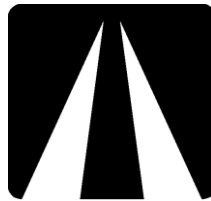


DRAFT REQUEST FOR PROPOSALS (RFP) 1-3317

COMPRESSED NATURAL GAS FUELING FACILITY OPERATIONS & MAINTENANCE



OCTA

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

Key RFP Dates

Issue Date:	May 10, 2021
Pre-Proposal Conference Date:	May 18, 2021
Question Submittal Date:	May 21, 2021
Proposal Submittal Date:	June 15, 2021
Interview Date:	July 8, 2021

FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT

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May 10, 2021

NOTICE OF REQUEST FOR PROPOSALS

(RFP): 1-3317: “COMPRESSED NATURAL GAS FUELING FACILITY OPERATIONS & MAINTENANCE”

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide compressed natural gas (CNG) fueling facility operations and maintenance. The budget for this effort is \$5,581,353 for the initial three-year term.

The Authority has set a 3% Disadvantaged Business Enterprise (DBE) participation goal for this project.

Proposals must be submitted electronically at or before 2:00 p.m. on June 15, 2021 to https://www.octa.net/proposal_upload_link. Select “RFP 1-3317” from the drop-down menu and follow the instructions as prompted.

Note: Hard copy proposal submissions will not be accepted for this RFP. Proposals must be submitted electronically at the link indicated above and no later than the date and time indicated.

Proposals and amendments to proposals received after the date and time specified above will not be accepted.

Firms interested in obtaining a copy of this RFP may do so by downloading the RFP from CAMM NET at <https://cammnet.octa.net>.

All firms interested in doing business with the Authority are required to register their business on-line at CAMM NET. The website can be found at <https://cammnet.octa.net>. From the site menu click on CAMM NET to register.

To receive all further information regarding this RFP 1-3317, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor’s on-line registration profile:

Category:
Fuel & Lubricants; Equipment
Professional Services
Maintenance Services -
Equipment

Commodity:
Fuel Management Systems
Fuel Management Services
Fuel & Lubricant Equipment -
Service

A pre-proposal conference will be held on May 18, 2021, at 10:00 a.m. via Skype for Business by visiting <https://meet.octa.net/kmason/G7254KBY>. For audio only, Offerors may call (714) 560-5666 and enter Conference ID 673561#. All prospective Offerors are encouraged to attend. If attending the pre-proposal conference, please complete the Pre-Proposal Sign-In Sheet, included as a separate document, and email to ***kmason@octa.net*** on or before day of the pre-proposal conference.

Note: Offerors must have Skype for Business installed on a PC or device in order to view and hear the pre-proposal conference PowerPoint presentation.

The Authority has established July 8, 2021, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

Note: All times indicated in this RFP are based on Pacific Daylight Time.

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SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held on May 18, 2021, at 10:00 a.m. via Skype for Business by visiting <https://meet.octa.net/kmason/G7254KBY>. For audio only, Offerors may call (714) 560-5666 and enter Conference ID 673561#. All prospective Offerors are encouraged to attend. If attending the pre-proposal conference, please complete the Pre-Proposal Sign-In Sheet, included as a separate document, and email to ***kmason@octa.net*** on or before day of the pre-proposal conference.

Note: Offerors must have Skype for Business installed on a PC or device in order to view and hear the pre-proposal conference PowerPoint presentation.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

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

D. AUTHORITY CONTACT

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

Kristen Mason, Section Manager, Maintenance Procurement
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: (714) 560-5842
Email: kmason@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding

this RFP with any Authority’s staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be submitted via email to kmason@octa.net and received by the Authority no later than 3:00 p.m., on May 21, 2021.
- b. Requests for clarifications, questions and comments must be clearly labeled, "RFP 1-3317 CNG Fueling Facility Operations & Maintenance". The Authority is not responsible for failure to respond to a request that has not been labeled as such.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than May 27, 2021. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Kristen Mason, Section Manager, Maintenance Procurement.

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

<p><u>Category:</u> Fuel & Lubricants; Equipment Professional Services Maintenance Services - Equipment</p>	<p><u>Commodity:</u> Fuel Management Systems Fuel Management Services Fuel & Lubricant Equipment - Service</p>
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Inquiries received after 3:00 p.m. on May 21, 2021, will not receive a response.

F. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be submitted electronically at or before 2:00 p.m. on June 15, 2021 to https://www.octa.net/proposal_upload_link. Select “RFP 1-3317” from the drop-down menu and follow the instructions as prompted.

Note: Hard copy proposal submissions will not be accepted for this RFP. Proposals must be submitted electronically at the link indicated above and no later than the date and time indicated.

2. Acceptance of Proposals

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to postpone proposal openings for its own convenience.
- d. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes.

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be for a three-year initial term with two, one-year option terms with fully-burdened rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A.

L. CONFLICT OF INTEREST

Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

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

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

M. CODE OF CONDUCT

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

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

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

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

O. DISADVANTAGED BUSINESS ENTERPRISE

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

P. AVAILABILITY OF FUNDS

This procurement is subject to the availability of funding in the form of a grant from the Federal Government. The Authority's obligation hereunder is contingent upon the availability of appropriated funds from which payment for the Contract purposes can be made. No legal liability on the part of the Authority for any payment shall arise until funds are made available for this Contract and until the Contractor receives notice of such availability, to be confirmed in writing by the

Contracting Officer. Any award of Contract hereunder will be conditioned upon said availability of funds for the Contract.

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SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12-point font, double-spaced. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed fifty (50) pages in length, excluding any appendices, cover letters, resumes, or forms.

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Kristen Mason, Section Manager, Maintenance Procurement and must, at a minimum, contain the following:

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

3. Technical Proposal

- a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the

services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

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

b. Proposed Staffing and Project Organization

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

Offeror to:

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

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the services specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that will be undertaken in completing the services and specify who will perform them.
- (3) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (4) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (5) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not

materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

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

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

e. Public Records Act Indemnification

Proposals received by Authority are subject to the California Public Records Act, Government Code section 6250 et seq. (the "Act"), except as otherwise provided in the Act. Proposers should familiarize themselves and exceptions thereto. In no event shall the Authority or any of its agents, representatives, consultants, directors, officers, or employees be liable to a Proposer for the disclosure of any materials or information submitted in response to the RFP. Proposers must complete and sign the Exhibit K, Public Records Act Indemnification – Proposal Documents, and submit it with the proposal. Failure to

complete Exhibit K may cause the proposal to be deemed non-responsive to this RFP and may no longer continue in the evaluation process.

If a California Public Records Act request is received by Authority for the release of information identified by Proposer as propriety, trade secret, or confidential, the request will be referred to Proposer for review and consideration. If Proposer requests that the information be withheld from release, Proposer shall provide such request in writing with the legal basis under the Act for each requested withholding. Failure to notify the Authority in writing of its desire to withhold the records 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 documents, shall constitute a waiver of any claims Proposer may have had related to such disclosure.

Authority will review the request, determine if the disclosure of the records is required by law, and notify Proposer of such determination. If Authority determines that the disclosure of records is required by law, Authority will notify Proposer of such determination and provide Proposer the opportunity to seek a protective order or other appropriate legal relief to protect the records.

Proposer shall defend and hold harmless Authority from any legal action arising from such withholding, as further detailed in Exhibit K, Public Records Act Indemnification – Proposal Documents.

4. Cost and Price Proposal

As part of the cost and price proposal, the Offeror shall complete the “Price Summary Sheet” included with this RFP (Exhibit B) and furnish any narrative required to explain the prices quoted. It is anticipated that the Authority will issue a time-and-expense contract with a firm-fixed unit price indicating CNG fuel in terms of each possible monthly throughput level for the work specified in the Scope of Work, included in this RFP as Exhibit A.

5. Appendices

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

B. FORMS**1. Campaign Contribution Disclosure Form – Exhibit D**

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Board of Directors, Offeror is required to complete and sign the Campaign Contribution Disclosure Form provided in this RFP and submit as part of the proposal.

This form **must** be completed regardless of whether a campaign contribution has been made or not and regardless of the amount of the contribution.

The prime contractor, subconsultants, lobbyists and agents are required to report all campaign contributions made from the proposal submittal date up to and until the Board of Directors makes a selection.

2. Status of Past and Present Contracts Form – Exhibit E

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

A separate form must be completed for each identified contract. Each form must be signed by the Offeror confirming that the information provided is true and accurate.

3. Disadvantaged Business Enterprise Program and Forms – Exhibit F

In conformance with Title 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” proposers must complete the following forms:

- DBE Participation Commitment Form (Exhibit F-1)
 - Written Confirmation (required from each proposed DBE firm listed on the DBE Participation Commitment Form)

- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “DBE Participation Commitment Form”); (Exhibit F-2)
- Bidders List (Exhibit F-3)

4. Certification of Restrictions on Lobbying and Disclosure of Lobbying Activities– Exhibit G

This form requires the Offeror to certify compliance with the lobbying requirements of 31 U.S.C. Section 1352 and the applicable regulations under 49 CFR part 19 and 20. (Required if the bid is equal or greater than \$100,000). The offeror is required to submit the Certification of Restrictions on Lobbying Form” and “Disclosure of Lobbying Activities Form”, in order for the offeror’s proposal to be responsive and to be considered for evaluation.

This form requires the Offeror to disclose lobbying activities pursuant to the requirements of 31 U.S.C. Section 1352. If Offeror does not have any reportable activities to disclose, they shall check the box entitled “No Reportable Activities” on the attached Standard Form-LLL “Disclosure of Lobbying Activities” and complete Section 16 of the form in order for the offeror’s proposal to be responsive and to be considered for evaluation. The certifying official shall sign and date the form, print his/her name, title and telephone number.

6. Safety Specifications – Exhibit H

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

7. Proposal Exceptions and/or Deviation Form – Exhibit I

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

8. Public Records Act Indemnification Form – Exhibit J

Offerors shall complete and sign the form entitled “Public Records Act Indemnification” provided in this RFP and submit it as part of the original proposal. Proposers must complete and sign either Option 1 or Option 2, whichever applies.

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SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

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

1. **Qualifications of the Firm** **30%**
 Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
2. **Staffing and Project Organization** **15%**
 Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
3. **Work Plan** **25%**
 Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
4. **Cost and Price** **30%**
 Reasonableness of the total price as well as the individual tasks; competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established July 8, 2021, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the

interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

At the conclusion of the proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

At the conclusion of the evaluation process, the evaluation committee will recommend to the Transit Committee, the Offeror with the highest final ranking or a short list of top ranked firms within the competitive range whose proposal(s) is most advantageous to the Authority. The Transit Committee will review the evaluation committee's recommendation and forward its decision to the full Board of Directors for final action.

C. AWARD

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

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

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EXHIBIT A: SCOPE OF WORK

SCOPE OF WORK

Part I – General Requirements

1. General

Contractor shall operate and maintain three (3) compressed natural gas (CNG) fueling stations at the Orange County Transportation Authority's (Authority) Anaheim, Garden Grove and Santa Ana bus bases (Bases). The facilities shall provide CNG fuel for transit buses and light vehicles at the Authority's Bases. The CNG fueling facilities (Facilities) produce CNG fuel utilizing compressors fed from a utility gas supply. The Facilities possess all permits, equipment, site work, connections and safety systems specified herein, and as required by the authorities having jurisdiction (AHJ). Contractor shall provide turn-key operation and maintenance services for a three-year initial term with two, one-year option terms with compensation provided per unit of fuel consumed by the Authority.

Authority Facilities will provide CNG fuel for transit buses, light vehicles, and equipment at the following locations:

Anaheim Base – 1717 East Via Burton, Anaheim, CA 92806

Equipment:

- (3) 600 hp, Electric driven CNG Compressors
- (1) CNG Natural Gas Dryer
- (4) CNG Storage Vessels or Spheres
- (2) CNG Transit Dispensers
- (1) Light Duty Dispenser
- (2) Generators with Switchgear
 - Manufactured by Generac Power Systems Inc.
 - Rated: 600 kW, 750 kVA
 - Model 855200500
 - Serial Numbers 2095378, 2095377
 - Type: MD0600-K36220D18GPSL C
 - Engine:OF9438

Related Control Systems

Garden Grove Base - 11790 Cardinal Circle, Garden Grove, CA 92843

Equipment:

- (3) 600 hp, Electric driven CNG Compressors
- (1) CNG Natural Gas Dryer
- (4) CNG Storage Vessels or Spheres
- (3) CNG Transit Dispensers
- (2) Light Duty Dispensers
- (1) Defueling Station
- (2) Generators with switchgear
 - Manufactured by Generac Power Systems Inc.
 - Rated: 600 kW, 750 kVA
 - Model 855522
 - Serial Numbers 2095407, 2095406

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- Type: MD0600K36220D18GPSL C
- Engine:OF9438

Related Control Systems

Santa Ana Base - 4301 West MacArthur Boulevard, Santa Ana, CA 92704

Equipment:

- (4) 600 hp, Electric Driven CNG Compressors
- (1) CNG Natural Gas Dryer
- (4) CNG Storage Vessels or Spheres
- (4) CNG Transit Dispensers
- (1) Light Duty Dispenser
- (1) Defueling Station
- (2) Generators with Switchgear
 - Manufactured by Generac Power Systems Inc.
 - Rated: 600 kW, 750 kVA
 - Models 7294250800 and 2094250900
 - Serial #s 2092553, 2092554
 - Type: MD0600K36220D18GPYLC
 - Engine:OF9438

Related Control Systems

Facilities provide CNG product to CNG dispensers for transit bus vehicles. The Facilities CNG transit dispensers shall be able to fuel buses simultaneously, each with 4,000 standard cubic feet (SCF) of CNG within five minutes, including contribution from a CNG buffer that is accumulated during a 90-second dwell time per bus fueling cycle. Compensation to the Contractor for the ongoing operation and maintenance (O&M) will be paid based on a schedule of proposed cost per therm of CNG fuel that is dispensed, and varies with actual monthly throughput, as per Exhibit B. O&M payments by the Authority will commence upon consumption of CNG fuel by the Authority.

Contractor will not be responsible for costs for energy (except as specified herein) or for fuel commodity.

Authority believes the information presented in this RFP to be factual. However, the Authority does not warrant the accuracy of this information, and each Offeror shall be solely responsible for verifying all material and site conditions and for making any independent investigation deemed necessary prior to submitting a proposal.

2. Overview of Work

Contractor shall be familiar with the existing fueling operations at the Authority's Bases, including at least one site visit prior to starting O&M work, and shall be familiar with the design site conditions of the Bases.

Contractor shall provide turn-key O&M services for the Facilities on behalf of the Authority. These services will include all scheduled and unscheduled repair, permits, as well as all maintenance, consumables, parts, and labor as required to maintain the performance of the equipment in compliance with these requirements. However,

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Contractor shall not be responsible for damages caused by the Authority or Authority's other Contractors, such as dispenser hose drive away.

Contractor shall invoice Authority monthly per actual therm of CNG dispensed, as repayment for the Contractor's Facilities operations costs (i.e. overhead, consumables, scheduled and unscheduled repairs, rebuilds, operation, maintenance, overhead and profit) associated with CNG production and dispensing. O&M costs charged to the Authority by the Contractor shall be firm-fixed price throughout the initial and option terms per Contractor's submitted pricing on Exhibit B. Contractor shall be responsible for paying all operating costs, as well as all applicable taxes and fees, excluding fuel commodity and energy costs. Authority does not guarantee any minimum CNG throughput per month or any other period. The supply and cost of the natural gas from the local gas utility company shall not be included in this scope of work.

Contractor shall be solely responsible for the O&M of all equipment provided as part of the Facilities through the term of the agreement.

Contractor shall operate and maintain the CNG fueling Facilities complete with gas dryer, CNG compressors, CNG buffer storage containers, high flow transit dispensers and Fleetwatch fueling terminals connected to Authority's fuel management system.

Authority is the user of the Facilities and as such, will be responsible for operating the CNG dispensers and fueling vehicles.

3. Summary Performance Requirements

Contractor shall be responsible to maintain the capability to dispense CNG in the volume-over-time performance requirements listed under Part II, Article 5 and the Throughput Performance Test listed under Part II, Article 32. However, minimum requirements for the Facilities include the following:

- A. Bases CNG fueling systems that feeds CNG dispensers for high-capacity fast fill fueling to include interface with existing fuel-management system.
- B. Electrical switchgear, utility connection, distribution panel, and power metering as required to provide electrical power to the entire CNG Facilities including area lighting, communications, gas leak detection, fire detection systems, and related alarms and annunciators. The gas detection system shall provide appropriate system response, per Part II, Article 18 to a methane gas leak within a maximum of two seconds of when methane gas is detected.
- C. All equipment foundations, fencing, equipment protection, signage, mechanical, and electrical connections required to provide complete and operable Facilities.

Part II – Technical and Performance Requirements

1. Definitions

- 1.1 "Authority" Orange County Transportation Authority.

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- 1.2 "AHJ" Authorities Having Jurisdiction
- 1.3 "Bases" Anaheim, Garden Grove and Santa Ana bases.
- 1.4 "CNG" compressed natural gas compressed to between 3,000 per square inch gauge (PSIG) and 4,500 PSIG for use as a vehicular fuel, as produced from local utility natural gas pipeline, utilizing compressors.
- 1.5 "Facilities" CNG fueling facilities as specified herein.
- 1.6 "SCF" one cubic foot of natural gas at standard pressure (14.696 PSIA) and temperature (70°F).
- 1.7 "SCFM" standard cubic feet per minute.
- 1.8 "Therm" 100,000 Btu.
- 1.9 Operating and Maintenance (O&M) Manuals:
 - 1.9.1 Authority shall provide Contractor with one bound sets of O&M manuals for the facilities, including repair, maintenance, and parts bulletins for all major components and systems, such as vessels, compressors, gas dryer, motors and motor starters, actuated valves, Programmable Logic Controller (PLC), filters, dispensers and hoses, and instrument air dryers. Include Recommended Spare Parts List (RSPL) for all listed components.
 - 1.9.2 Updates. Throughout the term of the agreement, Contractor shall provide the Authority with manual updates for any equipment or components that are replaced or added that are not listed in the original manuals.

2. Applicable Codes and Standards

Facilities are subject to the codes, regulations and requirements listed below, as adopted by local jurisdictions and the Authority. It is the Contractor's responsibility to identify all applicable jurisdictions and codes. Compliance with unforeseen codes or standards that come into force or are modified following commencement of the Contract shall be the responsibility of the Contractor. Contractor shall make all required filings for certifications, permits and licenses, and pay all related fees.

- 2.1 National Fire Protection Association (NFPA).
- 2.2 NFPA 37
- 2.3 NFPA 52, 2019 Edition: Compressed Natural Gas (CNG) Vehicular Fuel Systems Code.
- 2.4 NFPA 70: National Electric Code with City Anaheim, Garden Grove, and Santa Ana amendments, as applicable.

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- 2.5 NFPA 88-B: Standard for Repair Garages.
- 2.6 California Building Code with Cities of Anaheim, Garden Grove, and Santa Ana amendments, as applicable.
- 2.7 Uniform Fire Code with appropriate local jurisdiction amendments, as applicable.
- 2.8 UFC 5201.
- 2.9 UFC 5204.
- 2.10 California Title 8: Safety Orders for Unfired Pressure Vessels.
- 2.11 Occupational Safety and Health Act (work area sound-level limits).
- 2.12 ANSI/ASME B31.3-2020 Process Piping.
- 2.13 American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, 2021 Edition.
- 2.14 Section V: Nondestructive Examination.
- 2.15 Section VIII: Pressure Vessels - Division 1.
- 2.16 Section VIII: Pressure Vessels - Division 2 – Alternative Rules.
- 2.17 American Society for Testing and Materials (ASTM).
- 2.18 American Welding Society (AWS) D1.1-2020: Structural Welding Code - Steel.
- 2.19 International Standards Organization (ISO) 12944-5:2019 – Paints and varnishes – Corrosion protection of steel structures by protective paint systems – Part 5: Protective paint systems.
- 2.20 National Electrical Manufacturers Association (NEMA) NEMA 250 – Enclosures for Electrical Equipment (1000 Volts Maximum).
- 2.21 American Society of Heating Refrigerating and Air Conditioning Engineers (ASHRAE) as required for methane-leak detection.

3. Utility Connections

- 3.1 MCC and Electrical Sub Meter. The motor control center for each fueling system is installed at the equipment compound area and includes a submeter that records peak kW demand within any 15-minute period, and cumulative kWh consumption over 30-day intervals for the entire connected load of the Facilities.
- 3.2 Back-up Electrical Power. Contractor shall maintain Facilities diesel powered generators and automatic transfer switches at each location to start and operate

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all CNG dispensers, system controls, emergency shutdown device (ESD) system, area lighting, methane detectors in the equipment compounds, and compressors at a minimum of 1,139 standard cubic feet per minute (SCFM). All noise shall not exceed 80 decibels (dB) when measured at 25 feet or more. Attenuation shall be more than 20 dB for all frequencies above 63 hertz. Generators shall be exercised at time intervals recommended by the equipment manufacturer. Generator must have the appropriate registration and certification with South Coast Air Quality Management District (SCAQMD) and shall be maintained to meet SCAQMD and California Air Resources Board (CARB) requirements for backup power generator sets. Contractor is responsible for providing all fuel for the back-up generator operation.

4. Telecommunications

Contractor shall maintain all necessary telecommunication connections for modem and Internet access. Internet connection and services shall be independent of the Authority's system and shall be at the Contractor's expense.

5. Performance Requirements

5.1 CNG Fueling Performance. The CNG systems shall dispense a minimum of 8,500 SCF to each equipped CNG transit dispenser per bus simultaneously within five minutes of connected fueling time; systems may utilize buffered CNG that is stored during a 90-second dwell/change-out time between bus fueling events, during which time high-pressure CNG compressors may continue to run and replenish the CNG buffer. This performance shall be achieved each day, on a continuous basis, over an eight (8)-hour time period.

5.2 Requirements. Facility high-pressure compressors/storage/dispensing systems shall be capable of fueling vehicles to 3,600 PSIG, temperature compensated to 70 degrees Fahrenheit (°F). Dispensing system shall compensate for heat of compression in the vehicle storage cylinders, in addition to compensating for ambient temperature.

6. CNG Fuel Quality

6.1 Temperature. CNG dispensed shall have a temperature within 20°F of ambient, but not less than 20°F under any ambient temperature conditions.

6.2 CNG dispensed to vehicles shall meet the moisture-content requirement as specified by SAE standard J-1616, based on a low ambient temperature of 35°F.

6.3 Non-compliance with Requirements. In the event, Authority has reason to believe that CNG does not meet the minimum requirements identified in this scope of work, Contractor shall have CNG from dispenser nozzle tested by a third-party laboratory approved by the Authority to test for the suspected violation(s). The cost of any test with a positive result (i.e. violation of

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specification) shall be borne by the Contractor. The cost of any test with a negative result (i.e. non-violation of requirement) shall be borne by the Authority.

7. Fueling Window

During Operation: Fueling performance shall be available to the Authority for eleven (11) hours between 5:00 p.m. and 4:00 a.m. seven days per week. CNG fueling, including quality requirements, shall be available at a minimum of one bus dispenser continuously for 14 hours between 4:00 a.m. and 6:00 p.m. daily at each location, except if lesser availability is approved in advance and in writing by the Authority.

8. License to Operate the Facility

Contractor shall provide all necessary operating and maintenance labor, materials, and support to meet the fueling performance requirements set forth by the Authority. In order to enable the Contractor to perform the work, the Authority will grant the Contractor unrestricted access (in the form of a license or lease) to the Facility's sites and the right to utilize the Authority's CNG fueling Facilities and all related equipment during the term of the Contract for the purpose of operating and maintaining the Facilities. Granting of such license or lease shall not be unreasonably withheld, conditioned or delayed. Included in this right is the Contractor's right to complete limited modifications or enhancements of the equipment as agreed upon by the Contractor and the Authority. Modifications may be made to optimize the Facilities' ability to meet the Authority's fueling performance requirements for the CNG fueling Facilities and/or to improve the operating economics of the Facilities without sacrificing its performance under these requirements.

9. Equipment and Component Requirements

To ensure minimum performance and functional standards are met, the following system requirements shall be maintained.

9.1 Equipment. All equipment furnished by the Contractor for the Facilities may be new or refurbished.

9.2 Seismic design. All equipment, foundations and supports shall be suitable for Seismic Zone IV.

9.3 Manufacturer-Rated Pressures. All components downstream of high-pressure compressor discharge have a normal design working pressure of 5,000 PSI or greater, when available, and design safety factors in compliance with ANSI/ASME B31.3.

10. Compressor Based CNG System

Compressor Prime Movers. Prime movers are 3-phase electric motors rated NEMA premium efficiency with a 1.15 service factor.

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- 10.1 Discharge Pressure. Control stop pressure for high-pressure compressor(s) discharge shall be 4,500 PSIG or lower, regardless of configuration.
- 10.2 Backflow Prevention. Check valves are included between the utility MSA and the gas dryer.
- 10.3 Motor Starters. Compressor prime movers with electric motor prime movers shall be driven by programmable soft-start motor starters.

11. Facilities

- 11.1 Lights to indicate main power is energized, and condition light for each compressor indicating “running” or “standby.”
- 11.2 Lights shall be visible in bright daylight from outside of the CNG-equipment compound.
- 11.3 First-out (fault) annunciation.
- 11.4 Hour meter. Each compressor is equipped with and shall maintain a non-resettable hour meter to record cumulative time of operation.
- 11.5 Remote monitoring and reset capability for the Facilities control panel via Ethernet connection. Controller shall also provide auto dial-out and fault notification capability in case of fault.
- 11.6 Compressor Skid Enclosures. Each skid is enclosed and protected by a rain-resistant, sound attenuated enclosure. Noise levels shall not exceed 75 db when measured 25 feet or more from CNG equipment compound, in any direction, with all equipment in full operation. Enclosures have doors and/or user-removable panels that allow servicing and access to all components and systems on the skid. Each enclosure has adequate lighting to provide full illumination of all components and systems on the skid. All main doors include an inside panic bar that is not lockable. Each skid includes one emergency shutdown (ESD) button. Each enclosure includes an infrared point type methane detector. At 20 percent LEL, unit signals a local amber alarm light and annunciate at the main PLC of the CNG Facility. At 40 percent LEL, the unit signals a local red alarm light and siren, annunciate at the main PLC, and the PLC shall shut down the Facilities per an automatic ESD activation.

12. Gas Dryer

CNG compressors are fed by a suction side, twin vessel, automatically operated temperature swing absorber, heat regenerative gas dryer. The system includes inlet and outlet particulate filters, and spanning pressure gauges for measuring differential pressures at the inlet and outlet filters and across the entire dryer, as well as pressure gauges connected at the inlet and outlet flanges. The discharge gas complies with

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SAE standard J-1616, based on seven pounds of moisture per million standard cubic feet (MMSCF) natural gas, and a design low ambient temperature of 35°F.

12.1 Absorbent. The absorbent shall be 3A molecular sieve and shall not affect the character and odor of the incoming gas.

12.2 Design. The dryer utilizes an auto duplex design consisting of two identically sized desiccant vessels configured to provide closed-loop gas drying in alternating order. Regeneration is initiated and achieved by automatic manipulation of block and bypass valves based on either clock time or compressor run time. Dryer is pre-assembled on a skid and includes common connection at system inlet and outlet. Piping, vessels, and valves are sized, configured, and ported so that pressure drop between inlet and outlet flanges of dryer does not exceed 5 PSI at the design MSA supply pressure.

12.3 Instrumentation. An in-line dew-point sensor alarm is provided at the dryer discharge port. The detector has two levels of alarm: one light is activated upon moisture at dryer discharge approaching maximum saturation and a second light is activated upon moisture from dryer discharge reaching maximum saturation. Second level alarm will also annunciate an alarm and callout at the master control panel. All heater vessels include a redundant thermocouple or other redundant means to detect over temperature.

12.4 Bypass Capability. Dryer bypass and isolation manual ball valves are provided so that the compressors may operate while the entire duplex dryer is offline.

13. Emergency Shutdown System

13.1 An ESD system is provided and when activated, shall stop all compressor motors, shut off the gas supply to the compressors, shut off the discharge of CNG, shut off the flow of CNG from the buffer tanks and to all CNG dispensers, and shut off the defueling station. The system is a 120 VAC circuit, normally closed and tripped open, and is expandable so that additional switches may be added. The ESD is tied into the Authority's existing fuel ESD system to stop all fueling activities when either a CNG fueling system ESD or the existing diesel/gasoline/hydrogen fueling system ESD button is pushed. The Facilities ESD systems are independent of the fueling diesel ESD system. The diesel system shall be resettable by Authority staff once all ESD buttons have been reset to their original position.

13.2 Locations. ESD buttons are located in the following locations:

13.2.1 Two within the equipment enclosure area.

13.2.2 One on each CNG compressor skid enclosure.

13.2.3 Three at the outside perimeter of the equipment fence enclosure.

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13.2.4 One at least 25-feet but not more than 75-feet from every CNG dispenser and defueling station.

14. Fuel Management Terminal and Services

- 14.1 CNG dispensers receive transaction authorizations from and transmit transaction data to the existing Fleetwatch fuel-management terminal. Existing terminals and software shall continue to be operated by the Authority.
- 14.2 Bus Fueling. Fuel management terminals near each CNG dispenser provide authorization by numeric keypad and shall automatically record transaction data, including time/date stamp, hose ID, vehicle ID, and fuel volume in GGEs. The fuel management terminals simultaneously authorize the appropriate existing coolant, engine oil, and transmission fluid hose reels to dispense those products into the buses.
- 14.3 Dispensing Units. CNG bus dispensers shall be calibrated in GGEs, and fueling transactions recorded by the fuel-management system shall be in GGEs.

15. CNG Dispensers

High-Flow Transit Dispenser. Provide one high-capacity CNG dispenser at each of the fueling lanes located in the Fuel and Vacuum buildings. All dispenser tubing and valves are a minimum of ¾-inch diameter. Each dispenser includes a backlight display, a Micromotion CNG-050 meter and matching transmitter, a ¾-inch manual ball valve and a ¾-inch air-actuated ball valve. Dispenser includes a 6,000 PSIG manual pressure gauge mounted near the hose connection. Provide two coalescing filters in J6 housings at initial dispenser inlet. All dispensers include a vent valve that is common to the pressure gauge and the filter housings.

- 15.1 Operation. Dispensers include start and stop buttons, activity lights, an analog vehicle-pressure gauge, auto-fill completion with light annunciation, and backlight display for volume dispensed in GGEs. CNG dispensers are designed to operate in an exterior environment, exposed to inclement weather.
- 15.2 Transit Dispenser Hoses and Nozzles. Hoses must be of sufficient length to accommodate Authority provided bus fuel receptacle locations, plus a range of 5-feet in each direction. Hoses have ILB-5 breakaway couplings and must be electrically conductive. Hoses shall be at least ¾-inch with 3/8-inch vent lines and include retractors that keep hoses off the ground when nozzles are parked in their keepers. Nozzles shall be OPW CT-5000 compliant with steel locking jaws.
- 15.3 Light Duty Dispenser Hose and Nozzles. Provide a 3,600 PSIG fill hose for light duty vehicle fueling application. All dispenser tubing and valves are a minimum of ½-inch diameter. Each dispenser includes a backlight display, a Micromotion CNG-050 meter and matching transmitter, a ½-inch manual ball valve and a

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½-inch air-actuated ball valve. Dispenser includes a 6,000 PSIG manual pressure gauge mounted near the hose connection. Provide two coalescing filters in J4 housings at initial dispenser inlet. All dispensers include a vent valve that is common to the pressure gauge and the filter housings.

- 15.4 Operation. Dispensers include start and stop buttons, activity lights, analog vehicle-pressure gauge, auto-fill completion with light annunciation, backlit display for volume dispensed in GGEs.
- 15.5 Light Duty Dispenser Hoses and Nozzles. Hoses are of sufficient in length to fuel light duty when vehicles fuel receptacle is lined up with the dispenser plus a range of 5-feet in each direction. Hoses have ILB-1 breakaway couplings and must be electrically conductive. Hoses shall be at least ½-inch with 3/8-inch vent lines and include retractors that keep hoses off the ground when nozzles are parked in their keepers. Nozzles shall be NGV-1 type-2 with 3,600 PSIG service pressure.

16. Bus De-Fueling

The Facilities includes a means to de-fuel CNG from a bus vehicle without venting to atmosphere. Contractor shall maintain a de-fueling system for returning bus fuel to the suction side of a compressor-based system. Contractor shall provide an appropriately sized compressor to de-fuel CNG vehicle fuel tank to CNG storage buffer tanks. System also allows safe venting to atmosphere at Authority's discretion. System includes a 'BDN' model de-fueling nozzle by OPW, a minimum 12-feet long, 5,000 PSI-rated hose that can extend at least 12-feet beyond the equipment compound walls, and a grounding system. System includes a 5,000 PSIG pressure gauge to monitor vehicle pressure and an in-line manual ball valve and needle valve to control flow. De-fueling also includes a user-selectable means to vent to atmosphere.

- 16.1 Code Compliance. System shall be maintained in compliance with UFC 5204.10, including clearances and sign requirements.
- 16.2 The defueling location is adjacent to the equipment compound at each location. De-fuel hose shall be maintained to be of sufficient length to easily connect to a bus de-fuel receptacle when positioned anywhere within a 7-foot radius of the de-fuel post.
- 16.3 Performance. The de-fuel system shall be maintained to allow a bus with 22,000 SCF of on-board CNG storage to de-fuel within three hours. The atmospheric vent system shall allow a bus with 22,000 SCF of onboard CNG storage to de-fuel to atmospheric pressure within 90 minutes. Atmospheric venting includes a silencer or muffler appropriate for anticipated service pressures.

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17. Protection of Equipment

- 17.1 Fencing of Equipment Compounds. The equipment compound is contained in a secure, masonry block wall and/or fenced area.
- 17.2 Protection of Electrical Equipment. Switchgear, PLC and motor controllers in a Motor Control Center, is located in the equipment compound area.
- 17.3 Impact Protection. All equipment is protected against impact from all vehicle traffic and types that are expected to approach the Facility and equipment.
- 17.4 Signage. Contractor must maintain all safety and warning signs as required by NFPA 52. Signs are constructed of UV-resistant, all-weather material.

18. Methane Detection

- 18.1 CNG Equipment Compounds. Infrared methane gas detectors are installed with four point-type two minimum along the property line, one above the gas dryer, in the equipment compound area plus one additional infrared point type detector installed in each compressor skid enclosure.

18.2 Requirements.

- 18.2.1 When the methane gas sensors detect below 20 percent of the Lower Flammable Limit (LFL), the gas detection system status lights illuminate the steady green lamps with horns in the OFF mode and provide gas detection system status at the gas detection monitoring station in the Supervisor's office.
- 18.2.2 At 20 percent LFL and above, but below 30 percent LFL, the gas detection system will extinguish the green steady lamps, illuminate the amber strobe lights, and annunciate horns that pulse for two seconds, every six seconds, and provide notification, both visual and audible, at the gas detection monitoring station in the Supervisor's office.
- 18.2.3 At 30 percent LFL, but below 40 percent LFL, the gas detection system will continue to illuminate the amber strobe lights, and annunciate horns continuously, and provide notification, both visual and audible, at the gas detection monitoring station in the Supervisor's office.
- 18.2.4 At 40 percent LFL and above, the gas detection system shall extinguish the amber strobe lights, illuminate the red strobe lights, and annunciate horns continuously, and shall shut down power to the CNG fueling station and dispensing system and compression equipment (equivalent to an ESD activation), and provide notification, both visual and audible, at the gas detection monitoring station in the Supervisor's office. The system shall latch at this level until the system is manually reset.

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18.2.5 A status light and horn system is mounted on the entrance and exit ends of the Fuel Buildings, and on the Maintenance Buildings, and in the Maintenance Supervisor's office.

18.2.6 A gas detection control panel indicates amount of gas detection by location on a graphic display screen. Graphic display screen indicates all building locations on a site plan, sensor number, sensor building specific name, and percent LFL at each sensor.

19. Fire Detection

19.1 Maintain Fire Detection System per code and AHJs.

19.2 Fire Extinguishers. Contractor shall maintain handheld fire extinguishers at a distance between 10 and 25 feet from each of the CNG dispensers, a minimum of three fire extinguishers within the equipment compound, a minimum of three fire extinguishers at the perimeter of the compound, and as directed by the appropriate city's fire department. Extinguishers shall be a minimum of 10-pound capacity with 20 B:C rating.

19.3 Lightning Protection. Facilities shall be protected from lightning, per NFPA and NEC requirements.

20. Operations and Preventive Maintenance

20.1 Contractor shall provide all maintenance as required to keep the Facilities fully functional in accordance with these requirements, including all labor, consumables, repair, rebuild, and replacement costs. Contractor shall provide all preventive maintenance (PM) of the Bases entire CNG Facilities by experienced and qualified personnel with necessary tools and equipment. PM shall include all weekly, monthly, and annual service as required and recommended by the manufacturers of the systems and components being provided by the Contractor. Maintenance shall also include handling, storage, and disposal of all waste generated during O&M activities in full compliance with all federal, state and local laws.

20.2 Hazardous Materials and Waste. Contractor shall be solely responsible for controlling, storing, and disposing of all hazardous byproducts and waste that are generated as a result of O&M activities at the Facilities, per codes and requirements of AHJs, including any licensing requirements.

21. Interface with Authority

Contractor shall coordinate all activities with the Authority such that any impact to the Authority's normal operations are minimized. Contractor shall provide the Authority with internet access to the remote monitoring information and on-site cameras installed, the cellular telephone contact number of the responsible technicians, and telephone contact and access to the Contractor's remote control center.

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22. Exceptions

The only costs associated with O&M operation of the Facilities that are not the responsibility of the Contractor are those related to damage, neglect or misuse not caused or controlled by the Contractor, such as a dispenser drive-away by Authority personnel.

23. Reporting of PM and O&M Activities

Contractor shall submit to the Authority every three months, records of all scheduled and unscheduled maintenance and repairs performed on the Facilities. Contractor shall submit maintenance records throughout the term of the contract, and shall include reports on any failures, accidents, and other significant events.

24. Timing of PM Service

Contractor shall perform required PM services 24-hours a day, seven days a week, or as may be required to ensure the specified fueling performance. Contractor may perform scheduled and unscheduled maintenance and repairs at its discretion, provided Facilities' fueling function and vehicle yard circulation are not impacted.

25. Permits and Fees

Contractor shall be responsible for identifying, maintaining, and paying on time, all ongoing permits, fees, and taxes associated with the operation of the Facilities.

26. Callout Service

26.1 Critical Service. Critical service problems, which prevent bus fueling, disables a safety system, causes a natural gas leak, or that otherwise impacts the ability of buses to meet scheduled rollout, must be responded to by Contractor immediately. Contractor must ensure a qualified technician is on Facility property within two-hours of notification.

26.2 Non-Critical Service. Non-critical service problems are those which do not meet the criteria of critical service problems specified in Section 26.1, or otherwise do not impact the ability of buses to meet scheduled rollout. Non-critical service problems must be responded to by Contractor within four-hours of notification, and successful repairs performed within 24-hours.

27. Software

The right and license to use any software needed to operate and maintain the Facilities shall be transferred to Authority, along with all Facility's maintenance records and electronic records, programs, and files upon termination or end of the contract.

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28. Authority Access

Contractor shall permit trained Authority personnel to enter all portions of the Facilities to perform routine or emergency inspections and take routine or emergency readings. Authority personnel shall also have the right to follow and observe Contractor's technicians during their normal duties at the Facilities.

29. Required Experience and Qualifications

Contractor shall have demonstrated experience in long-term operation of at least two CNG facilities outside of the Authority's Facilities, similar in scope to the project specified herein, within the last 36-months.

30. Project Manager

Contractor's Project Manager assigned to this project shall be experienced in work like that proposed herein, with at least two-years of direct or closely related work experience. Contractor warrants that the Operations Director named in this agreement will remain as Project Manager through the duration of the contract unless a replacement is approved in writing by the Authority.

31. Maintenance Personnel

Maintenance personnel who will perform PM and respond to callouts shall have demonstrated experience and competency in maintaining other similar CNG equipment, with at least two-year's of recent experience.

32. Throughput Performance Test

32.1 Authority may require a performance test at any time during the contract period in order to verify the performance of the Facilities.

32.2 Tests shall be performed while fueling CNG buses simultaneously from fueling lanes, to verify that the system meets the minimum flow rates specified. Facilities shall be tested to verify its actual throughput performance using the following procedure:

32.2.1 Dispensers shall be calibrated on site, prior to throughput performance test, by a third party approved by the Authority and Contractor.

32.2.2 CNG Buffer storage shall be full and the single largest CNG compressor shall be taken off-line. All remaining CNG compressors shall be on-line.

32.2.3 Fueling lanes and dispensers shall be on-line. A test fleet of 20 CNG buses shall be used, and each bus shall be at no more than 2,000 PSIG prior to the test.

SCOPE OF WORK

- 32.2.4 The test shall begin when dispensers are connected to buses and dispensers are started simultaneously. The test start time (time of day) shall be noted.
- 32.2.5 Buses shall be fully filled as determined by the dispenser auto-fill completion. Buses shall be continuously fueled as each preceding bus completes fueling, regardless of lane.
- 32.2.6 Actual fill volume dispensed at each fill event shall be logged, based on dispenser display following each dispenser auto-fill completion.
- 32.2.7 Dwell time (i.e. time between auto-fill completion of bus 'A' and start of fuel flow to bus 'B' at a given lane/dispenser) between all test-fueling events shall be controlled and limited as closely as possible to 90-seconds by the Authority's fuelers.
- 32.2.8 Completion of filling the final (20th) test bus shall mark the termination of the test and the time of day shall be logged and the elapsed time of the test shall be calculated.
- 32.2.9 Flow time and volume will be recorded for each bus fill. Fleet average flow rate is defined as total volume dispensed divided by total flow time.
- 32.2.10 The mass of CNG dispensed to the 20 test buses shall be aggregated and converted to SCF of CNG.
- 32.2.11 The total aggregate SCF of CNG dispensed during the test, divided by the aggregate test time, shall equal at least 3,700 SCFM.
- 32.2.12 Five hours following fill completion: all test bus tank pressures shall be within three percent of 3,600 PSIG, temperature compensated to 70°F.
- 32.2.13 System is designed to deliver the observed throughput performance on a continuous basis.

33. Reliability Functional Test

The gas monitoring and warning system at bus-fueling shall be tested three times annually (every four months) to show that the system is working properly and has been approved by the AHJs.

DRAFT
EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET

Enter the pricing of turn-key operation and maintenance services described in the Exhibit A, Scope of Work to include operation, maintenance, all direct and indirect expenses, profit, and overhead. All prices quoted below shall be firm throughout the initial and option term of the Agreement. Pricing quoted shall be based on per therm of CNG dispensed.

Throughput Levels of Therms of CNG Dispensed Per Month	25,000 - 49,999	50,000 - 74,999	75,000 - 99,999	100,000 - 149,999	150,000 - 199,999	200,000 - 299,999	300,000+
Initial Term Year 1: (12/1/21-11/30/22) Turn-Key Operation and Maintenance Per Therm Cost	\$	\$	\$	\$	\$	\$	\$
Initial Term Year 2: (12/1/22-11/30/23) Turn-Key Operation and Maintenance Per Therm Cost	\$	\$	\$	\$	\$	\$	\$
Initial Term Year 3: (12/1/22-11/30/24) Turn-Key Operation and Maintenance Per Therm Cost	\$	\$	\$	\$	\$	\$	\$
Option Term Year 1: (12/1/23-11/30/25) Turn-Key Operation and Maintenance Per Therm Cost	\$	\$	\$	\$	\$	\$	\$
Option Term Year 2: (12/1/24-11/30/26) Turn-Key Operation and Maintenance Per Therm Cost	\$	\$	\$	\$	\$	\$	\$

Note: Evaluation will be based on cost per therm dispensed for 200,000 – 299,999 therms, for both the initial term and option term.

PRICE SUMMARY SHEET

1. I acknowledge receipt of **RFP 1-3317** and Addenda No.(s)_____
2. This offer shall remain firm for _____ days from the date of proposal.
(Minimum of 150)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

NAME AND TITLE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

DATE SIGNED _____

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EXHIBIT C: PROPOSED AGREEMENT

1 **PROPOSED AGREEMENT NO. C-1-3317**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5
6 **THIS AGREEMENT** is effective as of this _____ day of _____, 2021 ("Effective
7 Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box
8 14184, Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as
9 "AUTHORITY"), , , , (hereinafter referred to as "CONTRACTOR").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONTRACTOR to provide operation and
12 maintenance (O&M) services for AUTHORITY's compressed natural gas (CNG) fueling facilities at
13 Anaheim, Garden Grove and Santa Ana Bases; and

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

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

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

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

20 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

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

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

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

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

D. Should the services of any key person become no longer available to CONTRACTOR, the

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

7 **ARTICLE 4. TERM OF AGREEMENT**

8 A. This Agreement shall commence on December 1, 2021 and shall continue in full force and
9 effect through November 30, 2024, unless earlier terminated or extended as provided in this Agreement.

10 B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement for an
11 additional twelve (12) months, commencing December 1, 2024 and continuing through
12 November 30, 2025 ("First Option Year"), and thereupon require CONTRACTOR to continue to provide
13 services, and otherwise perform, in addition with Exhibit A and at the rates set forth in Article 5, "Payment".

14 C. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement for an
15 additional twelve (12) months, commencing December 1, 2025 and continuing through
16 November 30, 2026 ("Second Option Year"), and thereupon require CONTRACTOR to continue to
17 provide services, and otherwise perform, in addition with Exhibit A and at the rates set forth in Article 5,
18 "Payment".

19 D. AUTHORITY's election to extend this Agreement beyond the initial term shall not diminish its
20 right to terminate this Agreement. The "maximum term" of this Agreement shall be the period extending
21 from December 1, 2021 through November 30, 2026, which period encompasses the initial term and
22 option terms.

23 **ARTICLE 5. PAYMENT**

24 A. For CONTRACTOR's full and complete performance of its obligations under this Agreement,
25 and subject to the maximum cumulative payment obligation provisions set forth in Article 7, AUTHORITY
26 shall pay CONTRACTOR on a time and expense basis with firm-fixed unit prices per Exhibit B, entitled

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“Price Summary Sheet,” attached to and by this reference incorporated in and made a part of this Agreement. These prices shall remain fixed for the term of the Agreement and are acknowledged to include CONTRACTOR’s direct costs, indirect costs and profit.

B. CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment for services until such time as CONTRACTOR has documented to AUTHORITY’s satisfaction, that CONTRACTOR has fully completed all work required. AUTHORITY’s payment in full for any services completed shall constitute AUTHORITY’s final acceptance of CONTRACTOR’s work.

C. Invoices shall be submitted by CONTRACTOR on a monthly basis and shall be submitted in duplicate to AUTHORITY’s Accounts Payable office. CONTRACTOR may also submit invoices electronically to AUTHORITY’s Accounts Payable Department at vendorinvoices@octa.net. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-1-3317;
2. Specify the date, location, work performed and throughput, for which payment is being requested;
3. The time period covered by the invoice;
4. Total monthly invoice (including project-to-date cumulative invoice amount);
5. Certification signed by the CONTRACTOR or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The

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

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

6 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

7 A. AUTHORITY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to
8 facilitate timely payment to all subcontractors in accordance with regulatory mandates. Pursuant to 49
9 CFR Part 26.29, AUTHORITY will include the following clause in each U.S. DOT-assisted contract:

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

19 C. Any violation of the provisions listed above shall subject the violating CONTRACTOR to the
20 penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and
21 Professions Code. This requirement shall not be construed to limit or impair any contractual,
22 administrative or judicial remedies otherwise available to CONTRACTOR or subcontractor in the event
23 of a dispute involving late payment or nonpayment by CONTRACTOR; deficient subcontractor
24 performance and/or noncompliance by a subcontractor.

25 D. Failure to comply with this provision without prior approval from AUTHORITY will constitute
26 noncompliance, which may result in the application of appropriate administrative sanctions, including, but

not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

ARTICLE 7. MAXIMUM OBLIGATION

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

ARTICLE 8. NOTICES

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

To CONTRACTOR:

To AUTHORITY:

Orange County Transportation Authority
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584

ATTENTION:

ATTENTION: Kristen Mason

Title:

Title: Section Manager, Maintenance Procurement

Phone:

Phone: (714) 560 – 5842

Email:

Email: kmason@octa.net

ARTICLE 9. INDEPENDENT CONTRACTOR

A. CONTRACTOR's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONTRACTOR's personnel performing services under this Agreement shall

1 at all times be under CONTRACTOR's exclusive direction and control and shall be employees of
2 CONTRACTOR and not employees of AUTHORITY. CONTRACTOR shall pay all wages, salaries and
3 other amounts due its employees in connection with this Agreement and shall be responsible for all
4 reports and obligations respecting them, such as social security, income tax withholding, unemployment
5 compensation, workers' compensation and similar matters.
6

7 B. Should CONTRACTOR's personnel or a state or federal agency allege claims against
8 AUTHORITY involving the status of AUTHORITY as employer, joint or otherwise, of said personnel, or
9 allegations involving any other independent contractor misclassification issues, CONTRACTOR shall
10 defend and indemnify AUTHORITY in relation to any allegations made.

11 **ARTICLE 10. INSURANCE**

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

- 15 1. Commercial General Liability, to include Products/Completed Operations,
16 Independent Contractors', Contractual Liability, and Personal Injury Liability, and Property Damage with
17 a minimum limit of \$1,000,000 per occurrence and \$2,000,000 general aggregate;
- 18 2. Automobile Liability Insurance to include owned, hired and non-owned autos with a
19 combined single limit of \$1,000,000 each accident;
- 20 3. Workers' Compensation with limits as required by the State of California including a
21 waiver of subrogation in favor of AUTHORITY, its officers, directors, employees or agents;
- 22 4. Employers' Liability with minimum limits of \$1,000,000;
- 23 5. Professional Liability with minimum limits of \$1,000,000 per claim; and
- 24 6. Pollution Liability with minimum limits of \$2,000,000 per claim.

25 B. Proof of such coverage, in the form of a certificate of insurance and an insurance policy
26 blanket additional insured endorsement, designating the AUTHORITY, its officers, directors, and

1 employees as additional insureds on general liability and automobile liability, as required by contract.
2 Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the
3 effective date of this Agreement and prior to commencement of any work. Such insurance shall be
4 primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.
5 Furthermore, AUTHORITY reserves the right to request certified copies or review all related insurance
6 policies, in response to a related loss.
7

8 C. CONTRACTOR shall include on the face of the certificate of insurance the Agreement
9 Number C-1-3317; and, the Contract Administrator's Name, Kristen Mason.

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

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

15 **ARTICLE 11. ORDER OF PRECEDENCE**

16 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:

17 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 1-3317,
18 (3) CONTRACTOR's proposal dated _____; and (4) all other documents, if any, cited herein or
19 incorporated by reference.

20 **ARTICLE 12. CHANGES**

21 A. By written notice or order, AUTHORITY may, from time to time, order work suspension and/or
22 make changes in the general scope of this Agreement, including, but not limited to, the services furnished
23 to AUTHORITY by CONTRACTOR as described in the Scope of Work. If any such work suspension or
24 change causes an increase or decrease in the price of this Agreement or in the time required for its
25 performance, CONTRACTOR shall promptly notify AUTHORITY thereof and assert its claim for
26 adjustment within ten (10) calendar days after the change or work suspension is ordered, and an

1 equitable adjustment shall be negotiated. However, nothing in this clause shall excuse CONTRACTOR
2 from proceeding immediately with the Agreement as changed.
3

4 B. CONTRACTOR shall only commence work covered by an amendment after the amendment
5 is executed by AUTHORITY.

6 **ARTICLE 13. DISPUTES**

7 A. Except as otherwise provided in this Agreement, when a dispute arises between
8 CONTRACTOR and AUTHORITY, the project managers shall meet to resolve the issue. If project
9 managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts
10 Administration and Materials Management (CAMM), who shall reduce the decision to writing and mail or
11 otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMM, shall be the
12 final and conclusive administrative decision.

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

18 **ARTICLE 14. TERMINATION**

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

1 of the FAR pertaining to termination for convenience.

2
3 B. In the event either Party defaults in the performance of any of their obligations under this
4 Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the
5 option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Upon
6 receipt of such notice, CONTRACTOR shall immediately cease work, unless the notice from
7 AUTHORITY provides otherwise. Upon receipt of the notice from AUTHORITY, CONTRACTOR shall
8 submit an invoice for work and/or services performed prior to the date of termination. AUTHORITY shall
9 pay CONTRACTOR for work and/or services satisfactorily provided up to the date of termination in
10 compliance with this Agreement. Thereafter, CONTRACTOR shall have no further claims against
11 AUTHORITY under this Agreement. AUTHORITY shall not be liable for any claim of lost profits or
12 damages for such termination.

13 **ARTICLE 15. INDEMNIFICATION**

14 CONTRACTOR shall indemnify, defend, and hold harmless AUTHORITY, its officers, directors,
15 employees and agents from and against any and all claims (including attorneys' fees and reasonable
16 expenses for litigation or settlement) for any loss, costs, penalties, fines, damages, bodily injuries,
17 including death, damage to or loss of use of property, arising out of, resulting from, or in connection with
18 the performance of CONTRACTOR, its officers, directors, employees, agents, subcontractors or
19 suppliers under the Agreement. Notwithstanding the foregoing, such obligation to defend, hold harmless,
20 and indemnify AUTHORITY, its officers, directors, employees and agents shall not apply to such claims
21 or liabilities arising from the sole or active negligence or willful misconduct of AUTHORITY.

22 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

terms and conditions of this Agreement.

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

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

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

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

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2 **ARTICLE 18. CONFLICT OF INTEREST**

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

13 **ARTICLE 19. CODE OF CONDUCT**

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

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

18 CONTRACTOR and all subcontractors performing work under this Agreement, shall be
19 prohibited from concurrently representing or lobbying for any other party competing for a contract with
20 AUTHORITY, either as a prime CONTRACTOR or subcontractor. Failure to refrain from such
21 representation may result in termination of this Agreement.

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

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

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2 **ARTICLE 22. EQUAL EMPLOYMENT OPPORTUNITY**

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

10 **ARTICLE 23. CIVIL RIGHTS ASSURANCE**

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

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

18 B. Nondiscrimination: CONTRACTOR, with regard to the work performed by it during the
19 Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and
20 retention of subcontractors, including procurements of materials and leases of equipment. The
21 CONTRACTOR shall not participate either directly or indirectly in the discrimination prohibited by Section
22 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth
23 in Appendix B of the Regulations.

24 C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment: In all
25 solicitations either by competitive bidding or negotiation made by the CONTRACTOR for work to be
26 performed under a subcontract, including procurements of materials or leases of equipment, each

1 potential subcontractor or supplier shall be notified by the CONTRACTOR of the CONTRACTOR's
2 obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of
3 race, color, or national origin.
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5 D. Information and Reports: CONTRACTOR shall provide all information and reports required
6 by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records,
7 accounts, other sources of information and its facilities as may be determined by the AUTHORITY to be
8 pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information
9 required of a CONTRACTOR is in the exclusive possession of another who fails or refuses to furnish this
10 information the CONTRACTOR shall so certify to the AUTHORITY as appropriate, and shall set forth
11 what efforts it has made to obtain the information.

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

- 15 1. Withholding of payments to the CONTRACTOR under the Agreement until the
16 CONTRACTOR complies; and/or
17 2. Cancellation, termination, or suspension of the Agreement, in whole or in part.

18 F. Title VI of the Civil Rights Act: In determining the types of property or services to acquire, no
19 person in the United States shall, on the grounds of race, color, or national origin, be excluded from
20 participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program
21 or activity receiving Federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, as
22 amended, 42 U.S.C. Sections 2000d et seq. and DOT regulations, "Nondiscrimination in Federally
23 Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of
24 1964," 49 CFR Part 21. In addition, FTA Circular 4702.1, "Title VI and Title VI-Dependent Guidelines for
25 FTA Recipients," 05-13-07, provides FTA guidance and instructions for implementing DOT's Title
26 VI regulations.

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

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

15 **ARTICLE 24. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**
16 **CONTRACTOR CONTRACTS**

17 At the time of Agreement execution, CONTRACTOR committed to utilize one or more
18 Disadvantaged Business Enterprise (“DBE”) firms in the performance of this U.S. DOT-assisted contract.
19 CONTRACTOR agrees to ensure that any DBE subcontractor listed on the “DBE Participation
20 Commitment Form” (Attachment ___), will perform work and/or supply materials pursuant to all original
21 commitments, unless otherwise directed and/or approved by AUTHORITY prior to CONTRACTOR
22 effectuating any changes to its DBE participation commitment. CONTRACTOR shall comply with all the
23 requirements set forth in Attachment “A” entitled, “DISADVANTAGED BUSINESS ENTERPRISE (DBE)
24 CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS,” which is attached to, and
25 incorporated herein by reference to this Agreement.

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2 **ARTICLE 25. PROHIBITED INTERESTS**

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

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

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

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

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

24 C. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be
25 released by CONTRACTOR to any other person or agency except after prior written approval by
26 AUTHORITY, except as necessary for the performance of services under this Agreement. All press

1 releases, including graphic display information to be published in newspapers, magazines, etc., are to be
2 handled only by AUTHORITY unless otherwise agreed to by CONTRACTOR and AUTHORITY.

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

5 A. In lieu of any other warranty by AUTHORITY or CONTRACTOR against patent or copyright
6 infringement, statutory or otherwise, it is agreed that CONTRACTOR shall defend at its expense any
7 claim or suit against AUTHORITY on account of any allegation that any item furnished under this
8 Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes
9 upon any presently existing U.S. letters patent or copyright and CONTRACTOR shall pay all costs and
10 damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in
11 writing of the suit or claim and given authority, information and assistance at CONTRACTOR's expense
12 for the defense of same. However, CONTRACTOR will not indemnify AUTHORITY if the suit or claim
13 results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form
14 infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in
15 combination with other material not provided by CONTRACTOR when such use in combination infringes
16 upon an existing U.S. letters patent or copyright.

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

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

26 A. All of CONTRACTOR's finished technical data, including but not limited to illustrations,

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photographs, tapes, software, software design documents, including without limitation source code, binary code, all media, technical documentation and user documentation, photo prints and other graphic information required to be furnished under this Agreement, shall be AUTHORITY's property upon payment and shall be furnished with unlimited rights and, as such, shall be free from proprietary restriction except as elsewhere authorized in this Agreement. CONTRACTOR further agrees that it shall have no interest or claim to such finished, AUTHORITY-owned, technical data; furthermore, said data is subject to the provisions of the Freedom of Information Act, 5 USC 552.

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

ARTICLE 29. COVENANT AGAINST CONTINGENT FEES

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

ARTICLE 30. LOBBYING

CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification

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

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

11 CONTRACTOR shall comply with all the requirements set forth in Exhibit __, titled "Level 3 Health,
12 Safety and Environmental Specifications."

13 **ARTICLE 32. PRIVACY ACT**

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

21 **ARTICLE 33. INCORPORATION OF FTA TERMS**

22 All contractual provisions required by Department of Transportation (DOT), whether or not
23 expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F,
24 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all
25 FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained
26 in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply

1 with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.
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3 **ARTICLE 34. FEDERAL CHANGES**

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

8 **ARTICLE 35. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

16 **ARTICLE 36. LIQUIDATED DAMAGES**

17 A. It is mutually understood and agreed by and between the parties to this Agreement that
18 during the period that CONTRACTOR is providing O&M services to CNG Fueling Facilities, AUTHORITY
19 will be damaged if AUTHORITY's CNG transit buses are not fueled at any CNG Fueling Facility prior to
20 scheduled morning roll-out for reasons that are not the fault of AUTHORITY and which do not arise out
21 of events of force majeure. The amount of said damages, being difficult if not impossible of definite
22 ascertainment and proof, it is hereby agreed that the amount of such damages due AUTHORITY shall
23 be fixed at \$250.00 per day per CNG transit bus, not to exceed 395 CNG transit buses with an equivalent
24 160 gasoline gallon equivalent fill, that are not able to be fueled at any CNG Fueling Facility listed in this
25 Agreement.

26 B. CONTRACTOR hereby agrees to pay the aforestated amounts as fixed, agreed, liquidated

1 damages, and not by way of penalty, to AUTHORITY and further authorizes AUTHORITY to deduct the
2 amount of the damages from money due CONTRACTOR under this Agreement, computed as aforesaid.
3 If the monies due CONTRACTOR are insufficient or no monies are due CONTRACTOR, CONTRACTOR
4 shall pay AUTHORITY the difference or the entire amount, whichever may be the case, within thirty (30)
5 calendar days after receipt of a written demand by the AUTHORITY's Contract Administrator.
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7 **ARTICLE 37. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**
8 **RELATED ACTS**

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

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

25 **ARTICLE 38. RECYCLED PRODUCTS**

26 CONTRACTOR shall comply with all the requirements of Section 6002 of the Resource

1 Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the
2 regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement
3 of the items designated in subpart B of 40 CFR Part 247. CONTRACTOR agrees to include this
4 requirement in all of its subcontracts.
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6 **ARTICLE 39. ENERGY CONSERVATION REQUIREMENTS**

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

10 **ARTICLE 40. CLEAN AIR**

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

16 **ARTICLE 41. CLEAN WATER REQUIREMENTS**

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

22 **ARTICLE 42. FLY AMERICA REQUIREMENT**

23 CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance
24 with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that
25 recipients and sub recipients of Federal funds and their contractors are required to use U.S. Flag air
26 carriers for the U.S. Government-financed international air travel and transportation of their personal

1 effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter
2 of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was
3 used, an appropriate certification or memorandum adequately explaining why service by a U.S. carrier
4 was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a
5 certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the
6 requirements of this section in all subcontracts that may involve international air transportation.
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8 **ARTICLE 43. SEISMIC SAFETY REQUIREMENTS**

9 CONTRACTOR agrees that any new building or addition to an existing building will be designed
10 and constructed in accordance with the standards for Seismic Safety required in Department of
11 Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent
12 required by the regulation. CONTRACTOR also agrees to ensure that all work performed under this
13 contract including work performed by a subcontractor is in compliance with the standards required by the
14 Seismic Safety Regulations and the certification of compliance issued on the project.

15 **ARTICLE 44. DEBARMENT AND SUSPENSION**

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

20 **ARTICLE 45. FORCE MAJEURE**

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-1-3317 to be executed as of the date of the last signature below.

CONTRACTOR

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

By: _____

Darrell E. Johnson
Chief Executive Officer

DRAFT

APPROVED AS TO FORM:

By: _____

James M. Donich
General Counsel

APPROVED:

By: _____

Jennifer L. Bergener
Chief Operating Officer, Operations/
Deputy Chief Executive Officer

DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS

I. DBE Participation

It is the CONTRACTOR'S responsibility to be fully informed regarding the requirements of 49 CFR, Part 26 and AUTHORITY's DBE program developed pursuant to these regulations.

If CONTRACTOR has committed to utilize a DBE in the performance of this U.S. DOT-assisted contract, CONTRACTOR'S submitted "DBE Participation Commitment Form," in combination with the executed subcontract and/or purchase order will be utilized to monitor CONTRACTOR'S DBE commitment. Unless otherwise directed and/or approved by AUTHORITY prior, CONTRACTOR must not effectuate any changes to its DBE participation commitment.

CONTRACTOR must complete and submit all required DBE documentation to effectively capture DBE utilization on AUTHORITY's U.S. DOT-assisted contracts whether achieved race neutrally or race consciously. No changes to CONTRACTOR'S DBE commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

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

- A. Take appropriate actions to ensure that it will satisfy good faith efforts to meet the DBE agreement goal and continue to meet the DBE commitment made at award, when change orders or other modifications alter the dollar amount of the Agreement or the distribution of work. CONTRACTOR must apply and report its DBE goal commitment against the total Agreement value, including any 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"), 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 Financial Assistance Programs".

The project is subject to these stipulated regulations and AUTHORITY's DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR, Part 26, in the performance of agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of 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. AUTHORITY is firmly committed to the DBE Program objectives, which are designed to:

- A. Ensure non-discrimination in the award and administration of AUTHORITY's U.S. DOT-assisted contracts;
- B. Create a level playing field by which DBE's can fairly compete for AUTHORITY's U.S. DOT-assisted contracts;
- C. Ensure that AUTHORITY's DBE Program and Overall Goals are narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBE's in the AUTHORITY's DBE Program;
- E. Help remove barriers which impede the participation of DBE's in AUTHORITY's U.S. DOT-assisted contracts;
- F. Promote the use of DBE's in all types of U.S. DOT-assisted contracts and procurement activities conducted by AUTHORITY;
- G. Provide training and other assistance through our resource partners to address capital, bonding, and insurance needs;
- H. Assist in the development of DBE firms that can compete successfully in the marketplace outside of the DBE Program; and
- I. Establish and provide opportunities for DBEs by providing flexibility in the implementation of AUTHORITY's DBE Program.

CONTRACTOR 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 AUTHORITY's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations must prevail.

III. AUTHORITY's DBE Policy Implementation Directives

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise ("DBE") Program exists to ensure participation, equitable competition, and assistance to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY's analysis

of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Agencies' disparity studies, AUTHORITY's DBE Program is implemented utilizing both race-conscious and race-neutral means. When a contract-specific DBE goal is assigned to a project, 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.

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 fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least fifty-one percent (51%) 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 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. **"Socially and Economically Disadvantaged Individuals"** means any individual who is a citizens (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 groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
 - a) 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.
 - b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa";
 - ii. "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";
 - iii. "Native Americans," which includes persons who are enrolled

- members of a federally or State recognized Indian tribe, Alaskan Natives, or Native Hawaiians”;
- iv. "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, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong”;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;”
 - vi. Women; and
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- c) 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.
4. **“Owned and Controlled”** means a business: (a) which is at least 51 percent owned by one or more “Socially and Economically Disadvantaged Individuals” or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more “Socially and Economically Disadvantaged Individuals”; and (b) whose management and daily business operations are controlled by one or more such individuals.
5. **“Manufacturer”** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the CONTRACTOR.
6. **“Regular Dealer”** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Agreement 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 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. 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. 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.

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 AUTHORITY 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 and/or DBE commitment on the Agreement, CONTRACTOR must complete and submit within the specified timelines, the following DBE documentation, electronically through e-mail or an AUTHORITY-approved electronic reporting system consistent with CONTRACTOR'S DBE goal commitment:

- A. "Monthly DBE Subcontractor Commitment and Attainment Report Summary and Payment Verification" (Form 103)

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

The CONTRACTOR is required to complete and submit this form to AUTHORITY by the 10th of each month until completion of the Agreement. CONTRACTOR must submit first Form 103 following the first month of Agreement activity. Even if no DBE participation will be reported within a period, CONTRACTOR must execute and return the form.

The Form 103 must include the following information:

1. General Agreement Information – Including Agreement Number and Title, CONTRACTOR Name and the following:
 - a) Original Agreement Amount
 - b) Running Total of Change Order Amount
 - c) Current Agreement Amount
 - d) Amount Paid to CONTRACTOR during Month
 - e) Amount Paid to CONTRACTOR from Inception to Date
 - f) DBE Contract Goal
 - g) Total Dollar Amount of DBE Commitment
 - h) DBE Commitment as Percentage of Current Agreement Amount

2. Listed and Proposed CONTRACTOR/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 Capacity Type, 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 CONTRACTOR or Subcontractor(s) During Month and Amount Paid to CONTRACTOR or Subcontractor(s) to date.

CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR'S DBE attainment until the amount being claimed has been paid to the DBE.

3. CONTRACTOR Assurance of Full Compliance with Prompt Payment Provisions

CONTRACTOR must sign the prompt payment assurance statement of compliance contained within the Monthly Form 103, providing assurance that timely payments have been issued to all subcontractors in accordance with regulatory mandates and as required by 49 CFR Part 26.29.

4. CONTRACTOR Payment Verification Summary

CONTRACTOR is to further maintain and submit a Verification of Payment Summary inclusive of 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 payment made. The Verification of Payment Summary must also include:

DBE(s) and non DBE(s) invoice number, invoice amount, invoice date, CONTRACTOR'S invoice number that incorporated the corresponding DBE and non-DBE invoice(s) for billing purposes, date of invoice submission to AUTHORITY, date and amount AUTHORITY paid on CONTRACTOR'S Invoice. The report must 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 DBEs and non-DBEs.

CONTRACTOR to submit a Verification of Payment Summary with the Monthly Form 103 submission for each DBE firm in which CONTRACTOR has reflected a value paid within the reporting period. Verification of Payment Summary must be signed by

the applicable DBE and submitted with Form 103 to authenticate reported payments.

B. "Monthly DBE Trucking Verification" Form

Prior to the 10th of each month, CONTRACTOR must submit documentation on the "Monthly DBE Trucking Verification," Form to AUTHORITY showing the amount paid to DBE trucking companies. CONTRACTOR must also obtain and submit documentation to 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, CONTRACTOR may count only the fee or commission the DBE receives as a result of the lease arrangement.

CONTRACTOR must also obtain and submit documentation to 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.

C. DBE Subcontract Agreements

CONTRACTOR must submit to AUTHORITY copies of executed subcontracts and/or purchase orders (PO) for all DBE firms participating on the contract within ten (10) working days of award. CONTRACTOR must immediately notify AUTHORITY in writing, of any problems it may have in obtaining the subcontract agreements from listed DBE firms within the specified time.

D. Semi-Annual Subcontractor Paid Report Summary

AUTHORITY will require CONTRACTOR (inclusive of DBE primes) to report payment data to lower-tiers on a semi-annual basis each year, using the "Semi-Annual Subcontractor Paid Report Summary." These reports will capture payments to CONTRACTOR and payments to non-DBEs within the respective reporting period. Reported payments to lower-tiers must include a signed payment verification form.

CONTRACTOR will adhere to the following submittal schedule:

- April 10th Report, reporting period: October 1st through March 31st
- October 10th Report, reporting period: April 1st through September 30th

E. Final Report-Utilization of Disadvantaged Business Enterprises (DBE)

Upon completion of the project, CONTRACTOR must complete and submit a "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), Subcontractors," certified correct by CONTRACTOR or the CONTRACTOR'S authorized representative, to facilitate reporting and capturing DBE attainments at conclusion of the project. The

form must be furnished to AUTHORITY within thirty (30) days from the date of the project. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

F. Disadvantaged Business Enterprises (DBE) Certification Status Change

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor must notify the CONTRACTOR in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor must notify CONTRACTOR in writing with the date of certification (Attach DBE certification/decertification letter). CONTRACTOR must furnish the written documentation to AUTHORITY within ten (10) days of receipt. Upon completion of the project, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the CONTRACTOR indicating the DBEs' existing certification status. If there are no changes, indicate "No Changes." The signed and certified form must be furnished to AUTHORITY within thirty (30) days from the date of project acceptance.

Failure to submit any of the required submittals above and their support documentation within the specified timeline shall result in a penalty of ten dollars (\$10) per day, per submittal document.

AUTHORITY requires CONTRACTOR to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by AUTHORITY, unless otherwise provided by applicable record retention requirements for CONTRACTOR'S agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of AUTHORITY. This reporting requirement extends to all lower-tiers, both DBE and non-DBE.

AUTHORITY reserves the right, at its sole discretion, to demonstrate responsiveness to requirements of CFR 49 Part 26.37 by implementing the following method(s):

- a) Posting CONTRACTOR payment data to a website, database, or other place accessible to subcontractors to assist them in determining when they should expect to receive payment.
- b) Requiring CONTRACTOR to use an automated reporting system, inclusive of, but not limited to, real time entry of payments made and received by CONTRACTOR and their lower-tiers.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of bid/proposal submission:

1. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be

certified through the California Unified Certification Program (“CUCP”) at the time of bid submission. A listing of DBEs certified by the CUCP is available at the following source:

The CUCP web site, which can be accessed at <http://www.dot.ca.gov/hq/bep>.

2. A DBE may participate as a prime CONTRACTOR, subcontractor, joint venture partner, 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 work 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. The use of joint-checks for DBE firms must be approved by AUTHORITY prior to execution, and a joint-check agreement must accompany the request to AUTHORITY.
5. A DBE must perform a commercially useful function in accordance with 49 CFR Part 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 Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If CONTRACTOR 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 performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONTRACTOR’S DBE attainment.
 2. CONTRACTOR is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
 - a) Sixty percent (60%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a regular dealer; or

- b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subcontractors, Brokers, and Packagers may be credited toward CONTRACTOR'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 Agreement;
 - 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 Agreement.
4. CONTRACTOR 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 equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by the DBE-owned trucks or leased trucks with DBE drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - f) The DBE may lease trucks without drivers from a non-DBE truck leasing company and if the DBE uses its own employees as drivers, it is entitled to

credit for the total value of these hauling services.

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 CONTRACTOR listed a non-certified, 1st tier Subcontractor to perform work on this Agreement, 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 Agreement. If a DBE CONTRACTOR performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
6. CONTRACTOR is advised not to report the participation of DBE(s) toward the CONTRACTOR'S DBE attainment until the amount being claimed has been paid to the DBE.

VII. DBE Substitution, Termination and On-Going Good Faith Efforts

AUTHORITY requires that CONTRACTOR not terminate a DBE without AUTHORITY's prior written consent. This includes, but is not limited to, instances in which CONTRACTOR seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.

AUTHORITY will provide such written consent only if it agrees, for reasons stated in the concurrence document, that CONTRACTOR has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- A. The listed DBE subcontractor fails or refuses to execute a written contract;
- B. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of CONTRACTOR;
- C. The listed DBE subcontractor fails or refuses to meet CONTRACTOR'S reasonable, nondiscriminatory bond requirements;
- D. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

- E. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 108, 215 and 1,200 or applicable state law;
- F. CONTRACTOR has determined that the listed DBE subcontractor is not a responsible CONTRACTOR;
- G. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- H. The listed DBE is ineligible to receive DBE credit for the type of work required;
- I. A DBE owner dies or becomes disabled with the result that the listed DBE CONTRACTOR is unable to complete its work on the contract;
- J. Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if CONTRACTOR seeks to terminate a DBE it relied upon to obtain the Agreement so that CONTRACTOR can self-perform the work for which the DBE CONTRACTOR was engaged or so that CONTRACTOR can substitute another DBE or non-DBE CONTRACTOR after Agreement award.

Before transmitting to AUTHORITY its request to terminate and/or substitute a DBE subcontractor, CONTRACTOR must give notice in writing to the DBE, with a copy to AUTHORITY, of its intent to request to terminate and/or substitute, and the reason for the request.

CONTRACTOR must give the DBE five (5) days to respond to CONTRACTOR'S notice and advise AUTHORITY and CONTRACTOR of the reasons, if any, why it objects to the proposed termination of its subcontract or purchase order and why AUTHORITY should not approve CONTRACTOR'S action. If required in a particular case as a matter of public necessity (e.g. safety), CONTRACTOR may provide a response period shorter than five (5) days.

In the event of an approved DBE substitution, termination, or failure of a DBE to complete its work on the contract for any reason, the DBE must be substituted with another DBE or adequate good faith efforts must be documented by CONTRACTOR within five (5) days, to the extent needed to meet the contract-specific DBE goal. Note: The five (5) day period may be extended for an additional five (5) days if necessary, at the request of the CONTRACTOR.

The substitute DBE must be certified as a DBE at the time of request for substitution. CONTRACTOR shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY.

Should CONTRACTOR elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, AUTHORITY will review the documentation and provide a written

determination to CONTRACTOR stating whether or not good faith efforts have been adequately demonstrated.

The substitute DBE cannot work on the Agreement until its work eligibility has been confirmed and required subcontracts, supplies, trucking commitments, or other services have been approved by AUTHORITY.

VIII. Additional DBE Subcontractors

In the event CONTRACTOR identifies additional DBE Subcontractors or suppliers not previously identified by CONTRACTOR for DBE participation under the Agreement, CONTRACTOR must notify AUTHORITY by submitting "Request for Additional DBE Firm," to enable AUTHORITY to verify the firm's eligibility, capacity, CUF and ensure there is not a scope conflict with another listed firm. Proposed firms cannot be applied towards CONTRACTOR'S DBE participation until approved by AUTHORITY.

CONTRACTOR must also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specific 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 U.S. DOT-assisted contracts. CONTRACTOR is 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. Dispute Resolution

All contracts in excess of five-hundred thousand dollars (\$500,000) shall contain provisions or conditions which will allow for dispute resolution remedies in instances where CONTRACTORS violate or breach DBE Program requirements, inclusive but not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

CONTRACTOR shall incorporate this Section into each subcontract related to work arising under this Agreement and shall not incorporate by reference.

CONTRACTOR and subcontractor agree to notify AUTHORITY within five (5) business days of any prompt payment and/or DBE Program disputes which cannot be settled by discussions between the parties involved.

CONTRACTOR and subcontractor further agree to proceed through informal meetings, mediation, or any combination thereof as further detailed below. Dispute submittals shall include the method(s) of dispute resolution selected, terms, timeframes, and a detailed summary of assistance being requested (as applicable).

I. INFORMAL MEETINGS:

AUTHORITY is available to assist CONTRACTOR with coordination of informal meeting requests to assist in the resolution of disputes between CONTRACTOR and subcontractor. AUTHORITY's DBELO or a designated DBE support representative will conduct the informal meetings with parties in dispute. Representatives from CONTRACTOR and subcontractor for the purpose of dispute resolution, must include individuals authorized to bind each interested party. All parties must agree to the procedure.

II. Mediation

The parties to a contract may agree to endeavor to settle a dispute through informal mediation under independent third-party organizations. AUTHORITY's DBELO and her designated support staff is considered an independent third party. Submission to informal mediation is voluntary; it is not binding and offers advisory opinions.

Performance During Dispute: Unless otherwise directed by AUTHORITY, CONTRACTOR and its sub tiers shall continue performance under the Agreement while matters in dispute are being resolved.

Flow Down Requirements: The dispute resolution provisions flow down to all tiers.

These provisions shall not apply to disputes between CONTRACTOR and AUTHORITY. These provisions do not alter in any way or waive compliance with other provisions in the Agreement.

XI. Administrative Remedies and Enforcement

CONTRACTOR must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs," and ensure that all subcontractors, regardless of tier, are also fully compliant. Failure by CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as AUTHORITY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

3. Liquidated damages; and/or
4. Disqualifying CONTRACTOR from future bidding/proposing as non-responsible.

In instances of identified non-compliance, a Cure Notice will be issued to CONTRACTOR identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

CONTRACTOR must be given ten (10) working days from the date of the Cure Notice to remedy or to: (1) File a written appeal accompanied with supporting documentation; and/or (2) Request a hearing with AUTHORITY to reconsider AUTHORITY's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of CONTRACTOR'S right to appeal. If CONTRACTOR files an appeal, 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 CONTRACTOR'S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONTRACTOR, the written determination must state the specific remedy(ies) 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 the Agreement and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance, AUTHORITY will release all withholdings.

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

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EXHIBIT D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

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 subconsultants 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 ___
- Subconsultant 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 subconsultants, 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

Andrew Do, Chairman

Mark A. Murphy, Vice Chairman

Lisa A. Bartlett, Director

Doug Chaffee, Director

Barbara Delgleize, Director

Katrina Foley, Director

Brian Goodell, Director

Patrick Harper, Director

Michael Hennessey, Director

Gene Hernandez, Director

Steve Jones, Director

Joseph Muller, Director

Vicente Sarmiento, Director

Tim Shaw, Director

Harry S. Sidhu, Director

Donald P. Wagner, Director

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EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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

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

Name

Signature

Title

Date

**EXHIBIT F: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS**

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

1.0 DBE Goal

To assist proposers in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs 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.

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

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

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4.0 **DBE Proposal Submission Requirements**

Proposer must complete and submit the following DBE Exhibit (form) with their proposal:

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

Proposer must complete and submit the following DBE Exhibits (forms) 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	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	Required no later than 4:00 p.m. on the 2 nd business day after the proposal due date
Bidders List	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” (Exhibit F-1) required at time of Proposal. The Proposer is to provide the following information for each DBE that will participate in the contract:

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 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 proposer 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” (Exhibit F-2)

To be a responsible and responsive proposer, the proposer must make good faith efforts to meet the goal. The proposer can meet this requirement in two ways. (i) the proposer can meet the goal by documenting commitments for participation by DBE firms sufficient for this purpose; or (ii) the proposer 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 proposer did not meet or obtain enough DBE participation to meet the DBE goal, the proposer must complete and submit the “DBE Information – Good Faith Efforts,” form demonstrating that the proposer made adequate good faith efforts to meet the goal.

If the proposer has met the DBE goal based on the participation of DBEs listed on the proposer’s “DBE Participation Commitment Form,” it is at the proposer’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 proposer’s eligibility for award of the contract if the Authority determines that the proposer failed to meet the goal for various reasons (e.g. a DBE firm was not certified at proposal submission or the proposer made a mathematical error). Submittal of only the “DBE Information – Good Faith Efforts,” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made; therefore, the proposer 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 Exhibit E-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” (Exhibit F-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). Proposers are required to complete and submit the requested information listed on the “Bidders List” form, for all firms (DBE[s] and non-DBE[s]) who submitted a bid, proposal or quote, including firms who were contracted by the prime proposer.

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.

Proposer to Complete this Section

1. RFP No.: _____
2. Project Name/Description: _____
3. Prime Proposer Name: _____
4. Contract DBE Goal %: _____
5. Proposer'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
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Note: As a condition of responsiveness, the proposer 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 Proposer's Total Proposal Price

_____ %

Proposer Assurance: The proposer 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

Proposer 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 Proposer Name** - Enter the proposer's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Proposer's Total Proposal Price** – Enter the proposer'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 subcontractors 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 Proposer's Total Price** - Enter the corresponding percentage of the total eligible DBE participation that the proposer is counting towards the proposer's DBE goal commitment (Formula: Item (11) Total Dollar Value (\$) of Eligible DBE Participation / Item (5) Proposer's Total Price = Proposer'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 proposer.
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 proposer.
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 proposer.
18. **Email Address** - Enter the email address of the authorized person signing the form on behalf of the proposer.

NOTE: A firm is only eligible to count towards DBE participation in the NAICS codes contained within its California Unified Certification Program (CUCP) DBE Profile. Proposers are to verify that listed subconsultants contain DBE certification in the NAICS codes 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 _____% for this contract. The information provided herein shows that a good faith effort was made by _____(Proposer).

Proposer 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. Proposer should submit the following information even if the "DBE Participation Commitment Form" indicates that the proposer has met the DBE goal. This will protect the proposer's eligibility for award of the contract if Authority determines that the proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at proposal submission, or the proposer made a mathematical error.

Submittal of only the 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. Proposer to complete the following items in sufficient detail to effectively demonstrate that good faith efforts were undertaken to meet the established DBE goal:

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- A. Items of Work the Proposer Made Available to DBE Firms; a description of work items and approximate dollar amounts made available to DBE firms by the proposer, 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 proposer with its own forces) into economically feasible units to facilitate DBE participation sufficient to meet the DBE contract goal. It is the proposer'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	Proposer Normally Performs (Y/N)	Unbundled from Larger Scope (Y/N) If Yes, List Scope	Amount (\$)	Percentage of Contract

- 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 proposer, the proposer 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, proposer 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 proposer'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 proposer (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, proposer 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 proposer 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, proposer 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, proposer to provide a list of any assistance provided to DBEs:

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- H. Additional Data to Support a Demonstration of Good Faith Efforts; in determining whether a proposer made adequate good faith efforts, the Authority will take into account the performance of other proposers 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 proposer is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary proposer, and submit this information 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 Proposer:	DRAFT						<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.
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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NOTE: USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS TO THE BIDDERS LIST REQUIREMENTS.

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EXHIBIT G: RESTRICTIONS ON LOBBYING

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

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

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.

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**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf (name of bidder/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 influencing or attempting to influence making lobbying contracts 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. If bidder/offeror does not have any reportable activities to disclose, they shall check the box entitled "No Reportable Activities" on the attached Standard Form-LLL "Disclosure of Lobbying Activities" and complete Section 16 of the form. The certifying official shall sign and date the form, print his/her name, title and telephone number.
4. 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/offeror, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the bidder/offeror 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 _____, 20____

By _____
(Signature of authorized official)

(Title of authorized official)

NO REPORTABLE ACTIVITIES (Bidder/Offeror required to complete Section 16 below.)

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

Approved by
 OMB
 003480045

<p>1. Type of Federal Action:</p> <p><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:</p> <p><input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><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:</p> <p><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 style="font-size: 48px; opacity: 0.5;">DRAFT</p> <p>(attach Continuation Sheet(s) SF - LLL - A if necessary)</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>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><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):</p> <p><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>_____</p> <p align="center">(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: _____</p> <p>Print name: _____</p> <p>Title: _____</p> <p>Telephone No: _____ Date: _____</p>	
<p>Federal Use Only</p>		<p>Authorized for Local Reproduction Standard Form - LLL</p>

Approved by
 003480045

**INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING
ACTIVITIES**

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

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

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

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

Approved by
OMB
003480045

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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EXHIBIT H: SAFETY SPECIFICATIONS

LEVEL 3 HEALTH, SAFETY AND ENVIRONMENTAL (HSE) SPECIFICATIONS

REQUIRED HSE SUBMITTAL SUMMARY

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

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

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

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

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

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

6. A Detailed Site Specific HSE Work Implementation Plan:

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

PART I – GENERAL

1.0 GENERAL HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, and bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work or agreements with the Authority including California Department of Transportation safety requirements and special provisions. Additionally, manufacturer requirements are considered incorporated by reference, as applicable, to this scope of work.
- B. Observance of unsafe acts or conditions, serious violation of health and safety standards, non-conformance of Authority HSEC requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it

and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.

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

PART II – SPECIFIC REQUIREMENTS

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

2.1 REQUIRED DOCUMENTATION / REPORTING REQUIREMENTS

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

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

- A. A Comprehensive Project Specific Health, Safety, and Environmental (HSE) Work Plan.
 - a. The Contractor shall develop a site project plan that may include, but is not limited to: Permits, Evacuation, Emergency Plan, Roles and Responsibilities, Scope and Construction Activity Details, Constructability Review, Contractor Coordination Process, Safe Work Methods, Hazard

Identification & Risk Control, First Aid and Injury Management, Emergency Procedures, Public Protection, Authority and Contractor Site Rules, Incident Reporting and Investigation, Specialized Work or Licensing, Training and Orientation Requirements, Chemical Management, and Subcontractor Management.

- b. A Detailed Site Specific HSE Implementation Plan: This plan shall be prepared and submitted by a recognized HSE professional (current BCSP Certification in good standing, i.e., CSP, CHST, OHST) experienced in developing compliant written HSE programs, acceptable to OCTA. Indicate the methods and procedures, and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, SCAQMD rules, NFPA, NEC, ANSI codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

- B. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
- C. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
- D. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
- E. Contractor shall provide the resume and qualifications/certifications of assigned project designated Onsite HSE Representative for this scope as identified in section 2.3 of this specification.
- F. Accident/Incident investigation report within 24 hours of event (immediate verbal notification to Authority Project Manager, followed by Written Report).

The following required documentation shall be provided to the Authority's Project Manager, upon Authority request, within 72 hours.

- G. A copy of Contractor weekly site safety inspection report with status of corrections, upon request, within 72 hours.
- H. Contractor shall provide a copy of the Contractors and subcontractors competent person list (submit to Authority Project Manager, upon Authority request, within 72 hours).

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

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

2.2 HAZARD COMMUNICATION (CCR Title 8, Section 5194)

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

2.3 DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE

- A. Before beginning on-site activities, the Contractor shall designate an On-site HSE Representative. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
- B. The Contractor's on-site qualified HSE Representative for all Authority projects is subject to acceptance by the Authority Project Manager and the HSEC Department Manager. All contact information of the On-site HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager.

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

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

1. Capital Programs may include, but are not limited to, projects involving demolition and construction of; heavy construction, rail projects, highway projects, parking lots and structures, fuel stations, building construction, facility modifications, bus base construction, EPA/DTSC remediation, AQMD air or soil monitoring, fuel tank removal or modification, major bus base modifications, handling potential hazardous waste projects, and similar projects as deemed a Capital Program at the sole discretion by the Authority.
 2. Facility Modification Projects may include, but are not limited to, projects involving minor demolition and construction or improvement projects for transportation centers, bus base sites and/or building modifications, equipment and/or building upgrades, and similar projects as deemed a Facility Modification Project at the sole discretion by the Authority.
 3. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
 4. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the project.
- C. The Contractor shall designate a Competent Individual for each task, as required by Cal-OSHA standards or laws. The task Competent Individual shall be responsible for the prevention of accidents. If the Authority or any public agency with jurisdiction notifies the Contractor of any claimed dangerous condition at the site that is within the Contractor's care, custody or control, the Contractor shall take immediate action to rectify the condition at no additional cost to the Authority. The Contractor shall be responsible for the payment of all fines levied against the Authority for deficiencies relating to the Contractor's supervision or conduct and/or control of the scope agreement.
- D. On Facility Modification Projects, the Authority Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in section 2.3 (C), above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 15 workers, there are multiple scope work sites, or as warranted by the scope of work at the sole discretion by the Authority.
- E. On Capital Programs, the Authority's Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in item 2.3 (C) above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 50 workers, or is warranted by the scope of work.

2.4 SITE HSE ORIENTATION

The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects, a copy of the HSE orientation attendance list shall be provided to the Authority Project Manager. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.

2.5 INCIDENT NOTIFICATION AND INVESTIGATION

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

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

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

A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that led to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to OCTA.

C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a senior executive from the Contractors' organization to participate in the presentation. The serious incident presentation shall include action taken for the welfare of

the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement.
2. Serious Incident: includes property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

2.6 REGULAR INSPECTIONS & THIRD PARTY INSPECTIONS

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

2.7 ENVIROMENTAL REQUIREMENTS

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils,

- bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.
- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.
- E. If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined in California Health and Safety Code, and all regulations pursuant thereto) which has not been rendered harmless, the Contractor shall immediately stop work in that area affected and report the condition to the Authority in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Authority and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous substance and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous substance, or when it has been rendered harmless, by written agreement of the Authority and the Contractor, or in accordance with a final determination by an Environmental Consultant employed by the Authority.
- F. The Contractor shall not permit any hazardous substances to be brought onto or stored at the Project Site or used in the construction of the work, except for specified materials and commonly used construction materials for which there are no reasonable substitutes. All such materials shall be handled in accordance with all manufacturers' guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials shall be given by the Contractor. The Contractor shall not intentionally release or dispose of hazardous substances at the Project Site or into the soil, drains, surface or ground water, or air, nor shall the Contractor allow any Sub-Contractor, subcontractor or supplier or any other person for whose acts the Contractor or any subcontractor, vendor or supplier may be liable, to do so. For purposes of Contract Documents, "hazardous

substance” means any substance or material which has been determined or during the time of performance of the work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

2.8 VEHICLE AND ROADWAY SAFETY REQUIREMENTS

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

2.9 LANGUAGE REQUIREMENTS

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

2.10 PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

Contractors, and all associated subcontractors, vendors and suppliers are required to provide their own personal protective equipment (PPE), including eye, head, foot, and hand protection, respirators, reflective safety vests, and all other PPE required to perform their work safely on Authority projects.

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

- D. CONSTRUCTION PROJECTS - Minimum PPE required includes but is not limited to; hard hat, eye protection, hand protection, class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 are recommended.
- E. HARD HATS: Approved hard hat that meet ANSI Z89. 1 (latest revision). Hard hats should be affixed with the company/agency logo and/or name. The bill shall be worn forward. Metal hard hats and cowboy style are forbidden on Authority projects.
- F. FOOTWEAR: Enclosed leather that covers the ankles, such as a construction type boot. Employees shall not wear casual dress shoes, open toe, sneakers, sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal in construction work areas. Safety toe footwear that meets ANSI Z41 1991 are recommended on construction sites and in operating facilities.
- G. CLOTHING/SHIRTS: minimum or waist length shirts with sleeves (4" minimum).
- H. CLOTHING/TROUSERS: Cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. No sweat pants, or trousers with holes.
- 2.11 AERIAL DEVICES (CCR Title 8, Section 3648)
- Aerial devices are defined in CCR Title 8 as any vehicle-mounted or self-propelled device, telescoping extensible or articulating, or both, which is primarily designed to position personnel. If aerial devices are to be used, the required documentation in CCR Title 8, Section 3648 shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- 2.12 CONFINED SPACE ENTRY (CCR Title 8, Section 5157)
- Before any employee will be allowed to enter a confined space, the required documentation as required by CCR Title 8, Section 5157 shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- A. RECOMMENDED: a copy of the most recent calibration record for each air monitoring unit, 3-gas monitor or "sniffer" to be used by the Entry Supervisor prior to entering permit-required confined spaces.
- 2.13 CRANES
- A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. In addition, Contractor shall comply with the following requirements: Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items I,

2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.

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

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

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.

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

D. Critical Lift Plan

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

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

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

Note: *This information may be available from the Authority for selected locations on some projects.*

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

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

E. OVERHEAD CRANES

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

2.14 DEMOLITION OPERATIONS (CCR Title 8, Section 1734)

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

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

2.15 EXCAVATION OPERATIONS (CCR Title 8, Section 1541)

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

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

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

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

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

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

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

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

2.18 ELECTRICAL OPERATIONS

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

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

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

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

Only qualified persons shall work on electrical equipment or systems.

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

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

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

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

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

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

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

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

2.21 WARNING SIGNS AND DEVICES

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

2.22 STEEL ERECTION

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

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

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

2.23 AUDITS

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

2.24 RAILWAY SAFETY PRECAUTIONS

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

2.25 FINES

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

2.26 COMPLIANCE COSTS

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

2.27 REFERENCES

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

END OF DOCUMENT

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EXHIBIT I: CERTIFICATION OF CONSULTANT COMMISSION AND FEES

CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

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

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

I acknowledge that this Certificate is subject to applicable state and federal laws, both criminal and civil.

DRAFT

(Date)

(Signature)

DRAFT
EXHIBIT J: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

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

Offeror: _____

RFP No.: _____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

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

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

Complete Description of Deviation or Exception: _____

Rationale for Requesting Deviation or Exception: _____

Area Below Reserved for Authority Use Only:

**EXHIBIT K: PUBLIC RECORDS ACT INDEMNIFICATION – PROPOSAL
DOCUMENTS**

DRAFT

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 Proposer 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 Proposer’s proposal that the Proposer has marked as "confidential", "trade secret", "proprietary", "not subject to disclosure", or similar designation (the "PRA Documents"), the Authority will notify the Proposer of the request. The Proposer 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, Proposer 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.

Proposer shall pay all costs, immediately as they come due, pertaining to any action under the Public Records Act related to any portion of Proposer’s proposal marked or designated as described above, and withheld by Authority. If the Proposer fails to notify the Authority in writing within three business days, or to timely provide a legal basis for the withholding of documents, Proposer agrees that Authority shall release and disclose Proposer records, notwithstanding any marking or designation of the PRA Documents.

In no case shall Authority be liable for any inadvertent disclosure of any Proposer proposal documents, or any disclosure made by Authority upon a good faith belief that disclosure is required by law, or in the event Proposer 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 Proposer 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 Proposer 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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