I-405
12 Improvement Project, may not perform Work under this AGREEMENT.

13 C. The evaluation of team composition with regards to conflicts of interest will be done on a
14 case-by-case basis.

15 **ARTICLE 39. CODE OF CONDUCT**

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

19 **ARTICLE 40. HEALTH AND SAFETY REQUIREMENTS**

20 CONTRACTOR shall comply with all the requirements set forth in Exhibit F, titled "Level 1
21 HEALTH, SAFETY and ENVIRONMENTAL SPECIFICATIONS." As used therein, "CONTRACTOR"
22 shall mean "CONTRACTOR," and "Subcontractor" shall mean "Sub-contractor."

23 **ARTICLE 41. CONTRACTOR PURCHASED EQUIPMENT**

24 A. Prior authorization, in writing, by AUTHORITY's Project Manager shall be required before
25 CONTRACTOR enters into any unbudgeted purchase order, or subcontract. CONTRACTOR shall
26 provide an evaluation of the necessity or desirability of incurring such costs.

1 B. For purchase of any item, service or consulting work not covered in CONTRACTOR's
2 Cost Proposal and exceeding \$2,500.00, three (3) competitive quotations must be submitted with the
3 request, or the absence of bidding (sole source) must be adequately justified.

4 C. Any Equipment purchased as a result of this AGREEMENT is subject to the following:
5 CONTRACTOR shall maintain an inventory of all nonexpendable property. Nonexpendable property is
6 defined as having useful life of at least one year and an acquisition cost of \$5,000.00 or more. Upon the
7 expiration or termination of this AGREEMENT, AUTHORITY may elect to retain the Equipment, require
8 CONTRACTOR to decommission and dispose of the Equipment at no cost to AUTHORITY, or require
9 CONTRACTOR to sell such Equipment at the best price obtainable at a public or private sale, and credit
10 AUTHORITY in an amount equal to the sale price. AUTHORITY may also elect to allow CONTRACTOR
11 to keep the Equipment, in which case AUTHORITY and CONTRACTOR shall come to agreement on a
12 mutually acceptable fair market value price. AUTHORITY may elect to require CONTRACTOR to hire an
13 appraiser at CONTRACTOR's cost, in order to determine a basis for a fair market value price. If
14 CONTRACTOR sells the Equipment, the terms and conditions of such sale must be Approved in advance
15 by AUTHORITY. CFR, Title 49, Part 18 requires a credit to Federal funds when participating equipment
16 with a fair market value greater than \$5,000.00 is credited to the project.

17 D. All Subcontracts entered into as a result of this AGREEMENT shall contain all of the
18 provisions of this Article.

19 **ARTICLE 42. DISPOSITION OF BOS AS A SERVICE**

20 AUTHORITY shall have the right to assume all required licenses, leases, and service agreements
21 to allow uninterrupted use, operation and maintenance of the Equipment and services under the same
22 terms as those provided to CONTRACTOR for such services.

23 CONTRACTOR shall effect the transfer of title, or assignment of leases, service agreements and
24 licenses, as applicable, as a part of the Disentanglement Work and AGREEMENT closeout.

25 **ARTICLE 43. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

1 under this AGREEMENT shall be delivered to, and shall be the sole property of AUTHORITY.
2 Deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by
3 AUTHORITY. Except as otherwise provided herein, copies of the foregoing may be made for
4 CONTRACTOR's records but shall not be furnished to others without written authorization from
5 AUTHORITY.

6 B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings,
7 descriptions, and all other written information submitted to CONTRACTOR in connection with the
8 performance of this AGREEMENT shall not, without prior written Approval of AUTHORITY, be used for
9 any purposes other than the performance under this AGREEMENT, nor be disclosed to an entity not
10 connected with such performance.

11 C. CONTRACTOR acknowledges and agrees that privacy of 405 Express Lanes customers
12 is of paramount importance to AUTHORITY and its customers. CONTRACTOR shall comply with
13 AUTHORITY's privacy policies, all applicable Governmental Rules, and Business Rules pertaining to
14 confidentiality, privacy, handling, retention, reporting and disclosure, and limiting or restricting collection,
15 use or dissemination of PII and shall not sell, transfer, disclose or otherwise use such information for any
16 purpose other than in performance of its duties under this AGREEMENT. CONTRACTOR shall indemnify
17 AUTHORITY with regard to any failure to comply with this Article 43 in accordance with Article 14,
18 Indemnification.

19 D. CONTRACTOR may only use AUTHORITY's Data to perform functions as defined by this
20 AGREEMENT, including the Scope of Work and Requirements. Access to AUTHORITY Data shall be
21 restricted only to CONTRACTOR's and its Subcontractor's personnel who need the AUTHORITY Data
22 to perform their duties in the performance of this AGREEMENT, and shall not, at any time, be disclosed
23 or divulged except as expressly provided herein.

24 E. CONTRACTOR shall inform all of its officers, employees, agents, and Subcontractors
25 providing Work of the confidentiality provisions of this AGREEMENT. CONTRACTOR will require that
26 any CONTRACTOR personnel, Subcontractor(s) or other third party with whom CONTRACTOR will

1 disclose or disseminate AUTHORITY Data, in whole or in part, execute and adhere to an agreement
2 incorporating the provisions of this Section. Nothing in this Article shall allow CONTRACTOR to disclose
3 or disseminate AUTHORITY Data without prior written consent and CONTRACTOR shall deliver to
4 AUTHORITY all executed agreements with Subcontractors prior to any authorized disclosure and
5 dissemination.

6 F. Subject to Paragraph C in the case of PII, CONTRACTOR may use such information for
7 Violation processing and collection and shall release the PII to:

- 8 1. AUTHORITY, upon request, for the purposes of carrying out this AGREEMENT
9 or functions with respect to the 405 Express Lanes Project; and
- 10 2. California DMV, other state DMVs, or other third parties Approved in advance by
11 AUTHORITY to receive PII as necessary to assist in collection of debt or payments owing.

12 G. CONTRACTOR shall implement physical, electronic and managerial safeguards to
13 prevent unauthorized access to PII and to implement destruction of records containing PII in accordance
14 with the records retention provisions of this AGREEMENT.

15 H. CONTRACTOR shall not use AUTHORITY's names, logos, branding, photographs of the
16 Project, or any other publicity pertaining to the Project in any professional publication, magazine, trade
17 paper, newspaper, seminar or other medium without the express written consent of AUTHORITY.

18 I. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be
19 released by CONTRACTOR to any other person or agency except after prior written Approval by
20 AUTHORITY, except as necessary for the performance of Work under this AGREEMENT. All press
21 releases, including graphic display information to be published in newspapers, magazines, etc., are to be
22 handled only by AUTHORITY unless otherwise agreed to by CONTRACTOR and AUTHORITY.

23 J. Applicable patent rights provisions regarding rights to inventions shall be included in the
24 AGREEMENT as appropriate (48 CFR 27, Subpart 27.3 - Patent Rights under Government Contracts for
25 federal-aid contracts).

26 K. Any subcontract in excess of \$25,000 entered into as a result of this AGREEMENT, shall

1 contain all of the provisions of this Article.

2 **ARTICLE 44. AUDIT AND INSPECTION OF RECORDS**

3 A. For the purpose of determining compliance with the Public Contract Code 10115, et seq.
4 and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other
5 matters connected with the performance of the AGREEMENT pursuant to Government Code 8546.7;
6 CONTRACTOR, Subcontractors, and AUTHORITY shall maintain and make available for inspection all
7 books, documents, papers, accounting records, and other evidence pertaining to the performance of the
8 AGREEMENT, including but not limited to, the costs of administering the AGREEMENT. All parties shall
9 make such materials available at their respective offices at all reasonable times during the AGREEMENT
10 period and for four (4) years from the date of final payment under the AGREEMENT. The State of
11 California, State Auditor, AUTHORITY, FHWA, their duly authorized representative or other agents of
12 AUTHORITY or any duly representative of the Federal Government shall have access to any books,
13 records, payroll documents, facilities and documents of CONTRACTOR and its certified public
14 accountants (CPA) work papers that are pertinent to the AGREEMENT and indirect cost rate (ICR) for
15 audit, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested.

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

20 C. AUTHORITY's right to audit books and records directly related to this AGREEMENT shall
21 also extend to all first-tier Subcontractors performing work identified in Article 35, Assignments and
22 Subcontracts, of this AGREEMENT, and such language must be included in CONTRACTOR's
23 agreements with its Subcontractors, resulting from this AGREEMENT.

24 **ARTICLE 45. AUDIT REVIEW PROCEDURES**

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

1 B. Not later than thirty (30) Calendar Days after issuance of the final audit report,
2 CONTRACTOR may request a review by AUTHORITY's Internal Audit of unresolved audit issues. The
3 request for review shall be submitted in writing.

4 C. Neither the pendency of a dispute nor its consideration by AUTHORITY will excuse
5 CONTRACTOR from full and timely performance, in accordance with the terms of this AGREEMENT.

6 **ARTICLE 46. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

7 A. CONTRACTOR agrees that the Agreement Cost Principles and Procedures, CFR, Title
8 48, Chapter 1, Part 31 of the FAR, shall be used to determine the cost allowability of individual items.

9 B. CONTRACTOR also agrees to comply with federal procedures in accordance with CFR,
10 Title 49, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State
11 and Local Governments.

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

15 **ARTICLE 47. CONTRACT WORK HOURS AND SAFETY STANDARDS**

16 A. If the maximum cumulative payment obligation of this Agreement exceeds \$100,000,
17 CONTRACTOR agrees to comply with the Federal Contract Work Hours and Safety Standards (40
18 U.S.C. Section 3701 et seq. as supplemented by 29 CFR part 5). Under 40 U.S.C. Section 3702,
19 CONTRACTOR shall compute the wages of every mechanic and laborer, including watchmen and
20 guards, on the basis of a standard work week of forty (40) hours.

21 1. Overtime requirements: CONTRACTOR, and any Subcontractor contracting for
22 any part of the Contract Work which may require or involve the employment of laborers or mechanics,
23 shall not require or permit any such laborer or mechanic in any workweek in which he or she is employed
24 on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic
25 receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all
26 hours worked in excess of forty (40) hours in such workweek.

1 2. Violation; liability for unpaid wages; liquidated damages: In the event of any
2 violation of paragraph (A) of this Article, CONTRACTOR and any Subcontractor responsible therefor shall
3 be liable for the unpaid wages. In addition, CONTRACTOR and Subcontractor shall be liable to the
4 United States for liquidated damages. Such liquidated damages shall be computed with respect to each
5 individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set
6 forth in paragraph (A) of this Article, in the sum of \$10 for each calendar day on which such individual
7 was required or permitted to work in excess of the standard workweek of forty (40) hours without payment
8 of the overtime wages required by paragraph (A) of this Article.

9 3. Withholding for unpaid wages and liquidated damages: FTA shall upon its own
10 action or upon written request of an authorized representative of the Department of Labor withhold or
11 cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or
12 Subcontractor under any such contract or any other Federal contract with CONTRACTOR, or any other
13 federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held
14 by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of
15 CONTRACTOR or Subcontractor for unpaid wages and liquidated damages as provided in this Article.

16 4. Subcontracts: CONTRACTOR shall insert in any subcontracts the clauses set
17 forth in paragraphs (A) of this Article and also a clause requiring the Subcontractors to include these
18 clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for compliance by any
19 Subcontractor or lower tier Subcontractor with the clauses set forth in paragraph A of this Article.

20 B. CONTRACTOR agrees to comply with U.S. DOL Regulations, "Recording and Reporting
21 Occupational Injuries and Illnesses," 29 CFR part 1904; "Occupational Safety and Health Standards," 29
22 CFR part 1910; and "Safety and Health Regulations for Construction," 29 CFR part 1926.

23
24 **ARTICLE 48. GENERAL WAGE RATES AND DAVIS BACON AND COPELAND ANTI-**
25 **KICKBACK ACTS**

26 A. State Prevailing Wage and Labor Code Requirements. Notice is hereby given that, in

1 accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2,
2 CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of
3 a similar character in the locality in which the public works is performed, and not less than the general
4 prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the
5 Department of Industrial Relations of the State of California (DIR) is required to and has determined such
6 general prevailing rates of per diem wages. CONTRACTOR agrees to comply with the provisions of
7 California Labor Code Sections 1771, 1774 and 1775 concerning the payment of prevailing rates of
8 wages to workers and the penalties for failure to pay prevailing wages. Copies of such prevailing rates
9 of per diem wages may be obtained online at (<http://www.dir.ca.gov/>), are on file at the AUTHORITY's
10 office, and will be available to any interested party upon request. In accordance with the Labor Code, no
11 workman employed upon work under this Agreement shall be paid less than the above referenced
12 prevailing wage rate. A copy of said rates shall be posted at each job site during the course of
13 construction.

14 1. This Agreement is subject to compliance monitoring and enforcement by the DIR.
15 The DIR shall monitor and enforce compliance with applicable prevailing wage requirements for this
16 Agreement. The reporting requirements may be found at <https://www.dir.ca.gov/Public-Works/Contractors.html>. CONTRACTOR is responsible for complying with all requirements of the DIR,
17 including filing electronic payroll reports.
18

19 2. Pursuant to Labor Code Section 1771.1, CONTRACTOR and any Subcontractor
20 shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of
21 the Public Contract Code, or engage in the performance of any contract for public work on a public works
22 project unless registered with the DIR and qualified to perform public work pursuant to Labor Code
23 Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit
24 a bid that is authorized by Business and Professions Code Section 7029.1 or by Public Contract Code
25 Section 10164 or 20103.5, provided CONTRACTOR is registered to perform public work pursuant to
26 Section 1725.5 at the time the contract is awarded. CONTRACTOR shall not perform any work under

1 this Agreement with any Subcontractor who is ineligible to perform work on the public works project
2 pursuant to Section 1777.1 or 1777.7 of the Labor Code.

3 3. Pursuant to Labor Code Section 1771.4, CONTRACTOR will post all job site
4 notices, as prescribed by regulation.

5 4. CONTRACTOR, and all Subcontractors, shall comply with the provisions of Labor
6 Code Sections 1777.5 and 1777.6 concerning the employment of apprentices. CONTRACTOR shall
7 have full responsibility for compliance with such Labor Code sections for all apprenticeable occupations,
8 regardless of any other contractual or employment relationships alleged to exist.

9 5. CONTRACTOR agrees to comply with the provisions of Labor Code Section
10 1776, including the keeping of payroll records and furnishing certified copies thereof in accordance with
11 said Section and with the terms as set forth in Exhibit A, "General Provisions." CONTRACTOR is
12 responsible for compliance with Section 1776 by all Subcontractors.

13 6. CONTRACTOR agrees to comply with all applicable Labor Code provisions
14 governing legal working hours and shall forfeit, as a penalty to AUTHORITY, twenty-five dollars (\$25.00)
15 for each laborer, workman or mechanic employed in the execution of the contract, by him or any sub-
16 contractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which
17 the laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in any one
18 calendar day and forty (40) hours in any one calendar week in violation of the Labor Code.

19 7. In accordance with the provisions of Labor Code Section 3700, CONTRACTOR
20 will be required to secure the payment of compensation to his or her employees.

21 **B. Federal Prevailing Wage Rates and Anti-Kickback.**

22 1. CONTRACTOR shall comply with the Davis-Bacon Act, 40 U.S.C. Sections 3141-
23 3144 and Sections 3146-3148, as supplemented by U.S. DOL regulations at 29 CFR part 5, "Labor
24 Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."
25 Under 49 U.S.C. Section 5333(a), prevailing wage protections apply to laborers and mechanics employed
26 on FTA-assisted construction, alteration, or repair projects. In accordance with the statute,

1 CONTRACTOR shall pay wages to laborers and mechanics at a rate not less than the prevailing wages
2 specified in a wage determination made by the Secretary of Labor. CONTRACTOR agrees to pay wages
3 not less than once per week. CONTRACTOR shall comply with the Davis-Bacon Labor Provisions of 2
4 CFR Section 5.5, as set forth in Exhibit A, "General Provisions."

5 2. CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C.
6 Section 3145), as supplemented by U.S. DOL regulations at 29 CFR part 3, "Contractors and
7 Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from
8 the United States." CONTRACTOR is prohibited from inducing, by any means, any person employed in
9 the construction, completion, or repair of public work, to give up any part of the compensation to which
10 he or she is otherwise entitled.

11
12 **ARTICLE 49. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

13 CONTRACTOR and all Subcontractors performing work under this AGREEMENT, shall be
14 prohibited from concurrently representing or lobbying for any other party competing for a contract with
15 AUTHORITY, either as a prime contractor or subcontractor. Failure to refrain from such representation
16 may result in termination of this AGREEMENT.

17 **ARTICLE 50. FEDERAL, STATE AND LOCAL LAWS**

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

21 **ARTICLE 51. EQUAL EMPLOYMENT OPPORTUNITY**

22 In connection with its performance under this AGREEMENT, CONTRACTOR shall not
23 discriminate against any employee or applicant for employment because of race, religion, color, sex, age
24 or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed,
25 and that employees are treated during their employment, without regard to their race, religion, color, sex,
26 age or national origin. Such actions shall include, but not be limited to, the following: employment,

1 upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay
2 or other forms of compensation; and selection for training, including apprenticeship.

3 **ARTICLE 52. STATEMENT OF COMPLIANCE**

4 During the performance of this AGREEMENT, CONTRACTOR, for itself, its assignees and
5 successors in interest agree as follows:

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

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

24 C. Compliance with Regulations: CONTRACTOR shall comply with regulations relative to
25 Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49
26 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI

1 provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination
2 in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex,
3 age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under
4 any program or activity by the recipients of federal assistance or their assignees and successors in
5 interest.

6 D. Solicitations for Subcontracts, Including Procurement of Materials and Equipment:

7 CONTRACTOR, with regard to the Work performed by it during the AGREEMENT shall act in accordance
8 with Title VI. Specifically, the CONTRACTOR shall not discriminate on the basis of race, color, national
9 origin, religion, sex, age, or disability in the selection and retention of Subcontractors, including
10 procurement of materials and leases of equipment. The CONTRACTOR shall not participate either
11 directly or indirectly in the discrimination prohibited by Section 21.5 of the U.S. DOT's Regulations,
12 including employment practices when the AGREEMENT covers a program whose goal is employment.

13 E. Information and Reports: CONTRACTOR shall provide all information and reports

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

20 F. Sanctions for Noncompliance: In the event of CONTRACTOR's noncompliance with

21 nondiscrimination provisions of this AGREEMENT, AUTHORITY shall impose sanctions as it may
22 determine to be appropriate, including, but not limited to:

23 1. Withholding of payments to CONTRACTOR under the AGREEMENT until

24 CONTRACTOR complies; and/or

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

26 G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections

1 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs,
2 activities, and services of public entities, as well as imposes specific requirements on public and private
3 providers of transportation.

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

14 **ARTICLE 53. NOTICE OF LABOR DISPUTE**

15 Whenever CONTRACTOR has knowledge that any actual or potential labor dispute may delay
16 its performance under this AGREEMENT, CONTRACTOR shall immediately notify and submit all
17 relevant information to AUTHORITY. CONTRACTOR shall insert the substance of this entire clause in
18 any subcontract hereunder as to which a labor dispute may delay performance under this AGREEMENT.
19 However, any Subcontractor need give notice and information only to its next higher-tier Subcontractor.

20 **ARTICLE 54. CLEANING UP**

21 A. CONTRACTOR shall at all times keep the Facilities and Sites, including storage areas
22 used by it, clean and free from accumulations of waste material or rubbish. Upon completion of the Work,
23 CONTRACTOR shall leave the Facilities and Sites in a clean, neat and workmanlike condition satisfactory
24 to AUTHORITY.

25 B. After completion of all Work on the Project, and before making application for Final
26 Acceptance of the Work in the Implementation Phase and Project closeout in the O&M Phase, Project

1 closeout by AUTHORITY will be withheld until CONTRACTOR has satisfactorily complied with the
2 foregoing requirements for final cleanup of the Project.

3 C. Full compensation for conforming to the provisions in this Article, not otherwise provided
4 for, shall be considered as included in price of this AGREEMENT and no additional compensation will be
5 allowed therefore.

6 **ARTICLE 55. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**
7 **CONTRACTOR CONTRACTS**

8 A. AUTHORITY or Subcontractor/subconsultant shall not discriminate on the basis of race,
9 color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out
10 applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted
11 contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this
12 Agreement contract, which may result in the termination of this contract or such other remedy as the
13 AUTHORITY deems appropriate, which may include, but is not limited to:

- 14 1. Withholding monthly progress payments;
- 15 2. Assessing sanctions;
- 16 3. Liquidated damages; and/or
- 17 4. Disqualifying the CONTRACTOR from future proposing as non-responsible.

18 CONTRACTOR agrees to include these requirements in all subcontracts at any tier.

19 B. In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business
20 Enterprises in Department of Transportation Financial Assistance Programs," AUTHORITY has
21 established a three (3%) percent Disadvantaged Business Enterprise (DBE) participation goal for the
22 services required in this Agreement.

23 C. At the time of contract execution, the CONTRACTOR committed to utilize one or more
24 Disadvantaged Business Enterprise (DBE) Firms in the performance of this DOT-assisted contract.
25 CONTRACTOR agrees to enter into agreements with the DBE Subcontractors listed on Attachment
26 "Consultant Contract DBE Commitment Caltrans Exhibit 10-O2 (RFP Form D-5)," and ensure they

1 perform Work and/or supply materials in accordance with original commitments. No changes to
2 CONTRACTOR's DBE commitment shall be made until proper review and approval by AUTHORITY is
3 rendered in writing.

4 D. CONTRACTOR must take appropriate actions to ensure that it will satisfy good faith
5 efforts to attain the DBE goal and/or the DBE commitment made at award (whichever is higher), when
6 change orders or other modifications alter the dollar amount of the Agreement or the distribution of Work.
7 CONTRACTOR must apply and report its DBE goal commitment against the total current Agreement
8 value, including any change orders and/or amendments.

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

12 F. CONTRACTOR shall comply with all the requirements set forth in Attachment A titled,
13 "DBE CONTRACT PROVISIONS FOR FHWA-ASSISTED CONTRACTOR CONTRACTS
14 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION", which is attached to and, by
15 this reference, incorporated in and made a part of this Agreement.

16 **ARTICLE 56. DISADVANTAGED BUSINESS ENTERPRISE GOAL**

17 A. CONTRACTOR hereby agrees to attain DBE participation in the amount of three (3%)
18 percent of the total AGREEMENT amount. CONTRACTOR shall enter into agreements for the Work
19 identified in Attachment A entitled "DBE Participation Commitment Form D-1".

20 B. CONTRACTOR is required to comply with this goal for the duration of this AGREEMENT.
21 CONTRACTOR's failure to comply with the DBE participation provisions may result in:

22 1. Withholding of payment until such compliance is achieved or a waiver of the
23 provisions is provided by AUTHORITY; and

24 2. The AGREEMENT may be canceled, terminated or suspended in whole or in part.

25 C. Any substitution of Subcontractors must be approved in writing by the AUTHORITY's
26 Contract Administrator in advance of assigning work to a substitute Subcontractor. Form E is attached

1 for use by CONTRACTOR when requesting DBE Subcontractor/Supplier substitution or addition.

2 D. To ensure that all obligations under this AGREEMENT are met, AUTHORITY will conduct
3 periodic reviews of the CONTRACTOR's small DBE efforts during AGREEMENT performance. The
4 CONTRACTOR shall bring to the attention of AUTHORITY's Contract Administrator any situation in which
5 regularly scheduled payments are not made to DBE Contractors, Subcontractors or Suppliers.

6 E. The CONTRACTOR will be required to meet all reporting requirements related to
7 utilization, scope of work and dollar amount of the subcontracts. Forms D-6 and D-7 are attached for
8 convenience in reporting the required information regarding DBE monthly and final utilization,
9 respectively.

10 F. CONTRACTOR, Subcontractors and suppliers shall permit access to their books,
11 records, and accounts by the Contract Administrator, or a designated representative, for the purpose of
12 investigation to ascertain compliance with these specified requirements. Such records shall be
13 maintained in a fashion which is readily accessible to AUTHORITY, as described in Article 44, Audit and
14 Inspection of Records, for a minimum of four (4) years from the date of final payment by AUTHORITY.

15 **ARTICLE 57. PROHIBITED INTERESTS**

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

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

21 **ARTICLE 58. COVENANT AGAINST CONTINGENT FEES**

22 CONTRACTOR warrants that he/she has not employed or retained any company or person, other
23 than a bona fide employee working for the CONTRACTOR; to solicit or secure this AGREEMENT; and
24 that he/she has not paid or agreed to pay any company or person other than a bona fide employee, any
25 fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting
26 from the award, or formation of this AGREEMENT. For breach or violation of this warranty, AUTHORITY

1 shall have the right to annul this AGREEMENT without liability, or at its discretion; to deduct from the
2 AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission,
3 percentage, brokerage fee, gift, or contingent fee.

4 **ARTICLE 59. PROHIBITION OF EXPENDING LOCAL AGENCY, STATE OR FEDERAL**
5 **FUNDS FOR LOBBYING**

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

15 **ARTICLE 60. PRIVACY ACT**

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

23 **ARTICLE 61. INCORPORATION OF FEDERAL TERMS**

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

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

5 **ARTICLE 62. FEDERAL CHANGES**

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

11 **ARTICLE 63. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

19 **ARTICLE 64. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**
20 **RELATED ACTS**

21 A. CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies
22 Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil
23 Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this
24 Agreement, CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has
25 made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FHWA
26 assisted project for which this Agreement's work is being performed. CONTRACTOR also acknowledges

1 that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or
2 certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil
3 Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

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

11 **ARTICLE 65. RECYCLED PRODUCTS**

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

16 B. CONTRACTOR agrees to include this requirement in all of its Subcontracts entered into
17 as a result of this AGREEMENT.

18 **ARTICLE 66. ENERGY CONSERVATION REQUIREMENTS**

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

22 **ARTICLE 67. CLEAN AIR**

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

1 Subcontracts.

2 **ARTICLE 68. CLEAN WATER REQUIREMENTS**

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

8 **ARTICLE 69. FLY AMERICA REQUIREMENT**

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

19 **ARTICLE 70. BUY AMERICA**

20 A. If the maximum cumulative payment obligation of this Agreement exceeds one hundred
21 fifty thousand dollars (\$150,000), CONTRACTOR shall comply with the "Buy America" requirements of
22 49 U.S.C. Section 5323(j) and 49 CFR part 661, as amended, which provide that Federal funds may not
23 be obligated unless all steel, iron, and manufactured products used in FTA-funded projects are produced
24 in the United States, unless a waiver has been granted by FTA or the product is subject to a general
25 waiver.

26 B. CONTRACTOR shall furnish a Certificate of Compliance, conforming to the provisions of

1 this Article, for all steel and iron materials.

2 C. CONTRACTOR shall ensure all Subcontractors at every tier comply with these
3 requirements.

4 **ARTICLE 71. DEBARMENT AND SUSPENSION CERTIFICATION**

5 A. CONTRACTOR's signature affixed herein, shall constitute a certification under penalty of
6 perjury under the laws of the State of California, that CONTRACTOR has complied with CFR Title 2, Part
7 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)",
8 which certifies that he/she or any person associated therewith in the capacity of owner, partner, director,
9 officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination
10 of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or
11 determined ineligible by any federal agency within the past three (3) years; does not have a proposed
12 debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by
13 a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three
14 (3) years. Any exceptions to this certification must be disclosed in writing to the AUTHORITY.

15 A. Exceptions will not necessarily result in denial of recommendation for award, but will be
16 considered in determining CONTRACTOR responsibility. Disclosures must indicate to whom exceptions
17 apply, initiating agency, and dates of action.

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

20 **ARTICLE 72. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

26 **ARTICLE 73. FORCE MAJEURE**

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

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15 This AGREEMENT shall be made effective upon execution by both parties.

16 **IN WITNESS WHEREOF**, the parties hereto have caused this AGREEMENT No. C-0-2352 to
17 be
18 executed on the date first above written.

19 **CONTRACTOR**

ORANGE COUNTY TRANSPORTATION AUTHORITY

21 By: _____

21 By: _____

22 Darrell Johnson
23 Chief Executive Officer

24 APPROVED AS TO FORM:

25 By: _____

26 James M. Donich
General Counsel

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APPROVED:

By: _____

Kirk Avila
General Manager
Express Lanes Programs

Date: _____

DRAFT

**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, Subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.
- C. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55 that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- D. 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 Subcontractors"*).

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 Subcontractor.

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

ATTACHMENT A

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

ATTACHMENT A

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 Subcontractor Commitment and Attainment Report Summary and Payment Verification" (Form 103/RFP Form D-7).

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 Subcontractor Commitment and Attainment Report Summary and Payment Verification" (Form 103) to facilitate reporting and capturing actual DBE attainments at conclusion of the contract.

The Form 103 must include the following information:

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/Subcontractor 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 Subcontractors" (RFP Form D-6)

Upon completion of the contract, a summary of these records must be prepared on the: "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors" and certified correct by the 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 Subcontractor must notify the Consultant in writing with the date of decertification. If a Subcontractor becomes a certified DBE during the life of the project, the Subcontractor must notify the 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, Subcontractor, joint venture partner with a Prime or Subcontractor, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - A. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
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 Subcontractor, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the 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 Subcontractor, the value of the subcontracted work may be counted toward DBE participation only if the Subcontractor is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be

credited toward the 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 Subcontractors, 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 Subcontractor to perform work on this contract, and the non-certified Subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE 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 Subcontractors

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

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

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

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

VIII. Additional DBE Subcontractors

In the event Consultant identifies additional DBE Subcontractors 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 Subcontractors 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 Subcontractor

ATTACHMENT A

for the satisfactory work performed under this Agreement, no later than seven (7) calendar days. Consultant agrees further to return retainage payments to each Subcontractor within thirty (30) calendar days after the Subcontractor's work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from Consultant showing payment has been made to the Subcontractors. 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 Subcontractors 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 (2%) percent of the invoice amount due per month for every month that payment is not made.

These prompt payment provisions must be incorporated in all subcontract agreements issued by Consultant under this Agreement. Each subcontract must require the Subcontractor to make payments to sub-Subcontractors 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 Subcontractors 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 (2%) percent of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all withholdings.

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

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EXHIBIT F: MILESTONE PAYMENT SCHEDULE

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Milestone Payment Schedule

A. Payments for System Costs (Excluding Hardware, Equipment and Off-the-Shelf Software)				
Payment Number	Payment Milestone	% Paid	Cum % Paid	\$
A-1	Notice to Proceed (Mobilization)	5.00%	5.00%	\$
A-2	Baseline Project Management Plan, Baseline Implementation Schedule, Software Development Plan and Quality Assurance Plan Approved	4.00%	9.00%	\$
A-3	I-405 CSC and WIC Facility Design Inputs	2.00%	11.00%	\$
A-4	Requirements Traceability Matrix Approved	3.00%	14.00%	\$
A-5	Business Rules Approved	3.00%	17.00%	\$
A-6	System Detailed Design Document Approved	8.00%	25.00%	\$
A-7	Approval of all Remaining BOS Design, Installation, End of Agreement Transition, Training, Disaster Recovery, Business Continuity, Maintenance Plans	5.00%	30.00%	\$
A-8	CSC Operations and Facility Mobilization Plan, Staffing and Human Resources Plan, Reporting and Reconciliation Plan and SOPs Approved	4.00%	34.00%	\$
A-9	Master Test Plan Approved	4.00%	38.00%	\$
A-10	All Manuals and Third-Party Documentation	2.00%	40.00%	
A-11	Software Walkthrough and Update of RTM Approved	4.00%	44.00%	\$
A-12	Unit Testing Approved	4.00%	48.00%	\$
A-13	System Integration Testing Approved	4.00%	52.00%	\$
A-14	User Acceptance Testing Approved	5.00%	57.00%	\$
A-15	Approval of all Training Plans Materials and Manuals	3.00%	60.00%	\$
A-16	Training Completed	3.00%	63.00%	\$
A-17	Achieve Commencement or Ramp-up/Customer Services	3.00%	66.00%	\$
A-18	Onsite Installation and Commissioning Testing (includes updated SDDD, traceability matrix and business rules documents), and Go-Live Testing Approved	5.00%	71.00%	\$
A-19	Acceptance of Operational Readiness Demonstration	4.00%	75.00%	\$
A-20	Go-Live	10.00%	85.00%	\$
A-21	Operational and Acceptance Testing Approved	10.00%	95.00%	\$
A-22	BOS Acceptance	5.00%	100.00%	\$

B. Payments for Hardware, Equipment and Off-the-Shelf Software				
Payment Number	Payment Milestone	% Paid	Cum.% Paid	\$
B-1	Ordering Approved by Agencies and Verified	10.00%	10.00%	\$
B-2	Verified Received	45.00%	55.00%	\$
B-3	Verified Installed in Final Configuration and Location	45.00%	100.00%	\$

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**EXHIBIT G: LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL
SPECIFICATIONS**

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LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

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

G. INJURY AND ILLNESS PREVENTION PLAN

The Contractor shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

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

1.2 HEAT ILLNESS PREVENTION PROGRAM

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

1.3 HAZARD COMMUNICATION

A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of MSDS for all applicable products used, if any.

B. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

C. The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements.

1.4 INCIDENT NOTIFICATION AND INVESTIGATION

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

1. Damage to Authority property (or incidents involving third party property damage);
2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
3. Incidents impacting the environment, i.e. spills or releases on Authority property.

B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.

C. A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that lead to the incident occurrence, a copy

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

1.5 PERSONAL PROTECTIVE EQUIPMENT

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

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 14050 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. OCTA Yard Safety Rules

END OF SECTION

FORM A: OFFEROR'S QUESTIONS FORM

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Offeror Name:

Offeror's Questions Form

Question No.	Page	Section	Section Description	Offeror's Question	Authority Response
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					

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FORM B: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

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

RFP Number: _____ RFP Title: _____

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

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- The Prime Contractor Yes _____ No _____
- Subcontractor Yes _____ No _____
- Agent/Lobbyist hired by Prime to represent the Prime in this RFP Yes _____ No _____

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

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

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

_____ Board of Directors

Steve Jones, Chairman

Andrew Do, Vice Chairman

Lisa A. Bartlett, Director

Doug Chaffee, Director

Laurie Davies, Director

Barbara Delgleize, Director

Michael Hennessey, Director

Gene Hernandez, Director

Joseph Muller, Director

Mark A. Murphy, Director

Richard Murphy, Director

Miguel Pulido, Director

Tim Shaw, Director

Harry S. Sidhu, Director

Michelle Steel, Director

Donald P. Wagner, Director

Greg Winterbottom, Director

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FORM C: STATUS OF PAST AND PRESENT CONTRACTS

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STATUS OF PAST AND PRESENT CONTRACTS

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

FORM D: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS AND FORMS

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**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
REQUIREMENTS**

1.0 DBE Goal

To assist Offerors in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs are ready, willing and able to compete for subcontracting opportunities on this project. The DBE Goal for this contract is **3%**.

2.0 DBE Policy and Applicability

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (“U.S. DOT”), the Orange County Transportation Authority (“Authority”) has adopted a Disadvantaged Business Enterprise (“DBE”) Policy and Program, in conformance with Title 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Programs.” The contract is subject to the following stipulated regulations. Pursuant to the intent of these Regulations, it is the policy of the Authority to fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in Authority’s U.S. DOT-assisted contracts and subcontracts. The Authority is firmly committed to its DBE Program objectives, which are designed to:

- 2.1 Ensure non-discrimination in the award and administration of Authority’s U.S. DOT-assisted contracts.
- 2.2 Create a level playing field on which DBEs can compete fairly for the Authority’s U.S. DOT-assisted contracts.
- 2.3 Ensure that the DBE Program and Overall Goal are narrowly tailored in accordance with applicable law.
- 2.4 Ensure that only firms that meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs in the Authority’s DBE program.
- 2.5 Help remove barriers which impede the participation of DBEs in the Authority’s U.S. DOT-assisted contracts.
- 2.6 Promote the use of DBEs in all types of U.S. DOT-assisted agreements and procurement activities conducted by the Authority.
- 2.7 Provide training and other assistance through our resource partners to address capital, bonding and insurance needs.

- 2.8 Assist in the development of DBE firms that can compete successfully in the marketplace outside the DBE Program; and
- 2.9 Establish and provide opportunities for DBEs by providing flexibility in the implementation of the Authority's DBE Program.

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

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

Race-Neutral/Race-Conscious DBE Program Measures

The Authority will utilize both race-neutral and race-conscious means to meet its overall DBE Program goal.

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

In conjunction with the race-neutral measures listed above, the Authority will implement race-conscious measures through the use of contract goals and good faith efforts. When a contract-specific goal is assigned to a project, Offerors must demonstrate responsiveness by committing to meet the DBE goal or documenting a bona fide good faith effort to do so, as a condition of award. Contract-specific goals are specifically targeted at DBEs certified through the California Unified Certification Program ("CUCP").

3.0 Definitions

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

- 3.1 **"Disadvantaged Business Enterprise (DBE)"** means a for-profit small business concern: (a) which is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock of which is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- 3.2 **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- 3.3 **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
- 3.3.1 Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- 3.3.2 Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
- 3.3.2.1 "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- 3.3.2.2 "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- 3.3.2.3 "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

- 3.3.2.4 "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- 3.3.2.5 "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- 3.3.2.6 Women; and
- 3.3.2.7 Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- 3.3.3 Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.
- 3.4 **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals;" and (b) whose management and daily business operations are controlled by one or more such individuals.
- 3.5 **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the contractor.
- 3.6 **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- 3.7 **"Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE, and that attempts to participate in a U.S. DOT-assisted

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

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

3.8.1 Social Disadvantage

3.8.1.1 The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

3.8.1.2 The individual must demonstrate that he/she has personally suffered social disadvantage.

3.8.1.3 The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

3.8.1.4 The individual's social disadvantage must be chronic, longstanding and substantial; not fleeting or insignificant.

3.8.1.5 The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

3.8.1.6 A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

3.8.2 Economic Disadvantage

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

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

4.0 DBE Proposal Submission Requirements

Offeror must complete and submit the following DBE Form D-1 with their proposal:

- DBE Participation Commitment Form
 - Written Confirmation (required from each proposed DBE firm listed on the DBE Participation Commitment Form)

Offeror must complete and submit the following DBE Form D-2 to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date:

- DBE Information - Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the DBE Participation Commitment Form)
- Bidders List

Required Forms	Submission
DBE Participation Commitment Form D-1	Required at time of Proposal
Written Confirmation (for each DBE firm listed on the DBE Participation Commitment Form)	Required at time of Proposal
DBE Information – Good Faith Efforts Form D-2	Required no later than 4:00 p.m. on the 2 nd business day after the Proposal due date
Bidders List Form D-3	Required no later than 4:00 p.m. on the 2 nd business day after the Proposal due date

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

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 Valid DBE Certification ID to confirm eligibility status through the CUCP, in conformance with 49 CFR Part 26;
- 4.1.3 A description of the work that each DBE will perform or provide;
- 4.1.4 The dollar amount of the work to be performed or provided by the DBE;
- 4.1.5 The dollar amount of the work eligible to be credited for each DBE towards the DBE goal (should not include lower-tier participation and should account for the type of work to be performed);
- 4.1.6 The Offeror shall also submit, for each DBE to perform under this Agreement, a written confirmation signed and dated from each DBE listed, acknowledging that the DBE is participating in the contract for the specified dollar value and scope of work listed on the DBE Participation Commitment Form. A signed quote or proposal from the DBE firm can be used in lieu of the written confirmation; however, the dollar amount and scope(s) in the quote/proposal, and the amount and scope reflected on the DBE Participation Commitment Form must match identically.

4.2 “DBE Information - Good Faith Efforts” (Form D-2)

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

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

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

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

For further guidance, refer to instructions on Form D-2 “DBE Information – Good Faith Efforts,” form and the United States Department of Transportation’s (“U.S. DOT”) DBE Program, Appendix A of Title 49 CFR Part 26 - “Guidance Concerning Good Faith Efforts,” and the DBE Section of the Authority’s Pre-Proposal Power Point.

4.3 “Bidders List” (Form D-3)

The Authority is required by Regulations to create and maintain a “Bidders List,” of all firms proposing or quoting on the Authority’s U.S. DOT-assisted contracts for use in calculating the Authority’s DBE goal(s). Offerors are required to complete and submit the requested information listed on the “Bidders List” form, for all firms (DBE[s] and non-DBE[s]) who submitted a bid, proposal or quote, including firms who were contracted by the prime Offeror.

The “Bidders List” must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the Proposal due date.

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DBE PARTICIPATION COMMITMENT FORM

**THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE PROPOSAL AS A
CONDITION OF DBE RESPONSIVENESS**

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

Offeror to Complete this Section

1. RFP No.: _____
2. Project Name/Description: _____
3. Prime Offeror Name: _____
4. Contract DBE Goal %: _____
5. Offeror's Total Bid Price _____
(If applicable)

Required DBE Commitment Information

6. DBE Firm (Name and Address)	7. DBE Certification Number	8. Description of Scope of Services/Work	9. Dollar Value (\$) or Percent (%) of Participation	10. Dollar Value (\$) or Percent (%) of Eligible DBE Participation/Commitment

Note: As a condition of responsiveness, the Offeror is required to submit with the Proposal a written confirmation signed and dated from each DBE listed in Column 6 acknowledging that the DBE is participating in the contract for the specified dollar value (\$) or percent (%) and scope of work.

A quote or proposal from the DBE firm can serve in lieu of the written confirmation; however, the dollar and/or percentage amount in the written confirmation or quote/proposal and the amount shown on this form MUST match identically.

11. Total Dollar Value (\$) or Percent (%) of Eligible DBE Participation:

\$ _____

12. Eligible DBE Participation Represented as a Percentage (%) of Offeror's Total Proposal Price

_____ %

Offeror Assurance: The Offeror certifies that information on this form is complete and accurate, that it has verified the listed DBE(s) certification status and is only crediting eligible DBE participation towards meeting the contract DBE goal.

13. Preparer's Name (Print)

14. Preparer's Signature

15. Preparer's Title

16. Date

() _____
17. Telephone No.

18. Email Address

INSTRUCTIONS - DBE Participation Commitment Form

Offeror is required to ensure all information is complete and accurate:

1. **RFP No.** - Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Prime Offeror Name** - Enter the Offeror's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Offeror's Total Proposal Price** - Enter the Offeror's total proposal price.
6. **DBE Firm** - Enter name and address of the proposed DBE firm. Identify all DBE firms being claimed for credit, regardless of tier.
7. **DBE Certification Number** - Enter the DBE's certification identification number. All DBEs must have a valid DBE certification at time of proposal due date.
8. **Description of Scope of Services/Work** - Enter the scope of services/work for each DBE firm listed to participate on this contract.
9. **Dollar Value (\$) or Percent (%) of Participation** - Enter the total dollar value or percent of participation for each listed DBE firm.
10. **Dollar Value (\$) or Percent (%) of Eligible DBE Participation/Commitment** - Enter the dollar value or percent of participation eligible to count towards meeting the contract DBE goal. This value should exclude work performed by lower tier s and account for the DBE's capacity based on their certification type in conformance with the DBE crediting provisions set forth in Title 49 CFR Part 26.55.
11. **Total Dollar Value (\$) of Eligible DBE Participation** - Enter the sum of all eligible participation listed in column 10.
12. **Eligible DBE Participation Represented as a Percentage (%) of Offeror's Total Price** - Enter the corresponding percentage of the total eligible DBE participation that the Offeror is counting towards the Offeror's DBE goal commitment (Formula: Item (11) Total Dollar Value (\$) of Eligible DBE Participation / Item (5) Offeror's Total Price = Offeror's DBE Goal Commitment Percent (%). If percent (%) is used in lieu of dollar value (\$) for Item (11), then Item (12) should equal percent listed in Item 11).
13. **Preparer's Name (Print)** - Clearly enter the name of the authorized person preparing the form on behalf of the Offeror.
14. **Preparer's Signature** - Authorized person's signature.
15. **Preparer's Title** - Enter the position/title of the authorized person signing the form on behalf of the Offeror.
16. **Date** - Enter the date the form is signed.
17. **Telephone No.** - Enter the area code and telephone number of the authorized person signing the form on behalf of the Offeror.
18. **Email Address** - Enter the email address of the authorized person signing the form on behalf of the Offeror.

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. Offerors are to verify that listed subconsultants contain DBE certification in the NAICS codes relevant to the scope they are being listed to perform.



DBE INFORMATION - GOOD FAITH EFFORTS

RFP No: _____ Proposal Due Date _____

The Orange County Transportation Authority (Authority) established a Disadvantaged Business Enterprise (DBE) goal of three percent (3%) for this contract. The information provided herein shows that a good faith effort was made by _____(Offeror).

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

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

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

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

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

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FORM D-2**

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

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

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

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

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

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

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

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

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

NOTE: USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS.



Bidders List

The Department of Transportation requires the Authority to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, 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 Offeror is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary Offeror, and submit this information to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority's proposal due date, or as otherwise specified in the solicitation. The Authority will utilize this information to assist in the Authority's DBE goal-setting process.

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

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

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

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Name:							<input type="checkbox"/> Less than \$1 <u>million</u>
Contact Name:							<input type="checkbox"/> Less than \$5 <u>million</u>
Address:							<input type="checkbox"/> Less than \$10 <u>million</u>
							<input type="checkbox"/> Less than \$15 <u>million</u>
							<input type="checkbox"/> More than \$15 <u>million</u>
							Age of Firm: _____yrs.

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

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CONSULTANT PROPOSAL DBE COMMITMENT

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

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

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENTCONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: _____ 2. Contract DBE Goal: _____
 3. Project Description: _____
 4. Project Location: _____
 5. Consultant's Name: _____ 6. Prime Certified DBE: 7. Total Contract Award Amount: _____
 8. Total Dollar Amount for **ALL** Subconsultants: _____ 9. Total Number of **ALL** Subconsultants: _____

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Local Agency to Complete this Section			
20. Local Agency Contract Number: _____ 21. Federal-Aid Project Number: _____ 22. Contract Execution Date: _____	14. TOTAL CLAIMED DBE PARTICIPATION		\$
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.			%
_____ 23. Local Agency Representative's Signature 24. Date _____ 25. Local Agency Representative's Name 26. Phone _____ 27. Local Agency Representative's Title	IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required. _____ 15. Preparer's Signature 16. Date _____ 17. Preparer's Name 18. Phone _____ 19. Preparer's Title		

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.

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

INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

- 20. Local Agency Contract Number** - Enter the Local Agency contract number or identifier.
- 21. Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
- 22. Contract Execution Date** - Enter the date the contract was executed.
- 23. Local Agency Representative's Signature** - The person completing this section of the form for the Local Agency must sign their name to certify that the information in this and the Consultant Section of this form is complete and accurate.
- 24. Date** - Enter the date the DBE commitment form is signed by the Local Agency Representative.
- 25. Local Agency Representative's Name** - Enter the name of the Local Agency Representative certifying the consultant's DBE commitment form.
- 26. Phone** - Enter the area code and phone number of the person signing the consultant's DBE commitment form.
- 27. Local Agency Representative Title** - Enter the position/title of the Local Agency Representative certifying the consultant's DBE commitment form.

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

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

CEM-2402F (REV 02/2008)

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

Copy Distribution-Caltrans contracts:

Original - District Construction

Copy- Business Enterprise Program

Copy- Contractor

Copy Resident Engineer

Copy Distribution-Local Agency contracts:

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

Copy- District Local Assistance Engineer

Copy- Local Agency file

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

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

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

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

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

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

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

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

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

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

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

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

RFP 0-2352
FORM D-6

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

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

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

July 1, 2012 LPP 09-02

DRAFT



MONTHLY DBE SUBCONTRACTOR COMMITMENT AND ATTAINMENT REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)

Reporting Period (month): _____, 20__

Contract Number:	Form 103 Report No.:	Report prepared by:
Contract Award Date:	Original Contract Award Amount:	Title:
Prime Name:	Prime Current Contract Value: [B]	Report reviewed by:
Address:	% of Project Complete:	Signature:
	[D] divided by [B]	Title:
	Total Paid to Prime this Month:	
	Total Paid to Prime to Date [D]	Prime's Current DBE Attainment (A/B):
Telephone No.:	Total Paid to DBEs this Month:	(Total Dollars Paid to DBEs divided by Prime Current Contract Value)
Contract DBE Goal (Prime Commitment at Award):	Total Paid to DBEs to Date: [A]	Prime's Current DBE Commitment (C/B):
Original Project Goal:	Date of Last Progress Payment:	(Total DBE Current Eligible Subcontract Value divided by Prime Current Contract Value)

1	2	3	4	5	6	7	8	9	10	11	12	13	14	
SUBCONTRACTOR	Type of Work Performed (Scope)	Original \$ Amount Committed at Award	\$ +/- Resulting from Change Order Activity	\$ Amount of Current Commitment	\$ Amount of Eligible DBE Participation Claimed	\$ Amount Paid to DBE this month	\$ Amount paid to lower Tier(s) of DBE this month	Eligible \$ Amount Paid to DBE this month = (Column 7 minus Column 8) x DBE Capacity	\$ Amount paid to DBE to Date	\$ Amount paid to lower Tier(s) of DBE to Date	Eligible \$ Amount Paid to DBE to Date minus Payments to lower Tier(s)	% of Retention Withheld	% of Work Complete	Notes/ Comments
	Applicable Naics Code(s)													
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ TYPE: Subcontractor ___ Broker ___ Supplier: Regular Dealer ___ or Manufacturer ___ CERTIFICATION(s): () SB () DBE () DVBE () M Certification #: _____ Verification of Payment Attached: YES NO Anticipated Commencement of Work Date: _____		\$ -	\$ -	\$ -	\$ -	\$ -	DBE: \$ - NON DBE: \$ -	\$ -	\$ -	DBE: \$ - NON DBE: \$ -	\$ -	0%	#DIV/0!	
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: _____ TYPE: Subcontractor ___ Broker ___ Supplier: Regular Dealer ___ or Manufacturer ___ CERTIFICATION(s): () SB () DBE () DVBE () M Certification #: _____ Verification of Payment Attached: YES NO Anticipated Commencement of Work Date: _____		\$ -	\$ -	\$ -	\$ -	\$ -	DBE: \$ - NON DBE: \$ -	\$ -	\$ -	DBE: \$ - NON DBE: \$ -	\$ -	0%	#DIV/0!	

RFP 0-2352 X-YYYY
FORM D-7

Name:										DBE:								
Address:										\$ -								
City, State, Zip Code:																		
Telephone Number:																		
TYPE: Subcontractor ___ Broker ___																		
Supplier: Regular Dealer ___ or Manufacturer ___										NON DBE:								
CERTIFICATION(s): <input type="checkbox"/> SB <input type="checkbox"/> DBE <input type="checkbox"/> DVBE <input type="checkbox"/> M Certification #:																		
Verification of Payment Attached: <input type="checkbox"/> YES <input type="checkbox"/> NO										\$ -								
Anticipated Commencement of Work Date:																		

[C]																			
DBE Total(s):																			
	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	#DIV/0!

COMMENTS/ISSUES:

* Eligible amount claimed is based on applicable crediting provisions, DBE Current contract value (excluding amounts subcontracted to lower-tiers) multiplied by capacity of work performed by listed DBE (CUF).

Authorized Binding Name:																			
Authorized Binding Title:																			
Authorized Binding Signature:																			

If necessary, this form can be duplicated and/or modified; however, it must contain all requested data fields. DBE Monthly Form R3

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ORANGE COUNTY TRANSPORTATION AUTHORITY

REQUEST FOR DBE SUBCONTRACTOR/SUPPLIER SUBSTITUTION

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

Project No.:	Project Name:
Prime Contractor:	
Business Address:	
Please Provide the Following Information for the Listed or Approved DBE Subcontractor:	
Subcontractor Name:	DBE Certification No:
Address:	
Contact Person:	Phone:
Email Address:	
Description of work:	
Original Contract Value:	Current Contract Value:
Reason for Substitution:	
Prime Contractor to select either Option A or B to meet substitution requirements:	

ρ A. Please provide the following information if Contractor elects to substitute a DBE subcontractor with another DBE subcontractor.

Subcontractor Name:	DBE Certification No:
---------------------	-----------------------

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

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

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

Contract Representative Signature	Title
Business Phone Number	Date

CONCURRENCE BY ORIGINALLY PROPOSED DBE FIRM:

Signature	Title
Print Name	Date

AUTHORITY APPROVAL:

Date Request Received: _____

Date Letter Sent to Original DBE Subcontractor: _____

Authority's Approval of Request for Substitution? Yes No

If no, please state reason:

Reviewed by: _____ Date: _____

FORM E: CERTIFICATION OF RESTRICTIONS ON LOBBYING FORM

DRAFT

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.

DRAFT

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf (name of offeror) of

_____ that:
(Firm name)

1. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the attached Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in all subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Bidder, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. 3801, et seq. apply to this certification and disclosure, if any.

Executed this _____ day of _____, 201_____

By _____
(Signature of authorized official)

(Title of authorized official)

DISCLOSURE OF LOBBYING ACTIVITIES

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

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

FORM E**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.I 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.I identify the status of the covered Federal action.
- 3.I 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.E nter 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.I f 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.E nter 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.E nter 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.E nter 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.F or 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.E nter 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.C heck 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.C heck the appropriate box (es). Check all boxes that apply. If other, specify nature.
- 14.P rovide 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.C heck whether or not a SF-LLL-A Continuation Sheet(s) is attached.
- 16.T he 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 _____

DRAFT

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FORM F: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

DRAFT

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS FORM

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' technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit B) and Proposed Agreement (Exhibit E). 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:

FORM G: SURETY COMMITMENT LETTER

DRAFT

SURETY COMMITMENT LETTER

TO: Orange County Transportation Authority

We have reviewed the Proposal of _____
(Offeror)

(Address)

for the [RFP Title] for which Proposals will be received on: _____ (Proposal Due Date) and wish to advise that should this Proposal of the Offeror be accepted and the Contract awarded to, such Offeror, this company agrees to become the Surety and provide the Payment and Performance Bonds required by the Contract for both the Implementation and Operations and Maintenance Phases. Such Bonds will be in the amounts identified in the Price Proposal, and referenced in Agreement, Article 13, Bonds, with terms of the Bonds as also provided in that article.

We are duly authorized to do business in the State of California

Surety Company/Address:

(Authorized Signature)

ATTEST:

[Attach Power of Attorney]

(Corporate Seal, if any. If no seal, write "No Seal" across this place and sign.)

DRAFT

FORM H: ESCROW AGREEMENT

FORM H
FORM OF INTELLECTUAL PROPERTY ESCROW AGREEMENT

Account Number _____

This Intellectual Property Escrow Agreement ("Escrow Agreement") is effective _____, 201_ among _____, a _____ corporation ("Escrow Agent"), _____, a _____ corporation ("Depositor"), and the Orange County Transportation Authority and, public entity of the State of California ("OCTA") together referred to as ("Authority"), who collectively may be referred to in this Escrow Agreement as the parties ("Parties").

A. Depositor and Authority have entered or will enter into an agreement for Back Office System and Customer Services Center Operations Services for the 405 Express Lanes in Orange County, California (the "AGREEMENT"). Unless the context otherwise requires, capitalized terms used in this Escrow Agreement have the meanings given in the AGREEMENT.

B. Under the AGREEMENT, Depositor has granted Authority licenses to use certain intellectual property, software and supporting materials, and Depositor will from time to time modify, add to, refine, substitute, revise, enhance, update, revise, upgrade and/or correct such software and supporting materials and will submit these updated software development documents on an ongoing basis as soon as reasonably practicable, but in no event more than 30 Calendar Days from the date of such updates. An initial deposit shall be made by Depositor within 60 Calendar Days of the AGREEMENT's Effective Date if requested by Authority. Additional deposits shall be made within 10 Calendar Days of Go-Live and BOS Acceptance. Depositor shall make deposits of the complete set of IP Materials current at the time of deposit at least semi-annually if no deposits provided above have occurred within the relevant preceding six-month period.

C. Depositor has agreed in the AGREEMENT to deposit into escrow with Escrow Agent the Intellectual Property and IP Materials including, without limitation, related documentation of Software required to be delivered as part of the AGREEMENT, including Software Source Code in ASCII format, on industry standard media and source code listings in human readable form of the Software as well as paper and electronic copies of the functional specifications and design specifications, code and documentation for tests used by Depositor to verify Software behavior, and user and technical documentation (all of which, together with modifications, additions, enhancements, updates, revisions, upgrades and corrections thereto and thereof, and all other supplementary deposits under Section 1.1 below, being collectively referred to in this Escrow Agreement as the "Software Source Code").

D. Depositor and/or its Software suppliers desire to avoid disclosure and release of the Software Source Code except under certain limited circumstances.

E. The availability of the IP Materials (including without limitation Software Source Code) to Authority is critical to Authority' business and, therefore, Authority need access to the IP Materials certain limited circumstances.

F. Depositor and Authority desire to establish an escrow with Escrow Agent to provide for the retention, administration and controlled access of the IP Materials.

G. Escrow Agent has consented to act as Escrow Agent and to receive and hold the current version and any future versions of the IP Materials.

H. The parties desire this Escrow Agreement to be supplementary to the AGREEMENT pursuant to 11 United States Bankruptcy Code, Section 365(n)(1)(B).

NOW, THEREFORE, Depositor and Authority hereby engage Escrow Agent to serve as Escrow Agent for the Intellectual Property and IP Materials, Escrow Agent hereby accepts such engagement, and

the Parties hereby agree to the establishment and administration of an escrow for the IP Materials, on the following terms and conditions.

SOURCE CODE ESCROW AGREEMENT

SECTION 1. DEPOSITS

1.1. Obligation to Make Deposits.

(a) Immediately upon execution of this Escrow Agreement, Depositor shall deposit IP Materials that consist of Pre-Existing Contractor Intellectual Property and Third Party Intellectual Property to be used in connection with the Toll Services with Escrow Agent.

(b) Depositor will submit updated Software development documents on an ongoing basis as soon as reasonably practicable, but in no event more than 30 Calendar Days from the date of such updates. Notwithstanding the foregoing, additional deposits shall be made within 10 Calendar Days of Go-Live and BOS Acceptance. Depositor shall make deposits of the complete set of IP Materials current at the time of deposit at least semi-annually if no deposits provided above have occurred within the relevant preceding six-month period.

(c) If during any calendar month after the date a Notice of BOS Acceptance is issued by Authority, Depositor completes and installs in or for the BOS Work any modification, addition, Enhancement, Update, revision, Upgrade or correction of or to any of the escrowed Software Source Code, it shall deposit with Escrow Agent, as soon as reasonably practicable and in no event more than 30 Calendar Days from the date of such updates, each such modification, addition, Enhancement, Update, revision, Upgrade and correction, and a modified Attachment A identifying the same. Similarly, if Depositor identifies any additional Intellectual Property or IP Materials to be deposited pursuant to Article 26 of the AGREEMENT, it shall deposit same with Escrow Agent, along with a modified Attachment A identifying the same as soon as reasonably practicable, but in no event more than 30 Calendar Days from the date of such identification.

(d) Each deposit under subsection (d) above shall be added to the existing deposit. Each deposit under subsections (b) or (c) above shall be listed on a modified Attachment A and Depositor shall sign each modified Attachment A. Attachment A and each modified Attachment A shall be held and maintained separately within the escrow account. Escrow Agent shall create an independent record which documents the activity for Attachment A and each modified Attachment A. The processing of all deposits under this Section 1.1 shall be in accordance with Sections 1.2 through 1.6 below.

(e) Notwithstanding any other provision of this Escrow Agreement, Depositor shall have no obligation to deposit with the Escrow Agent any Software Source Code for Off-the-Shelf Software, subject however, to the provisions of Article 26 of the AGREEMENT.

1.2. Identification of Tangible Media. Prior to each delivery of the IP Materials to Escrow Agent, Depositor shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Intellectual Property are written or stored. Additionally, with each delivery Depositor shall complete Attachment A to this Escrow Agreement or a modified Attachment A by listing each such tangible media by the item label description, the type of media and the quantity, and the identity of the owner of the Intellectual Property (whether Depositor or a Software Supplier). Depositor shall sign each Attachment A or modified Attachment A and deliver it to Escrow Agent with the IP Materials. Such signature shall constitute Depositor's representation and warranty that Attachment A is true, accurate and complete. Unless and until Depositor makes the initial deposit with Escrow Agent, Escrow Agent shall have no obligation with respect to this Escrow Agreement, except the obligation to notify the parties regarding the status of the account as required in Section 2.2 below.

1.3. Deposit Inspection. Within three Business Days after Escrow Agent receives IP Materials and Attachment A or a modified Attachment A, Escrow Agent shall conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Code to the item descriptions and quantity listed on Attachment A or modified Attachment A. In addition to the deposit inspection, Authority may elect to cause a verification of the IP Materials at any time in accordance with Section 1.6 below.

1.4. Acceptance of Deposit. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling of the tangible media matches the item descriptions and quantity on Attachment A or the modified Attachment A, Escrow Agent shall date and sign Attachment A or the modified Attachment A and mail a copy thereof to Depositor and Authority. Immediately upon completion of each deposit inspection, if Escrow Agent determines that the labeling does not match the item descriptions or quantity on Attachment A or the modified Attachment A, Escrow Agent shall (a) note the discrepancies in writing on Attachment A or the modified Attachment A; (b) date and sign Attachment A or the modified Attachment A with the exceptions noted; and (c) mail a copy of Attachment A or the modified Attachment A to Depositor and Authority. Escrow Agent's acceptance of the deposit occurs upon the signing of Attachment A or the modified Attachment A by Escrow Agent. Delivery of the signed Attachment A or the modified Attachment A to Authority is Authority's notice that the Software Source Code have been received and accepted by Escrow Agent.

1.5. Depositor's Representations. Depositor represents and warrants to Authority as follows:

- (a) Depositor lawfully possesses all of the IP Materials and the Intellectual Property contained therein as deposited with Escrow Agent;
- (b) With respect to all of the IP Materials and the Intellectual Property contained therein, Depositor has the right and authority to grant to Escrow Agent and Authority the rights as provided in this Escrow Agreement;
- (c) The IP Materials and the Intellectual Property contained therein are not subject to any lien or other encumbrance;
- (d) The IP Materials and the Intellectual Property contained therein consist of the proprietary technology and other materials identified either in the AGREEMENT or Attachment A, as applicable; and
- (e) The IP Materials are readable and useable in their current form or, if any portion of the IP Materials and the Intellectual Property contained therein is encrypted, the decryption tools and decryption keys have also been deposited.

1.6. Verification. Authority may, at Authority's expense, cause a verification of any IP Materials. Authority shall notify Depositor and Escrow Agent of Authority's request for verification. Depositor shall have the right to be present at the verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the IP Materials. If a verification is elected after the IP Materials have been delivered to Escrow Agent, then only Escrow Agent, or at Escrow Agent's or Authority's election an independent person or company selected and supervised by Escrow Agent or Authority, may perform the verification. If Authority elects to have an independent person or company perform the verifications, its election and selection shall prevail over any such election by Escrow Agent. The verification shall be conducted in accordance with the verification procedures specified in the completed form of Attachment A accompanying Depositor's deposit of the relevant IP Materials with Escrow Agent. Such verification shall determine the relevance, completeness, currency, accuracy and functionality of the IP Materials and the Intellectual Property contained therein and, specifically as to Software Source Code, whether the deposit is complete. If Escrow Agent or a person or company it selects performs the verification, Escrow Agent shall deliver to Authority a written report detailing the verification not later than 30 days after Authority delivers Notice requesting such verification. Any verification shall take place either at Escrow Agent's location or an agreed upon location during Escrow Agent's regular business hours. If Authority elect to have an independent person or company perform the verification, then such entity shall adhere to the

confidentiality requirements of the AGREEMENT. If Escrow Agent or the independent person performing the verification determine that the verification procedures specified in the completed Attachment A are insufficient to enable verification of the relevant IP Materials and the Intellectual Property contained therein, then upon the request of Escrow Holder or Authority, Depositor shall cooperate in good faith to supplement and/or modify the verification procedures as necessary and appropriate to facilitate such verification.

1.7. Removal of IP Materials. The IP Materials and the Intellectual Property contained therein may be removed and/or exchanged only on written instructions signed by both the Depositor and Authority, or as otherwise provided in this Escrow Agreement.

1.8. Inspection. Authority and Depositor shall be entitled, during normal business hours, to inspect, under the supervision of an officer of Escrow Agent and at Escrow Agent's facilities, the physical and technical status and condition of the IP Materials and the Intellectual Property contained therein. The party undertaking the inspection shall provide Notice of the pending inspection to the other party, five Business Days prior to the scheduled date of the inspection. The party receiving the notice shall have the right to be present at the inspection, but such presence is not a condition precedent to the inspecting party's right to proceed with inspection.

SECTION 2. CONFIDENTIALITY AND RECORD KEEPING

2.1. Confidentiality. Escrow Agent shall maintain the IP Materials and the Intellectual Property contained therein in a secure, environmentally safe, fireproofed vault or locked facility which is accessible only to authorized representatives of Escrow Agent. Escrow Agent shall have the obligation to reasonably protect the confidentiality of the Intellectual Property. Except as provided in this Escrow Agreement, Escrow Agent shall not disclose, transfer, make available or use the Intellectual Property or any IP Materials. Escrow Agent shall not disclose the content of this Escrow Agreement to any third party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the IP Materials and the Intellectual Property contained therein, Escrow Agent shall immediately notify the other Parties unless prohibited by law. It shall be the responsibility of Depositor and/or Authority to challenge any such order; provided, however, that Escrow Agent does not waive its rights to present its position with respect to any such order. Escrow Agent shall not be required to disobey any order from a court or other judicial tribunal. (See Section 7.5 below for notices of requested orders.)

2.2. Status Reports. Escrow Agent shall issue to Depositor and Authority a report profiling the account history at least semi-annually. Escrow Agent may provide copies of the account history pertaining to this Escrow Agreement upon the request of any other Party.

2.3. Audit Rights. During the term of this Escrow Agreement, Depositor and Authority may each inspect the written records of Escrow Agent pertaining to this Escrow Agreement. Any inspection shall be held during normal business hours and following reasonable prior Notice.

SECTION 3. TITLE TO IP MATERIALS

3.1 Title to IP Materials. Title to the IP Materials which embody Intellectual Property is vested in Authority pursuant to Article 25 of the AGREEMENT, but is subject to the provisions of this Escrow Agreement on access to and release of such IP Materials.

3.2 Disclaimer. Escrow Agent hereby disclaims and relinquishes any title to or ownership of Software Source Code deposited with Escrow Agent under this Escrow Agreement.

SECTION 4. RELEASE OF DEPOSIT

4.1. Release Conditions. As used in this Escrow Agreement, "Release Condition" shall mean any of the following:

- (a) The AGREEMENT is terminated for any reason including expiration of the Term;
- (b) A voluntary or involuntary bankruptcy or insolvency of CONTRACTOR occurs;
- (c) CONTRACTOR is dissolved or liquidated;
- (d) CONTRACTOR or any third party, (a) fails or ceases to provide services as necessary to permit continued use of any such Intellectual Property or (b) otherwise ceases to engage in the ordinary course of the business of manufacturing, supplying, maintaining and servicing the IP Materials pursuant to a license or any sublicense thereof.

4.2. Filing For Release. If Authority believes in good faith that a Release Condition has occurred, Authority may provide to Escrow Agent Notice of the occurrence of the Release Condition and a request for the release of the IP Materials and incorporated Intellectual Property. If the Release Condition pertains only to an owner of Third Party Intellectual Property, Authority' Notice shall so indicate. Immediately upon receipt of such Notice, Escrow Agent shall provide a copy of the Notice to Depositor by commercial express mail.

4.3. Contrary Instructions. From the date Escrow Agent mails the Notice requesting release of the IP Materials and incorporated Intellectual Property, Depositor shall have ten days to deliver to Escrow Agent contrary instructions ("Contrary Instructions"). Contrary Instructions shall mean the written representations and warranties, without qualification, exception or condition, by an authorized officer or authorized delegate of Depositor that (a) the person signing for Depositor is an authorized officer or authorized delegate of Depositor and (b) a Release Condition has not occurred or has been cured. Immediately upon receipt of Contrary Instructions within such ten day period, Escrow Agent shall send a copy to Authority by commercial express mail. Additionally, Escrow Agent shall provide Notice to Depositor and Authority that there is a dispute to be resolved pursuant to Section 7.3 of this Escrow Agreement. Subject to Section 5.2 of this Escrow Agreement, Escrow Agent shall continue to store the IP Materials and Intellectual Property without release pending (i) instructions from Depositor and Authority; (ii) dispute resolution pursuant to Section 7.3; or (iii) order of a court. Contrary Instructions received after such ten day period shall be automatically null and void, shall have no force or effect, and shall be disregarded by Escrow Agent.

4.4. Release of Deposit.

(a) If Escrow Agent does not receive Contrary Instructions from the Depositor within such ten day period, Escrow Agent is authorized to, and shall, immediately release the IP Materials and incorporated Intellectual Property to Authority. If the Release Condition pertains only to an owner of Third Party Intellectual Property, then Escrow Agent shall only release the IP Materials that (a) are identified on Attachment A as owned by such owner of Third Party Intellectual Property or (b) lacks identification of ownership on Attachment A. Any copying expense will be chargeable to Depositor. This Escrow Agreement shall terminate upon the release of all the IP Materials and incorporated Intellectual Property held by Escrow Agent.

(b) Escrow Agent shall promptly release all or any part of the IP Materials and incorporated Intellectual Property at any time and from time to time upon receipt of Notice signed by both Depositor and Authority.

(c) Escrow Agent shall also release the IP Materials and incorporated Intellectual Property to Authority at any time as directed or ordered by an arbitration award, by a final judgment of a court of competent jurisdiction, or by other final dispute resolution pursuant to Section 7.3; provided that

Authority provide to Escrow Agent a written opinion of counsel for Authority to the effect that such award, judgment or resolution is final and not appealable. In such event, Escrow Agent shall proceed with release in accordance with the award, judgment or resolution and may rely on such legal opinion.

4.5. Right to Use Following Release. Upon release of the IP Materials in accordance with this Section 4, Authority shall have the right and license to use the released Intellectual Property as provided in the AGREEMENT. Authority shall be obligated to maintain the confidentiality of the released Intellectual Property as provided in the AGREEMENT.

SECTION 5. TERM AND TERMINATION

5.1. Term of Escrow Agreement. The term of this Escrow Agreement shall continue in effect unless and until this Escrow Agreement is terminated in accordance with the terms of this Section 5. This Escrow Agreement shall be terminated in the event (a) Depositor and Authority jointly instruct Escrow Agent in writing that the Escrow Agreement is terminated; or (b) Escrow Agent provides Notice to Depositor and Authority that the Escrow Agreement is terminated for nonpayment in accordance with Section 5.2 or by resignation in accordance with Section 5.3. If the IP Materials and incorporated Intellectual Property are subject to another escrow agreement with Escrow Agent, Escrow Agent reserves the right, after the initial one year term, to adjust the anniversary date of this Escrow Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2. Termination for Nonpayment. In the event fees owed to Escrow Agent are not paid when due, Escrow Agent shall provide Notice of delinquency to all Parties. Any Party shall have the right to make the payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within one month of the date of such Notice, then Escrow Agent shall have the right to terminate this Escrow Agreement at any time thereafter by sending Notice of termination to all Parties. Escrow Agent shall have no obligation to take any action under this Escrow Agreement so long as any undisputed payment due to Escrow Agent remains unpaid and delinquent, except action to hold and safeguard the IP Materials and transfer or dispose of the IP Materials following termination as provided in this Section 5.

5.3. Termination by Resignation. Escrow Agent may terminate this Escrow Agreement, for any reason, by providing Depositor and Authority with 90-days' Notice of its intent to terminate this Escrow Agreement. Within the 90-day period, the Depositor and Authority shall use diligent efforts to enter into a substantially similar agreement with another entity willing and able to perform the functions of Escrow Agent under this Escrow Agreement and shall provide Escrow Agent with Notice including instructions authorizing Escrow Agent to forward the IP Materials and incorporated Intellectual Property to another escrow company and/or agent or other designated recipient. Escrow Agent shall transfer and dispose of the IP Materials in accordance with any such Notice. If Escrow Agent does not receive said Notice within 90 days of the date of Escrow Agent's termination Notice, then Escrow Agent shall have no obligation to take any action under this Escrow Agreement, except action to hold and safeguard the Intellectual Property and transfer or dispose of IP Materials following termination as provided in this Section 5.

5.4. Disposition of IP Materials Upon Termination. Upon termination of this Escrow Agreement, Escrow Agent shall destroy, return, or otherwise deliver the IP Materials in accordance with Depositor's and Authority' Notice. If there is no such Notice, Escrow Agent may, commence legal action interpleading Depositor and Authority, deposit the IP Materials with the court in such action and otherwise handle and dispose of the IP Materials in accordance with court order. In no event shall Escrow Agent have the right to destroy the IP Materials or return them to Depositor absent written instructions to such effect or final order of a court of competent jurisdiction.

5.5. Survival of Terms Following Termination. Upon termination of this Escrow Agreement, the following provisions of this Escrow Agreement shall survive:

- (a) Depositor's representations and warranties (Section 1.5);

- (b) The obligations of safekeeping and confidentiality with respect to the IP Materials and incorporated Intellectual Property set forth in Section 2.1;
- (c) The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the IP Materials has occurred prior to termination;
- (d) The obligation to pay Escrow Agent any fees and expenses due;
- (e) The obligations of Escrow Agent under Section 5.4;
- (f) The provisions of Section 7;
- (g) Any provisions in this Escrow Agreement which specifically state they survive the termination of this Escrow Agreement; and
- (h) All other provisions which by their inherent character or express terms should survive termination of this Escrow Agreement, the expiration of the AGREEMENT.

SECTION 6. IP ESCROW AGENT'S FEES

6.1. Fee Payment and Schedule Escrow Agent is entitled to be paid its standard fees and expenses applicable to the services provided, which shall be the responsibility of Depositor. Escrow Agent shall notify Authority at least 60 days prior to any increase in fees. For any service not listed on Escrow Agent's standard fee schedule, Escrow Agent shall provide a quote prior to rendering the service, if requested.

6.2. Payment Terms. Fees are due 30 days after receipt of an invoice from Escrow Agent detailing the services performed and setting forth fees therefor consistent with the then applicable fee schedule. Escrow Agent may deliver invoices not more frequently than monthly. Except for action to hold and safeguard the Intellectual Property and transfer or dispose of the IP Materials following termination as provided in this Section 6, Escrow Agent shall not be required to perform any service whenever any undisputed outstanding balance owed to Escrow Agent is not paid when due.

SECTION 7. LIABILITY AND DISPUTES

7.1. Right to Rely on Instructions. Escrow Agent may act in reliance upon any instruction, instrument, or signature reasonably believed by Escrow Agent to be genuine. Except with respect to a Contrary Instruction that is not timely delivered or lacks the representation set forth in Section 4.3(a), Escrow Agent may assume that any employee of a party to this Escrow Agreement who gives any Notice, request, or instruction has the authority to do so. Escrow Agent shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any Notice, request or instruction. Escrow Agent shall not be responsible for failure to act as a result of causes beyond the reasonable control of Escrow Agent.

7.2. Indemnification. Depositor and Authority each agree to indemnify, defend and hold harmless Escrow Agent from any and all Claims and Losses in connection with this escrow arrangement except to the extent such Liabilities were caused by the negligence or willful misconduct of Escrow Agent or its breach of this Escrow Agreement.

7.3. Dispute Resolution. Any dispute, controversy, claim or difference arising out of, or in connection with, or resulting from this Escrow Agreement, its application or interpretation, a breach thereof, or a Contrary Instruction issued hereunder, which cannot be settled amicably by the Parties, shall be subject to resolution in accordance with the dispute resolution provisions of the AGREEMENT. Escrow Agent agrees to be bound by any such final resolution. Notwithstanding the foregoing, any suit in interpleader brought

by Escrow Agent under Section 5.4 shall not be by arbitration and may be brought by Escrow Agent in any court having jurisdiction.

7.4. Controlling Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of California, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this AGREEMENT shall be in Orange County, California, unless changed by the judicial officer.

7.5. Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct Escrow Agent to take, or refrain from taking, any action, that Party shall:

- (a) Give Escrow Agent at least two Business Days' prior Notice of the hearing; and
- (b) Ensure that Escrow Agent not be required to deliver the original (as opposed to a copy) of the IP Materials if Escrow Agent may need to retain the original in its possession to fulfill any of its other duties under this Escrow Agreement.

SECTION 8. GENERAL PROVISIONS

8.1. Escrow Agent Representation. Escrow Agent represents and warrants to Authority and Depositor that (a) to the best knowledge of Escrow Agent neither it nor any of its personnel has been the subject of any investigation or been convicted or indicted for commission of any crime involving misconduct, corruption, bribery or fraud in connection with any public contract in the State of California, or any other jurisdiction, except as has been specifically disclosed in writing to Authority and Depositor, and (b) should any such conviction or indictment be obtained or any such investigation commenced prior to the expiration of the term hereof, regardless of the date of the occurrence giving rise to the subject matter of such conviction, indictment or investigation, Escrow Agent will immediately disclose it in writing to Authority and Depositor.

8.2. Entire Escrow Agreement. This Escrow Agreement (including all Exhibits to this Escrow Agreement) contain the entire understanding of the parties with respect to the subject matter of this Escrow Agreement and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter. Escrow Agent is not a party to the AGREEMENT between Depositor and Authority and has no knowledge of any of the terms or provisions of the AGREEMENT. Escrow Agent's only obligations to Depositor or Authority are as set forth in this Escrow Agreement. No amendment or modification of this Escrow Agreement shall be valid or binding unless signed by all the parties, except that Attachment A need not be signed by Authority and Attachment B need not be signed.

8.3. Notices. All notices, invoices, payments, deposits and other documents and communications under this Escrow Agreement shall be sent as provided in Article 11 of the AGREEMENT and given to the parties at the addresses specified in the attached Attachment B. It shall be the responsibility of the parties to notify each other as provided in this Section in the event of a change of address. The parties shall have the right to rely on the last known address of the other parties.

8.4. Severability. In the event any provision of this Escrow Agreement is found to be invalid, voidable or unenforceable, the parties agree that unless it materially affects the entire intent and purpose of this Escrow Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Escrow Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.5. Successors. This Escrow Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, Escrow Agent shall have no right to assign this Escrow

Agreement or delegate its duties hereunder without the prior written consent of Depositor and Authority; and Escrow Agent shall have no obligation in performing this Escrow Agreement to recognize any successor or assign of Depositor or Authority unless Escrow Agent receives unambiguous and authoritative written evidence of the change of Parties.

8.6. Regulations. Depositor and Authority are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Intellectual Property may be delivered in accordance with the provisions of this Escrow Agreement.

8.7. Liability. No member, officer, or employee of Authority, Depositor or Escrow Agent shall be liable personally hereunder or by reason hereof.

8.8. Counterparts. This Escrow Agreement may be executed in any number of counterparts and by the different parties on different counterparts, each of which, when executed, shall be deemed an original, but all of which, taken together, shall constitute one and the same Escrow Agreement.

[signatures on next page]

DRAFT

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed this Source Code Escrow Agreement as of the date first written above.

OCTA

**ORANGE COUNTY TRANSPORTATION
AUTHORITY**

By: _____
Name:
Title:

APPROVED AS TO FORM:

By: _____

DEPOSITOR:

By: _____
Name:
Title:

IP ESCROW AGENT:

By: _____
Name:
Title:

DRAFT

ATTACHMENT A

DESCRIPTION OF ESCROWED MATERIAL

Depositor Company Name: _____

Account Number _____

Product name _____ Version _____
(Product Name will appear as the Exhibit 1 Name on Account History report)

Owner of Product _____
(Name, address, tel. no., e-mail address)

SOURCE CODE DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	
_____	DAT tape _____mm	
_____	CD-ROM	
_____	Data cartridge tape _____	
_____	TK 70 or _____ tape	
_____	Magnetic tape _____	
_____	Documentation	
_____	Other _____	

PRODUCT DESCRIPTION:

Environment _____

SOURCE CODE INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

SOURCE CODE VERIFICATION PROCEDURES:

[Insert in space below or provide as separate attachment]

Other required information _____

I certify for **Depositor** that the above described **Escrow Agent** has inspected and accepted IP Materials have been transmitted to _____ the above materials (any exceptions are noted above):

Signature: _____ Signature: _____

Print Name: _____ Print Name: _____

Date: _____ Date Accepted: _____

Attachment A#: _____

Send materials to: IP Escrow Agent, _____ () _____

DRAFT

ATTACHMENT B

DESIGNATED CONTACT

Account Number _____
Notices, deposit material returns and
communications to Depositor should be
addressed to:

Invoices to Depositor pursuant to Section 4.4(a)
should be addressed to:

Company Name: _____

Address: _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____ Email: _____

Verification Contact: _____

Notices and communications to the Authority
should be addressed to each agency as follows:

Company Name: Orange County Transportation
Authority

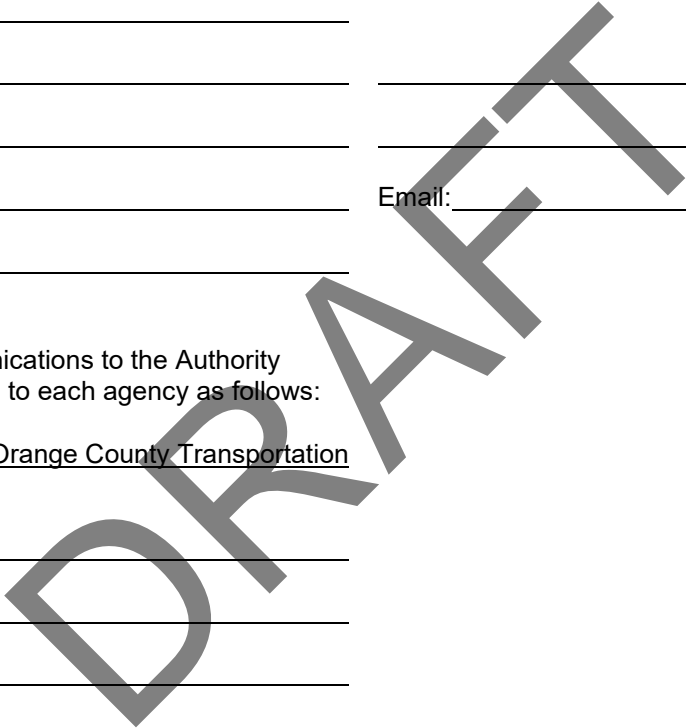
Address _____

Designated Contact: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____



Requests from Depositor and/or Orange County Transportation Authority to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor and/or Orange County Transportation Authority.

Contracts, IP Materials and Intellectual Property, notices, invoice inquiries and fee remittances to IP Escrow Agent should be addressed to:

Date: _____

Telephone: (____) _____

Facsimile: (____) _____

E-mail: _____

DRAFT

DRAFT

FORM I: PERFORMANCE BOND

**FORM OF IMPLEMENTATION PHASE
PERFORMANCE BOND**

Agreement No. _____

Bond No. _____

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Orange County Transportation Authority (“AUTHORITY”), a public entity of the State of California, has awarded _____, a corporation organized under the laws of _____ (“Principal”) an agreement to design, implement, operate and maintain a Back Office System and Customer Service Center for the 405 Express Lanes (the “Agreement”);

AND WHEREAS, the AGREEMENT was awarded by AUTHORITY on _____ to provide the Work in accordance with the terms of the AGREEMENT, as therein specified;

AND WHEREAS, it is one of the conditions to execution of the AGREEMENT by AUTHORITY that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”), an admitted surety insurer in the State of California, are firmly bound and held unto AUTHORITY, in the amount of _____ Dollars (\$ _____) (“Bonded Sum”) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to AUTHORITY, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The AGREEMENT is incorporated by reference in this Bond.
2. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the AGREEMENT.
3. If Principal or its heirs, successors, executors, administrators or assigns shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and Work under the AGREEMENT, including any and all amendments, supplements, and alterations made to the AGREEMENT as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless AUTHORITY and all other Indemnified Parties, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.
4. The obligations covered by this Bond specifically include the performance of each and every obligation of Principal under the AGREEMENT with respect to the Work required to complete the Implementation Phase, including its liability for Liquidated Damages and warranties as specified in the AGREEMENT, but not to exceed the Bonded Sum. Completion of the Implementation Phase, as used herein, means achievement of Go-Live of Implementation Phase.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the AGREEMENT, or in the Work to be performed with respect to completion of the Implementation Phase, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the AGREEMENT, or any rescission or attempted rescission of the AGREEMENT or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of AUTHORITY seeking to recover from this Bond, or any fraud practiced by any other person other than AUTHORITY seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the Work to satisfy this Bond will not be considered payment bond claims.

7. Whenever Principal shall be, and is declared by AUTHORITY to be, in default under the AGREEMENT, provided that AUTHORITY is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly, at AUTHORITY' election:

- (a) remedy such default, or
- (b) complete the Work covered by this Bond in accordance with the terms and conditions of the AGREEMENT, or
- (c) select a contractor or contractors to complete all Work covered by this Bond in accordance with the terms and conditions of the AGREEMENT then in effect, using a contractor or contractors approved by AUTHORITY (provided, however, that the Surety may not select Principal or any affiliate of Principal to complete the Work for and on behalf of the Surety without AUTHORITY' express written consent, in its sole discretion), arrange for a contract meeting the requirements of the AGREEMENT between such contractor or contractors and AUTHORITY, and make available as Work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the AGREEMENT Price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the Bonded Sum.
- (d) Shall pay Authority for the Work in an amount not exceeding the Bonded Sum.

8. If Surety does not proceed as provided in Paragraph 7 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional Notice from the AUTHORITY to Surety demanding that Surety perform its obligations under this Bond, and AUTHORITY shall be entitled to enforce any remedy available to AUTHORITY.

9. The guarantees contained in this Bond shall survive completion of the Implementation Phase with respect to those obligations of Principal which survive Final Acceptance of Implementation Phase.

10. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that AUTHORITY will have no obligation to deal with multiple sureties hereunder. All correspondence from AUTHORITY to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of Notice (by personal delivery or by certified mail, return receipt requested) to AUTHORITY designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____
_____ on this _____ day of _____, A.D., 20__.

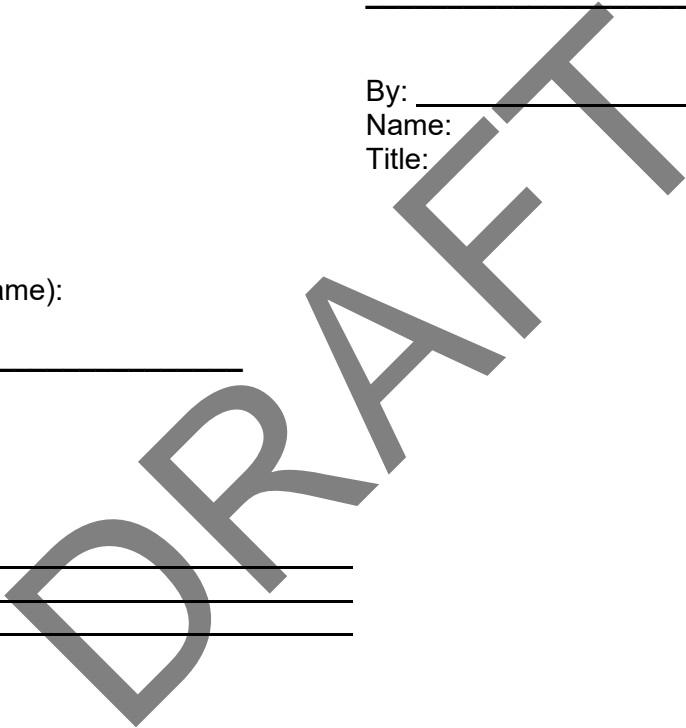
PRINCIPAL:

By: _____
Name: _____
Title: _____

Surety (full legal name):

Address:

By: _____



[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority to sign must be furnished and a Power of Attorney attached.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

DRAFT

DRAFT

FORM J: PAYMENT BOND

**FORM OF IMPLEMENTATION PHASE
PAYMENT BOND**

Agreement No. _____

Bond No. _____

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Orange County Transportation Authority (“AUTHORITY”), a public entity of the State of California, has awarded to _____, a corporation organized under the laws of _____ (“Principal”) an agreement to design, implement, operate and maintain a Back Office System and Customer Service Center for the 405 Express Lanes (the “AGREEMENT”);

AND WHEREAS, AGREEMENT was awarded by AUTHORITY on _____ to provide the Work, as specified and in accordance with the terms of the AGREEMENT;

AND WHEREAS, it is one of the conditions to execution of the AGREEMENT by AUTHORITY that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”), an admitted surety insurer in the State of California, are firmly bound and held unto AUTHORITY, in the sum of _____ Dollars (\$ _____) (“Bonded Sum”) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to AUTHORITY, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The AGREEMENT is incorporated by reference in this Bond. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the AGREEMENT.
2. If Principal, its Subcontractors, hires, successors, executors, administrators or assigns shall fail to pay:
 - (a) any of the persons named in Civil Code section 40500 involved in performance of the Work for the Implementation Phase as provided for under the AGREEMENT;
 - (b) any amounts due under the Unemployment Insurance Code with respect to the Work for the Implementation Phase;
 - (c) any amounts required to be deducted, withheld and paid over to 1302 Franchise Tax Board from the wages of employees of the Principal and its Subcontractor pursuant to Revenue and Taxation Code Section 18662 et seq. with respect to such labor; or
 - (d) anyone required to be paid by law

then Surety shall pay for the same in an amount not to exceed the Bonded Sum; otherwise this obligation shall be null and void; otherwise it shall remain in full force and effect. In

case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney's fee to be fixed by the court.

3. This Bond shall inure to the benefit of any of the persons named in Civil Code Section 40500 or anyone required to be paid by law under the AGREEMENT so as to give a right of action to such persons or their assigns in any suit brought upon this Bond.

4. This Bond covers all of Principal's payment obligations under the AGREEMENT for the Work for the Implementation Phase, as set forth in the AGREEMENT

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the AGREEMENT, or in the Work to be performed with respect to the Implementation Phase, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the AGREEMENT, or any rescission or attempted rescission of the AGREEMENT or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of AUTHORITY seeking to recover from this Bond, or any fraud practiced by any other person other than AUTHORITY seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it hereby waives notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that AUTHORITY will have no obligation to deal with multiple sureties hereunder. All correspondence from AUTHORITY to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of Notice (by personal delivery or by certified mail, return receipt requested) to AUTHORITY designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

7. This bond shall inure to the benefit of the persons named in Civil Code section 40500 so as to give a right of action to such persons and their assigns in any suit brought upon this bond.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____
_____ on this _____ day of _____, A.D., 20__.

PRINCIPAL: _____.

By: _____
Name:
Title:

Surety (full legal name):

Address:

By: _____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished and a Power of Attorney attached.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

_____ **NOTARY PUBLIC**

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FORM K: OPERATIONS AND MAINTENANCE BOND

DRAFT

FORM OF OPERATIONS AND MAINTENANCE PERFORMANCE BOND

Agreement No. _____

Bond No. _____

KNOW ALL WHO SHALL SEE THESE PRESENTS:

THAT WHEREAS, The Orange County Transportation Authority (“AUTHORITY”), a public entity of the State of California, has awarded _____, a corporation organized under the laws of _____ (“Principal”) an agreement to design, implement, operate and maintain a Back Office System and Customer Service Center for the 405 Express Lanes (the “AGREEMENT”);

AND WHEREAS, the AGREEMENT was awarded by AUTHORITY on _____ to provide the Work in accordance with the terms of the AGREEMENT, as therein specified;

AND WHEREAS, it is one of the conditions to execution of the AGREEMENT by AUTHORITY that these presents shall be executed;

NOW THEREFORE, We the undersigned Principal and _____ (the “Surety” or “Co-Sureties”), an admitted surety insurer in the State of California, are firmly bound and held unto AUTHORITY, in the amount of _____ Dollars (\$_____) (“Bonded Sum”) good and lawful money of the United States of America for the payment whereof, well and truly to be paid to AUTHORITY, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH THAT:

1. The AGREEMENT is incorporated by reference in this Bond.
2. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the AGREEMENT.
3. If Principal or its heirs, successors, executors, administrators or assigns shall in all things stand to and abide by and well and truly keep, perform and complete all covenants, conditions, agreements, obligations and Work under the AGREEMENT, including any and all amendments, supplements, and alterations made to the AGREEMENT as therein provided, on Principal’s part to be kept and performed at the time and in the manner therein specified, and shall indemnify, defend and save harmless AUTHORITY and all other Indemnified Parties, as therein stipulated, then this obligation shall become null and void; otherwise it shall remain in full force and effect. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorney’s fee to be fixed by the court.
4. The obligations covered by this Bond specifically include the performance of each and every obligation of Principal under the AGREEMENT with respect to the Work required to complete the Implementation Phase, including its liability for Liquidated Damages and warranties as specified in the AGREEMENT, but not to exceed the Bonded Sum.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the AGREEMENT, or in the Work to be performed with respect to completion of the Implementation Phase, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the AGREEMENT, or any rescission or attempted rescission of the AGREEMENT or this Bond, or any conditions precedent or subsequent in this Bond attempting to limit the right of recovery of AUTHORITY seeking to recover from this Bond, or any fraud practiced by any other person other than AUTHORITY seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it does hereby waive notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the Work to satisfy this Bond will not be considered payment bond claims.

7. Whenever Principal shall be, and is declared by AUTHORITY to be, in default under the AGREEMENT, provided that AUTHORITY is not then in material default thereunder, the Surety (or Co-Sureties) shall promptly:

- (a) remedy such default, or
- (b) complete the Work covered by this Bond in accordance with the terms and conditions of the AGREEMENT, or
- (c) select a contractor or contractors to complete all work covered by this Bond in accordance with the terms and conditions of the AGREEMENT then in effect, using a contractor or contractors approved by AUTHORITY (provided, however, that the Surety may not select Principal or any affiliate of Principal to complete the Work for and on behalf of the Surety without AUTHORITY' express written consent, in its sole discretion), arrange for a contract meeting the requirements of the AGREEMENT between such contractor or contractors and AUTHORITY, and make available as Work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the AGREEMENT Price; but not exceeding, including other costs and damages for which Surety (or Co-Sureties) is (are) liable hereunder, the Bonded Sum.

8. If Surety does not proceed as provided in Paragraph 7 of this Bond with reasonable promptness, Surety shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional Notice from the AUTHORITY to Surety demanding that Surety perform its obligations under this Bond, and AUTHORITY shall be entitled to enforce any remedy available to AUTHORITY.

9. The guarantees contained in this Bond shall survive completion of the Implementation Phase with respect to those obligations of Principal which survive Final Acceptance of Implementation Phase.

10. **[Use in case of multiple or co-sureties]** The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that AUTHORITY will have no obligation to deal with multiple sureties hereunder. All

correspondence from AUTHORITY to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of Notice (by personal delivery or by certified mail, return receipt requested) to AUTHORITY designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this at _____
_____ on this _____ day of _____, A.D., 20__.

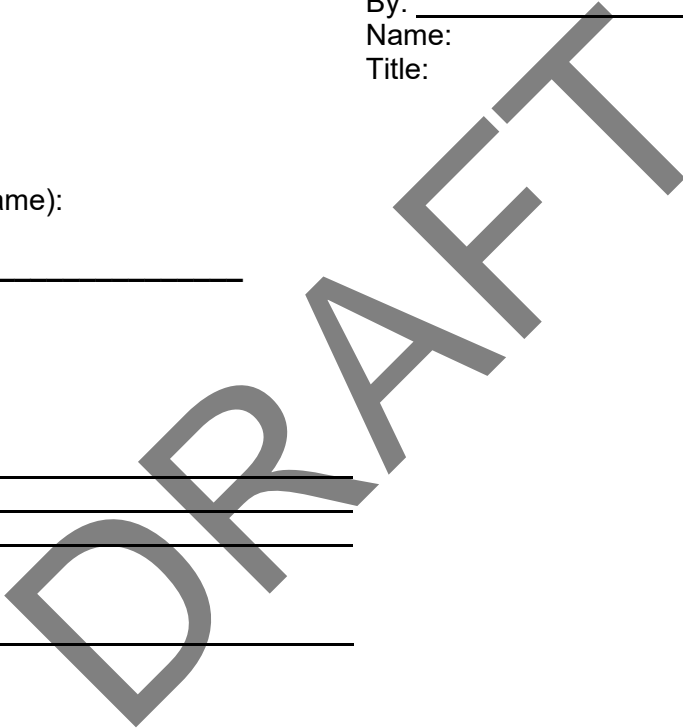
PRINCIPAL:

By: _____
Name: _____
Title: _____

Surety (full legal name):

Address:

By: _____



[Note: If more than one surety, then add appropriate number of lines to signature block.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority to sign must be furnished and a Power of Attorney attached.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

NOTARY PUBLIC

DRAFT

FORM L: IRAN CONTRACTING CERTIFICATION

DRAFT

IRAN CONTRACTING ACT CERTIFICATION
(California Public Contract Code Sections 2200, *et seq.*)

The Iran Contracting Act of 2010 (PCC Sections 2200-2208), prohibits bidders who are engaged in investment activities in the energy sector of Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods or services of one million dollars (\$1,000,000) or more. At the time of submitting a bid, each bidder must certify that the bidder is not identified on the Department of General Services list of ineligible persons pursuant to PCC Section 2203(b). Each bidder is also required to certify that the bidder is not engaged in investment activities in violation of the Iran Contracting Act of 2010.

A bidder who is engaged in investment activities in the energy sector of Iran is defined as:

1. A person providing goods or services of twenty million dollars (\$20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or
2. A person that is a financial institution that extends twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created pursuant to PCC Section 2203(b).

A bidder is not required to certify that it is engaged in investment activities in the energy sector of Iran if the bidder is exempt from the certification under PCC Section 2203(c) or (d). If the bidder is exempt from the certification requirement, the bidder will be required to provide documentation demonstrating the exemption.

To comply with the Iran Contracting Act of 2010, the bidder shall complete **one** of the options below. Please note: under PCC Section 2205, false certification of this form may result in civil penalties of \$250,000 or twice the amount of the contract for which false certification was made, termination of the contract, and/or ineligibility to bid on contracts for a period of three years.

Option #1: Certification

I, the official named below, certify I am duly authorized to execute this certification on behalf of the vendor/financial institution identified below, and the vendor/financial institution identified below, and any subcontractor who will perform work or labor or render services to the vendor identified below, is not on the current Department of General Services list identifying persons engaged in investment activities in the energy sector of Iran, and is not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person/vendor, for 45 days or more, if that other person/vendor will use the credit to provide goods or services in the energy sector in Iran and is identified on the current Department of General Services list identifying persons engaged in investment activities in the energy sector of Iran.

Vendor/Financial Institution: _____
Signature: _____
Name and Title: _____
Date: _____

Option #2: Exemption

Pursuant to PCC Section 2203(c) and (d), a public entity may permit a bidder or financial institution engaged in investment activities in Iran, on a case-by-case basis, to be eligible for, or to bid on, submit proposals for, or enter into or renew a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more. If the bidder, financial institution, or any subcontractor who will perform work or labor or render services to the bidder has obtained an exemption from the certification requirement, please complete and sign below and attach the documentation demonstrating the exemption approval.

Vendor/Financial Institution: _____
Signature: _____
Name and Title: _____
Date: _____

Option #3: Non-Applicability

Pursuant to PCC Section 2203(b), a bidder or financial institution engaged in investment activities in Iran may not be eligible for, or to bid on, submit proposals for, or enter into or renew a contract with a public entity for goods or services of one million dollars (\$1,000,000) or more. If the contract is not for goods or services of one million dollars (\$1,000,000) or more, please sign below indicating that the contract is not for goods or services of one million dollars (\$1,000,000) or more and thus bidder is not required to certify and does not meet the exemption.

Vendor/Financial Institution: _____

Signature: _____

Name and Title: _____

Date:

(This form is required from the Prime only.)

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FORM M: PUBLIC RECORDS ACT INDEMNIFICATION – PROPOSAL
DOCUMENTS

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PUBLIC RECORDS ACT INDEMNIFICATION – PROPOSAL DOCUMENTS

Offeror is required to submit one copy of the completed and signed form as part of its proposal and it should be included only in the original proposal. Offeror shall complete either Option 1 or Option 2 which ever applies.

Option #1: Public Records Act Indemnification Agreement

By signing below, the Offeror agrees as follows regarding its Proposal:

If Authority receives a Public Records Act request (Government Code sections 6250 et seq.) which seeks any portion of Offeror’s proposal that the Offeror has marked as "confidential", "trade secret", "proprietary", "not subject to disclosure", or similar designation (the "PRA Documents"), the Authority will notify the Offeror of the request. The Offeror shall, within three business days of such notification from the Authority, inform the Authority as to whether it desires the PRA Documents to be withheld, and shall thereafter timely provide a legal basis for each such requested withholding. If the Authority determines to withhold the PRA Documents, Offeror shall indemnify and defend Authority from any and all costs or liabilities resulting from such withholding including, but not limited to, attorney fees and court costs.

Offeror shall pay all costs, immediately as they come due, pertaining to any action under the Public Records Act related to any portion of Offeror’s Proposal marked or designated as described above, and withheld by Authority. If the Offeror fails to notify the Authority in writing within three business days, or to timely provide a legal basis for the withholding of documents, Offeror agrees that Authority shall release and disclose Offeror records, notwithstanding any marking or designation of the PRA Documents.

In no case shall Authority be liable for any inadvertent disclosure of any Offeror proposal documents, or any disclosure made by Authority upon a good faith belief that disclosure is required by law, or in the event Offeror has failed to notify the Authority in writing of its desire to withhold the PRA Documents within three business days and/or to timely provide a legal basis for the withholding of documents, regardless of any marking or designation of such PRA Documents, and Offeror waives any claims it may have had related to such disclosure.

Official, legal name of Proposing Firm (Type or Print)

Contact Name: _____ (Print Name)

Title: _____

Signed by: _____

Date: _____

Option #2: Non-Applicability

This Offeror has not marked any portion of its proposal as "confidential", "trade secret", "proprietary", "not subject to disclosure", or similar designation.

Official, legal name of Proposing Firm (Type or Print)

Contact Name: _____ (Print Name)

Title: _____

Signed by: _____

Date: _____

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FORM N: OFFEROR RECENT CLIENT LIST

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Offeror Name:

**Offeror Recent Client List
(For most recent three years)**

Name of Client including Address and Telephone #	Project Name	Project Description	Start Date	End Date	Contract Dollar Amount

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FORM O: REFERENCE FORMS

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Reference Forms O-1

Form O-1 Part 1
BOS Implementation and Maintenance

Offeror shall use this attachment to clearly demonstrate how Offeror meets the minimum qualification requirements for Proposals with regard to Offeror project experience. Each reference provided may be contacted by the Authority. Copy this form as needed to comply with the requirements outlined in the RFP for the Implementation and Maintenance Phase minimum qualifications. **References must be from a third party agency or company for whom Offeror has performed similar services.**

Offeror Name:

Please check off which qualifications requirement this reference is intended to address (you may check more than one box to cover multiple requirements as long as the explanation below is sufficiently detailed).

Implementation

Maintenance

Reference Company/Agency Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Project Manager Reference:		
E-mail:		
Alternate Reference*:		
Phone Number:	Fax Number:	
E-mail:		
Alternate Reference Role on Reference Project:		
*Must be completed in addition to the Project Manager reference		

Offeror's role on project and years of participation (mm/dd/yy to mm/dd/yy):

Project location, scope, cost, start / end dates:

Description of project functions and operations including size:

Relevant hardware, software and systems used:

Comparison to the Authority requirements:

Installed System or Maintenance documented performance, as applicable:

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Form O-1 Part 2
Operations

Offeror shall use this attachment to clearly demonstrate how Offeror meets the minimum qualification requirements for proposals with regard to Offeror project experience in Operations. Each reference provided may be contacted by the Authority. Copy this form as needed to comply with the requirements outlined in the RFP for minimum qualifications. **References must be from a third party agency or company for whom Offeror has performed services.**

Offeror's Name:

Reference Company/Agency Name:	
Address:	
City:	State: Zip Code:
Phone Number:	Fax Number:
Project Manager Reference:	
E-mail:	
Alternate Reference*:	
Phone Number:	Fax Number:
E-mail:	
Alternate Reference Role on Reference Project:	
*Must be completed in addition to the Project Manager reference	
Offeror's role on project and years of participation (mm/dd/yy to mm/dd/yy):	

Project location, scope, cost, start / end dates:

Description of project functions and operations performed, including size:

Relevant hardware, software and systems used:

Comparison to Authority' requirements:

Operations documented performance:

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Reference Forms O-2

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Form O-2
Key Personnel

Offeror shall use this form to clearly show how Offeror meets the requirements set forth in the RFP for Key Personnel members. References must be provided from an outside agency or company and shall not be an internal Offeror reference. Each reference provided may be contacted to determine the respondent's ability to meet the Proposal requirements. Copy this form as needed to comply with the requirements of the RFP and the number of references cited. **References must be from a third party agency or company for whom Key Personnel has performed similar services.**

Offeror Name _____
Key Project Personnel Member _____

Proposed Position _____

Reference Company Name:		
Address:		
City:	State:	Zip Code:
Phone Number:	Fax Number:	
Project Manager:		
E-mail:		
Number of total years' experience of Key Personnel team member in similar role to one proposed for the Authority:		
Reference Project:		
Key Team Personnel member role on reference project, including dates of participation and job description:		
Description of reference project location, scope, cost, start / end dates, etc.:		
Operational functionality and size of operations (accounts, transactions; notices...)		
Key Team Personnel member's major contributions and highlights:		
Key Team Personnel involved and role who are also proposed on the Authority project:		

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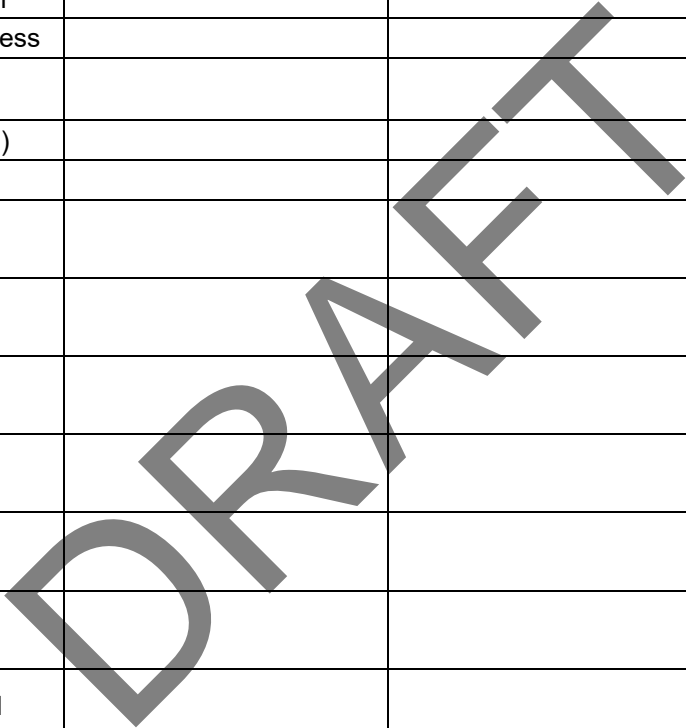
FORM P: LIST OF SUBCONTRACTORS

FORM P
List of Subcontractors

Offeror Name:

Please duplicate this page as necessary to provide the requested information.

	SUBCONTRACTOR	SUBCONTRACTOR	SUBCONTRACTOR
Legal Name of Company			
Company Contact Name			
Company Address			
City, State, Zip Code			
Company Telephone No.			
Company Fax Number			
Company E-mail address			
Legal Name of Principal(s)			
Address of Principal(s)			
City, State, Zip Code			
Telephone No. of Principal(s)			
Fax Number of Principal(s)			
E-mail address of Principal(s)			
Corporate Number (if applicable)			
License Number (if applicable)			
Status of License (if applicable)			
Work to be Performed			
Committed Dollar Amount of Total Work			
Committed Percentage of Total Work			



By: _____
President or Vice President

Signature: (1) _____

Attest: _____
Secretary (or Assistant Secretary)

Signature: (2) _____

(Affix Corporate Seal)

FORM Q: CONFORMANCE MATRIX

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