

REQUEST FOR PROPOSALS (RFP) 0-2335

**CONSULTANT SERVICES TO PREPARE THE  
PROJECT REPORT AND ENVIRONMENTAL  
DOCUMENT FOR THE INTERSTATE 5  
IMPROVEMENT PROJECT FROM SAN DIEGO  
COUNTY LINE TO AVENIDA PICO**



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**Key RFP Dates**

<b>Issue Date:</b>	<b>June 22, 2020</b>
<b>Pre-Proposal Conference Date:</b>	<b>June 25, 2020</b>
<b>Question Submittal Date:</b>	<b>July 1, 2020</b>
<b>Proposal Submittal Date:</b>	<b>July 22, 2020</b>
<b>Interview Date:</b>	<b>August 18, 2020</b>

**SURFACE TRANSPORTATION BLOCK GRANT FUNDS/FEDERAL HIGHWAY  
ADMINISTRATION FUNDED PROJECT**

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June 22, 2020

**NOTICE OF REQUEST FOR PROPOSALS**

**(RFP): 0-2335: “CONSULTANT SERVICES TO PREPARE THE PROJECT REPORT AND ENVIRONMENTAL DOCUMENT FOR THE INTERSTATE 5 IMPROVEMENT PROJECT FROM SAN DIEGO COUNTY LINE TO AVENIDA PICO”**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

The Orange County Transportation Authority (Authority) invites proposals from qualified firms for Consultant Services to Prepare the Project Report and Environmental Document for the Interstate 5 Improvement Project from San Diego County Line to Avenida Pico.

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

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

1. Project Study Report – Project Development Support (PSR/PDS) on Interstate 5 between Avenida Pico and San Diego County Line
2. South County Traffic Relief Effort Report

The Authority has set a **14%** Disadvantaged Business Enterprise (DBE) participation goal for this project. Award of this contract is contingent upon Consultant meeting the DBE attainment requirements including the good faith effort to meet the established goal.

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

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

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

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

**Proposals must be received in the Authority's office at or before 2:00 p.m. on July 22, 2020.**

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

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

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

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

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

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

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

To receive all further information regarding this RFP 0-2335, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Professional Services	Engineering - Right of Way
	Engineering - Architectural
	Engineering - Traffic
	Architect Services, Professional
	Engineering - Civil
	Engineering - Environmental
Professional Consulting	Traffic Planning Consulting
	Environmental Consulting
	Consultant Services - General
	Architectural & Engineering
	Design Consulting

A pre-proposal conference will be held via tele-conference on **June 25, 2020**, at **9:00 a.m.** Prospective offerors may call-in using the following credentials:

- Call-in number: 714-558-5200
- Conference ID: 342894

No on-site meeting will be held. A copy of the presentation slides and a pre-proposal registration sheet will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

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

The Authority has established **August 18, 2020**, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

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

**SECTION I: INSTRUCTIONS TO OFFERORS**

**SECTION I. INSTRUCTIONS TO OFFERORS**

**A. PRE-PROPOSAL CONFERENCE**

A pre-proposal conference will be held via tele-conference on **June 25, 2020**, at **9:00 a.m.** Prospective Offerors may call-in using the following credentials:

- Call-in number: 714-558-5200
- Conference ID: 342894

No onsite meeting will be held. A copy of the presentation slides and a pre-proposal registration sheet will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

**B. EXAMINATION OF PROPOSAL DOCUMENTS**

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

**C. ADDENDA**

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

**D. AUTHORITY CONTACT**

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

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



Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

## **E. CLARIFICATIONS**

### **1. Examination of Documents**

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

### **2. Submitting Requests**

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on **July 1, 2020**.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
  - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
  - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
  - (3) Facsimile: (714) 560-5792.
  - (4) Email: mle1@octa.net

### 3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than **July 7, 2020**. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Michael Le, Contract Administrator.

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

<u>Category:</u>	<u>Commodity:</u>
Professional Services	Engineering - Right of Way
	Engineering - Architectural
	Engineering - Traffic
	Architect Services, Professional
	Engineering - Civil
	Engineering - Environmental
Professional Consulting	Traffic Planning Consulting
	Environmental Consulting
	Consultant Services - General
	Architectural & Engineering
	Design Consulting

Inquiries received after 5:00 p.m. on July 1, 2020, will not be responded to.

## F. SUBMISSION OF PROPOSALS

### 1. Date and Time

Proposals must be received in the Authority's office at or before 2:00 p.m. on **July 22, 2020**.

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

### 2. Address

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

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

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

**Orange County Transportation Authority  
Contracts Administration and Materials Management (CAMP)  
P.O. Box 14184  
Orange, California 92863-1584  
Attention: Michael Le, Contract Administrator**

**3. Identification of Proposals**

Offeror shall submit an **original and 6 copies** of its proposal in a sealed package, addressed as shown above in F.2. The outer envelope must show the Offeror's name and address and clearly marked with RFP number. In addition to the above, ***Proposers shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a CD, DVD, or flash drive.***

**4. Acceptance of Proposals**

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

**G. PRE-CONTRACTUAL EXPENSES**

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

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

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

**H. JOINT OFFERS**

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

**I. TAXES**

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

**J. PROTEST PROCEDURES**

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

**K. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be a firm-fixed price contract specifying firm-fixed prices for individual tasks specified in the Scope of Work, included in this RFP as Exhibit A.

**L. CONFLICT OF INTEREST**

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

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

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

Offerors hired to perform services for the Authority are prohibited from concurrently acting as an advocate for another firm who is competing for a contract with the Authority, either as a prime or subcontractor. All Offerors responding to this RFP must avoid organizational conflicts of interest which would restrict full and open competition in this procurement. An organizational conflict of interest means that due to other activities, relationships or contracts, an Offeror is unable, or potentially unable to render impartial assistance or advice to the Authority; an Offeror's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or an Offeror has an unfair competitive advantage. Conflict of Interest issues must be fully disclosed in the Offeror's proposal.

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

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

**M. PREVAILING WAGES**

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

**N. CODE OF CONDUCT**

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

**O. DISADVANTAGED BUSINESS ENTERPRISE**

The Authority has established a 14 percent (**14%**) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

**P. NONDISCRIMINATION**

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

**Q. PRIME AND LOWER TIER DEBARMENT**

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

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

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

**SECTION II: PROPOSAL CONTENT**

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

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

**2. Letter of Transmittal**

The Letter of Transmittal shall be addressed to Michael Le, Contract Administrator and must, at a minimum, contain the following:

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



### 3. Technical Proposal

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

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

Offeror to:

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

**b. Proposed Staffing and Project Organization**

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

Offeror to:

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

**c. Work Plan**

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

Offeror to:

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

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

d. Exceptions/Deviations

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

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

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 L, Public Records Act Indemnification – Proposal Documents, and submit it with the proposal. Failure to complete Exhibit L 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 L, Public Records Act Indemnification – Proposal Documents.

#### 4. Cost and Price Proposal

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

#### 5. Appendices

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

### B. FORMS

#### 1. Campaign Contribution Disclosure Form

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

Offeror is required to submit only **one** copy of the completed form(s) as part of its proposal and it must be included in only the **original** proposal.

#### 2. Status of Past and Present Contracts Form

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not

limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

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

**3. Certification of Restrictions on Lobbying**

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.

**4. Disclosure of Lobbying Activities**

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.

**5. Safety Specifications**

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

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

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

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

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

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

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

- E-1 DBE Participation Commitment Form
- E-2 DBE Information – Good Faith Efforts
- E-3 Bidders List
- E-4 (Exhibit 10-O2) – Consultant Contract DBE Information
- E-5 Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors
- E-6 Monthly Race-Conscious DBE Subcontractors Paid Report Summary and payment Verification (Form 103)
- F Request for DBE Subcontractor/Supplier Substitution

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

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

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

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

**11. Public Records Act Indemnification Form**

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.



**SECTION III: EVALUATION AND AWARD**

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

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

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

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

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

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established **August 18, 2020**, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

At the conclusion of the evaluation process, the evaluation committee will rank proposals and will recommend to the Regional Planning and Highways Committee, the Offeror(s) with the highest ranking. The Regional Planning and Highways Committee(s) will review the evaluation committee's recommendation and forward its recommendation to the Board of Directors for final action.

### **C. AWARD**

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

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

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

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

**D. NOTIFICATION OF AWARD AND DEBRIEFING**

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

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

**EXHIBIT A: SCOPE OF WORK**

**SCOPE OF WORK**

**Preparation of  
Project Report and Environmental Document for  
Interstate 5 (I-5) Improvements from  
San Diego County Line to Avenida Pico**

**SECTION 1****DESCRIPTION OF PROJECT****1.1 BACKGROUND**

The Orange County Transportation Authority (Authority), in cooperation with the California Department of Transportation (Caltrans) District 12, is seeking professional and technical consultant services for developing the Project Report and Environmental Document (PR/ED) for proposed improvements to the Interstate 5 Freeway (I-5) from south of the San Diego County line to Avenida Pico in the City of San Clemente, in Orange County. Consultant shall prepare both draft and final Project Report (PR) and; draft and final Environmental Document (ED) in compliance with California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) procedures per the Caltrans Project Development Procedures Manual (PDPM), Caltrans Standard Environmental Reference (SER), and Caltrans and the Federal Highway Administration (FHWA) guidelines. The anticipated documentation for the Project will be an Environmental Impact Report/Environmental Assessment (EIR/EA) leading to a Final EIR and an anticipated Notice of Determination (NOD) and Finding of No Significant Impact (FONSI). The EIR/EA and the supporting technical studies shall be submitted to the Authority and Caltrans, as appropriate, for review and approval.

Caltrans is responsible for compliance with the policies and procedures of CEQA and NEPA and other Federal environmental laws and regulations. California participated in the "Surface Transportation Project Delivery Pilot Program" (Pilot Program) pursuant to 23 USC 327, for more than five years, beginning July 1, 2007 and ending September 30, 2012. With the Pilot Program, FHWA assigned, and the Department assumed, all of the USDOT Secretary's responsibilities under NEPA. The Moving Ahead for Progress in the 21st Century Act (MAP-21) amended 23 USC 327 to establish a permanent Surface Transportation Project Delivery Program. As a result, on October 1, 2012, the Department entered into a memorandum of understanding with FHWA, pursuant to 23 USC 327 (327 MOU) that bridged the Pilot Program with establishment of the permanent program. On December 23, 2016, the bridging MOU was replaced with an MOU that is renewable every 5 years.

This Project is currently not funded beyond this phase of work. Pending the outcome of the environmental process, the Authority will seek federal, state, and/or local funding opportunities for design and construction.

**1.1-2 Location and Limits**

I-5 from P.M R71.0 and P.M. R72.4 in San Diego County and from P.M. 0.0 to P.M. 3.4 in Orange County. The Project is located in the City of San Clemente and northern San Diego County. An administrative copy of the Project Study Report/Project Development Support (PSR-PDS) for EA 0P550K is available (see Attachment A). The total length of the Project is approximately 4.8 miles.

**1.1-3 Statement of Intent**

Consultant shall perform professional and technical engineering services to prepare a Draft and Final PR, a Draft and Final EIR/NOD, in compliance with CEQA, and an EA/FONSI (anticipated) in compliance with NEPA for the Project. The findings of the environmental technical studies will support the level of environmental documentation required for CEQA/NEPA compliance. The alternatives being considered are described in the following section.

**1.1-4 Detailed Proposed Project Alternatives**

The Draft and Final Environmental Documents (ED) shall fully analyze the two (2) Build alternatives and a No Build Alternative as described below.

**1.1-4a Alternative 1: No Build Alternative**

The No Build Alternative proposes no action and would result the Project remaining in its present condition. As the No Build Alternative would not alter existing conditions, this alternative provides a baseline for comparison of environmental impacts under the Build Alternatives. Existing conditions serve as the baseline for evaluation of the two Build Alternatives.

**1.1-4b Alternative 2: Add One High-Occupancy Vehicle (HOV) Lane in Each Direction**

This alternative will include the following:

- Add one HOV Lane in each direction,
- An 8-ft to 10-ft easterly shift in the centerline median between Cristianitos Road and Avenida San Luis Rey,
- Generally maintaining full standard lane and shoulder widths,
- Re-establish all existing auxiliary lanes, and
- Modified ramps at selected locations.

The estimated capital cost varies from \$175 million to \$197 million. See Alternative 3A in the administrative copy of the PSR-PDS for typical cross sections and layouts for this alternative.

**1.1-4c Alternative 3: Transportation System Management (TSM) and Transportation Demand Management (TDM)**

This alternative will include providing the following TSM and



TDM elements, where feasible:

- Improved ramp metering hardware and software and closed-circuit television system for viewing ramps and nearby arterials
- Upgraded traffic signals interconnected and coordinated with adjacent signals and ramp meters at locations of interchange improvements
- Additional way-finding signs on freeway and arterials
- On- and off-ramps designed to limit impacts to non-motorized travel and preserve access to both planned and existing bike and pedestrian facilities
- Intelligent Transportation Systems (ITS) elements including fiber-optic and other communication systems for improved connectivity and remote management; changeable message signs, closed-circuit television systems, and vehicle detection systems for volume, speed, and vehicle classification
- An automated feature that detects slowing northbound traffic and displays a SLOW TRAFFIC AHEAD message on the existing CMS.
- Advanced traffic management system improvements to the hardware and software systems at the Caltrans District 12 Traffic Management Center (TMC)
- Traveler information management system improvements to enhance dissemination of real-time information for roadway conditions

The estimated capital cost varies for this alternative and has yet to be determined.

## **1.2 STANDARDS**

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

Consultant shall perform all services under the Agreement in conformance and in compliance with the latest Caltrans editions of applicable design and environmental standards. Please note that Caltrans currently requires work to be done in English Customary Units.

### **1.2-2 Conflicts**

In case of conflict, ambiguities, discrepancies, errors or omissions among the reference materials obtained by Consultant from other agencies, Consultant shall submit the matter to Authority for clarification. Any work affected by such conflicts, ambiguities, discrepancies, errors or omissions which is performed by Consultant prior to clarification by Authority shall be at Consultant's risk. Such conflicts, ambiguities, discrepancies, errors or omissions among the references shall not give rise to a claim by Consultant for extra work unless Consultant can demonstrate that it has incurred additional expenses as a result thereof.

### **1.2-3 Preliminary Engineering and Environmental Documentation**

Preparation of the PR will be in accordance with the latest edition of the Caltrans Project Development Procedures Manual and the Highway Design Manual. Any additional nonstandard features shall require documentation by Consultant and approval from Caltrans and FHWA as necessary. Environmental Documentation work shall be prepared in conformance with both CEQA and NEPA guidelines and regulations, as well as Caltrans and FHWA policies and procedures.

### **1.2-4 Drafting**

All drafting shall be in conformance with the latest Caltrans Plan Preparation Manual and CADD Users Manual.

### **1.2-5 Reference Materials**

Consultant shall utilize as appropriate, but not limited to, the following documents:

Caltrans Highway Design Manual (HDM)

Caltrans Project Development Procedures Manual (PDPM)

Caltrans and FHWA Environmental Guidelines & Manuals

Caltrans Standard Environmental Reference (SER)

Caltrans Plan Preparation Manual (PPM)

Caltrans Project Planning and Design Guide (PPDG)

Caltrans CADD Users Manual

Caltrans Standards Specifications  
Caltrans Standard Plans  
Orange County Hydrology Manual  
Caltrans Right of Way Engineering Procedures Handbook  
Caltrans Right of Way Manual  
Caltrans Survey Manual  
Applicable Caltrans District 12 Design Memorandum  
Applicable Local Codes and Manuals  
Caltrans District 12 Quality Control Review Checklists  
CEQA and NEPA Handbooks  
California Manual on Uniform Traffic Control Devices (CA MUTCD) 2014,  
Rev. 5 or latest edition  
Highway Capacity Manual (HCM), 6<sup>th</sup> Edition  
Caltrans SB 743 VMT Implementation Website:  
<https://dot.ca.gov/programs/transportation-planning/office-of-smart-mobility-climate-change/sb-743>

#### **1.2-6 Consultant Deliverables**

- All electronic data produced and supporting the PR/ED shall be provided on electronic media on a portable hard drive or other electronic medium (i.e. FTP site, etc.) in formats consistent with Authority and Caltrans software programs.
- All vector geographic data layers shall be delivered in either ESRI Shapefile (shp) or Personal Geodatabase (MS ACCESS) format with File Geodatabase or Map Package (MPK) format. Aerial photography shall be delivered in tiled Tagged Image File Format (TIFF) with "world" files or Joint Photographic Experts Group (JPEG) with "world" files. Raster data can be delivered in ArcGRID format. The coordinate system for all geographic data layers shall be California Coordinate System State Plane, Zone VI (FIPS 0406), units = feet, North American Datum 1983.
- All electronic drafting data produced and supporting the PR/ED shall be provided as dgn files in the Microstation version currently in use by Caltrans. One copy of the data on a portable hard drive shall be provided to Authority upon completion of the PR and environmental studies/ documentation. All submittal files shall be compressed and shall be successfully run through AXIOM FILEFIXER software or EDG.

**EXHIBIT A**

- All electronic data produced and supporting the PR/ED shall be provided to the Authority and shall be organized and indexed. This includes but is not limited to all drawings, reports, tables, graphs, exhibits, and appendices in their original electronic format (.dgn, .dwg, .jpg, .docx, .xlsx, .pdf, etc.)

## **SECTION 2**

### **GENERAL CONDITIONS AND REQUIREMENTS**

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

- 2.1-1** Consultant shall carry out the instructions as received from Authority's Project Manager and shall cooperate fully with Caltrans staff assigned to the Project.
- 2.1-2** It is not the intent of the foregoing paragraph to relieve Consultant of their professional responsibility during the performance of this Scope of Work. In those instances where the Consultant believes a better design or solution to a problem is possible, Consultant shall promptly notify Authority and Caltrans of these concerns, together with the reasons.
- 2.1-3** Consultant shall be responsible for the accuracy, consistency and completeness of reports, studies, data, plans, and estimates prepared for the Project and shall check such material accordingly. Caltrans will provide independent Quality Assurance for the reports and plans for conformity with Caltrans design standards and applicable State and Federal regulations. The responsibility for accuracy and completeness is Consultant's.
- 2.1-4** Reports, studies, plans, data, estimates, and documents produced by Consultant shall be subject to approval and acceptance by Caltrans and FHWA. In the event of non-acceptance due to errors, inconsistencies and omissions, Consultant shall have ten (10) business days to make corrections and return the documents to Caltrans.
- 2.1-5** Reports, studies, plans, estimates and other documents furnished under this Scope of Work shall be of a quality acceptable to Caltrans and Authority. The minimum criteria for acceptance shall be a product of neat appearance that is well organized, technically and grammatically correct, and thoroughly checked in accordance with the Caltrans QA/QC Procedures Manual. All work products shall clearly identify both the preparer and checker. The standards of appearance, organization, and contents of the reports shall meet or exceed those of similar documents produced by Caltrans.
- 2.1-6** The page identifying preparers of engineering reports shall bear the professional seal, certificate number, registration classification, expiration date of the certificate, and signature of the professional engineer(s) responsible for their preparation.

- 2.1-7** To assist in understanding contract objectives and requirements, Consultant shall hold regular, monthly PDT meetings with Authority and Caltrans. The primary purpose of these meetings is to discuss work objectives, Consultant's work schedule, the terms of the contract and other related issues. In addition, the meetings shall serve as a forum for resolving any issues related to the PR/ED development.
- 2.1-8** Authority and Caltrans shall have the right, from time-to-time, to monitor and review the progress and/or processes of Consultant by visiting Consultant's facilities or by requiring coordination meetings.
- 2.1-9** Only with approval from Caltrans and Authority, may Consultant establish direct contact with governmental regulatory agencies and others for the purpose of obtaining information, expertise and assistance in developing baseline data and resource inventories. Only with approval from Caltrans may consultant establish contact with governmental resource agencies. Consultant shall maintain a record of such contacts and shall transmit copies of those records to Authority and Caltrans on a regular basis.
- 2.1-10** Authority and Caltrans will retain responsibility for final consultation, both informal and formal, with State and Federal agencies regarding the Project mitigation and compensation proposals.
- 2.1-11** Surveys performed by Consultant shall conform to the requirements of the Land Surveyors Act and Caltrans Surveys Manual. In accordance with the Act, "responsible charge" for the work shall reside with a pre January 1, 1982, Registered Civil Engineer or a Licensed Land Surveyor, in the State of California.
- 2.1-12** Consultant shall designate a Surveys Manager who will coordinate Consultant's surveying operations. The Surveys Manager shall be responsible for all matters related to Consultant's surveying operations, but shall coordinate with Consultant's Project Manager.
- 2.1-13** Where Consultant is required to prepare and submit studies, reports, plans, etc., to Caltrans as required by this Scope of Work, these shall be submitted in draft to Authority for review in addition to submitting to Caltrans. The Project Master Schedule (PMS) shall reflect Authority reviews and Consultant revisions as necessary. In addition to Authority reviews, draft submittals reflected on the PMS shall be provided an opportunity for Caltrans to request revisions, prior to final submission as part of the Caltrans review process.

**2.1-14** Authority's Project Manager will administer Consultant Agreement and provide general direction to Consultant. Caltrans is responsible for Independent Quality Assurance and approval of reports, plans, estimates and other required deliverables.

**2.1-15** Material to be furnished by Caltrans/Authority (as available) for EA 0P550K:

- Existing aerial photographs and mapping
- Existing site survey information
- Existing right-of-way maps
- Existing land-net information and any pertinent record of information
- Copies of existing plans (half-size)
- Existing and future traffic data
- Administrative copy of PSR-PDS and supporting reports

**2.1-16** Caltrans Responsibilities:

- Provide all current standards, existing plans, and manuals (at consultant cost)
- Perform Independent Quality Assurance for all work and deliverables
- Attend Project meetings
- Coordinate and communicate with FHWA, as needed
- Provide general guidance for the preparation of the PR, ED and supporting documentation
- Issue an Encroachment permit to the consultant and sub-consultants for field investigation, data collection and survey work necessary for the completion of the PR/ED
- Conduct internal QA/QC procedures per NEPA Assignment for the Draft and Final ED, approve the Draft ED for circulation, and approve the Final ED
- Review and approve the PR

**2.1-17** Encroachment Permit:

It is the responsibility of Consultant and its sub Consultants to obtain the proper permit(s) from Caltrans and/or local agencies prior to any field surveys.

**2.1-18** Consultant shall comply with Occupational Safety and Health Act (OSHA) regulations regarding safety equipment and procedures, safety instructions issued by Caltrans, and the safety provisions included in the Caltrans Survey Manual. While working on the job site, Consultant's personnel shall wear white hard hats, rubber soled shoes, and appropriate safety vests. In the case of a discrepancy between the Caltrans and OSHA requirements, the more stringent regulation shall apply.

- 2.1-19** Consultant team shall be responsible for supporting and assisting Authority staff in the Board of Directors (Board) approval process during the preparation of the PR and ED, which may include providing Project materials for Board packages.

As per Article 3 of the Contract, Consultant shall obtain approval from Authority's Project Manager prior to any changes to key personnel, including sub- consultants. Key personnel removal without prior consent of Authority's Project Manager shall be deemed as out of contract compliance.



## SECTION 3

### SCOPE OF WORK

#### 3.1 PROJECT MANAGEMENT/COORDINATION/ADMINISTRATION

This task includes the Project management services including the requirements for meetings, schedules, progress reports, invoicing, and administration of Consultant work.

##### 3.1-1 Coordination/Administration

Purpose: To provide overall execution and financial management of the Project, including Authority and Caltrans coordination, coordination with local, state, and federal regulatory agencies and railroads, tracking progress of the work, administering subcontracts, attending public workshops, preparing invoices, and conducting Project meetings for a period of 30 months. To meet with affected parties; to discuss/resolve issues pertinent to the analysis, design, and potential impacts of the Project; and to obtain direction for the study.

Methodology: Consultant's Project Manager shall provide overall Project management, coordination, and supervision of Project staff to facilitate the performance of the work in accordance with the scope and requirements of the Authority and Caltrans. Consultant shall coordinate among members of the Project Development Team (PDT) and regulatory agencies impacted by the Project. A kickoff meeting shall be held soon after contract execution to review Project objectives and requirements, receive initial information from agencies, establish the communication plan and protocols, and address other issues as necessary to ensure successful Project initiation. Thereafter, Consultant shall actively participate in PDT meetings in conjunction with Authority, Caltrans, and FHWA to discuss progress, coordinate design activities, obtain direction, exchange Project information, and identify issues to be resolved. Consultants shall participate in the following meetings:

- **PDT meetings:** Meetings shall be held with Authority, Caltrans, and other key stakeholders as needed to discuss policy, procedure, and make decisions affecting the direction of the PR and ED. Consultant shall prepare and distribute meeting notices, agendas, handout material relevant to the agenda, and meeting minutes.
- **Agency Coordination/Technical Workshop Meetings:** Meetings shall be held to discuss technical issues with specific agencies. Consultant shall participate in approximately 30 meetings and shall bring progress plans as appropriate. Internal Project team task-specific meetings will be held as necessary to coordinate

Environmental and design activities, review assignments and progress, and identify issues to be resolved.

***Deliverables:***

- PDT meeting notices, agendas, handouts, and minutes
- Agency Coordination/Technical Workshop meeting notices, agendas, handouts, and record of action items
- Progress plans

### **3.1-2 Schedules/Project Controls**

Purpose: To provide administration to ensure executive and managerial requirements with the Project are met. The scheduling requirements for the Project are to be considered and documented for a period of 30 months.

Methodology: Consultant administration activities will include the following elements of the work:

- Supervise, coordinate, and monitor work for conformance with Caltrans' standards and policies.
- Prepare, circulate, and file correspondence and memos as appropriate.
- Maintain Project files using Caltrans Uniform File System.

Fifteen (15) days after notice-to-proceed, Consultant shall prepare the Project Master Schedule (PMS) for the technical studies, ED, and PR. The schedule shall be prepared in Microsoft Project using the Critical Path Method, and, at a minimum, the schedule shall be consistent with the tasks that have been laid out in this scope of work. Inclusions of additional critical path items are to be added as necessary. The PMS will reflect the various levels of reviews for the draft and final environmental documents and technical studies. Caltrans will require 30 to 60-day review periods for major deliverables. The PMS will include:

- Project milestones and delivery of intermediate Project deliverables
- Reviews for the draft and final environmental documents and intermediate Project deliverables by Authority, Caltrans, and FHWA.
- Work items of agencies and other third-parties that may affect or be affected by the Consultant's activities.

The PMS will be prepared to include the data for the total Project and the critical path will be identified. The order sequence and interdependence of significant work items will be reflected on the PMS.

The following list of tasks will be used to develop the Project Master Schedule:

- Task 1 – Project Management/Coordination/Administration
- Task 2 – Engineering Development
- Task 3 – Project Report Preparation

- Task 4 – Environmental Document

Consultant shall submit a copy of the PMS to Authority's Project Manager for review and approval and a copy to Caltrans for information.

***Deliverables:***

- Project Master Schedule

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

Purpose: To provide for tracking the actual progress relative to the PMS and to ensure that all significant completion dates of the Project are being met.

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

Consultant shall submit one copy of a monthly progress report to the Authority's Project Manager consisting of a written narrative and an updated PMS. This report shall be received no later than the tenth (10<sup>th</sup>) calendar day of the month following the month being reported.

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

All schedule tasks in the PMS shall be updated to reflect current percent complete. If the latest completion time for a significant work item does not fall within the time allowed by the original PMS, the sequence of work and/or duration will be revised by Consultant until the resultant schedule indicates that all significant Project completion dates will be met. If during the course of work, Consultant falls behind in overall performance in accordance with the current schedule, a Project management meeting will be called to determine the cause. If the cause is found to be due to Consultant's performance, payment to Consultant may be withheld pending the submittal of an action plan outlining the steps which shall be taken to correct the identified delay(s).

The initial PMS referenced in Task 3.1-2, as agreed to by Authority, will become the Project target. The target schedule will be displayed on the updated PMS.

***Deliverables:***

- Monthly Progress Reports

### 3.1-4 Quality Management Plan

Purpose: The Quality Management Plan (QMP) will establish the Quality Assurance and Quality Control (QA/QC) processes and procedures and how they will be managed to ensure that the tasks are being prepared, developed, checked and reviewed in accordance with the Caltrans and other applicable procedures. The environmental consultant certifies that the environmental document is internally consistent, complies with the SER annotated outline, and meets all Caltrans and FHWA requirements. All certifications on the External Certification form are to be completed including by the resource/technical specialists, technical edit reviewer, and environmental consultant/local.

Methodology: Consultant shall prepare and maintain a QMP throughout the performance of the services under this Agreement. The QMP shall provide comprehensive quality control processes and procedures that outline the independent checking procedures to be performed on report preparation, calculations and drawings, independent reviews and management systems; and quality assurance procedures for internal (including any subconsultants) surveillances and audits, to maintain product quality, schedule, and budget adherence. Consultant shall prepare this QMP to comply with the:

- Caltrans Standard Environmental Reference (SER), Volume 1, Chapters 1, 2 and 38, Federal and State Requirements and NEPA Assignment. Similar processes will be followed for CEQA as well.
- The Caltrans District 12 Quality Control checklists
- Caltrans Environmental Document External Quality Control Certification Sheet
- Environmental Document Review Checklist will be applied as part of the quality control procedures.
- Consultants shall sign off on each checklist by sub-functional responsibility before submittal of the draft and final ED.

All deliverables shall be subject to a quality control review utilizing the Consultant's processes and procedures before they are submitted to Authority, Caltrans, and FHWA for review comments. Consultant shall prepare a response-to-comments matrix indicating how and where the changes to the documents have been made in response to comments from the Authority, Caltrans, and FHWA. The response-to-comments matrix will accompany the submittal documents when the revised documents are resubmitted to Authority and Caltrans. In addition:

- The Caltrans Environmental Document External Quality Control Certification Sheet, and appropriate tools, as deemed necessary, will be utilized in the preparation of the technical studies and ED.
- The Environmental Document Review Checklist for draft and final environmental documents shall accompany the screen check draft, draft, and final ED, respectively.
- Consultant shall identify QC reviews within the Project Master Schedule (PMS).
- The QMP shall include a QA procedure that describes the QA Certification process for each deliverable that is certified by Consultant's Quality Manager or Project Manager.
- Each deliverable shall be certified by Consultant's Quality Manager or Consultant Project Manager as being prepared and checked in accordance with the approved QMP.
- Consultant's Project Manager or Quality Manager shall demonstrate they are qualified to implement the QMP.
- Consultant shall comply with Authority's independent quality surveillance, monitoring, and audits. Such quality surveillance, monitoring, and audits shall be performed by Authority's Quality Manager.

Within thirty (30) days of receiving Notice to Proceed, Consultant's shall submit a complete copy of the QMP to both Authority's Project Manager and Caltrans.

***Deliverables:***

- Quality Management Plan (2 copies and in Adobe Acrobat Reader)

### **3.1-5 Project Management Plan**

CONSULTANT shall prepare a Project Management Plan. Within thirty (30) days of receiving Notice to Proceed, CONSULTANT shall prepare a Project Management Plan for this Project, including a Communication Plan and a Risk Management Plan.

***Deliverables:***

- Project Management Plan (2 copies and in Adobe Acrobat Reader)

### 3.2 ENGINEERING DEVELOPMENT

Activities consist of the development of engineering plans and reports to support the evaluation of the Project Build Alternatives within the PR and ED. Task 2 and Task 3 have been developed assuming that two build alternatives, as identified in the administrative copy of the PSR-PDS, will be carried forward in the PA/ED phase: Alternative 2: Add 1 HOV Lane in each direction, and Alternative 3: Provide TSM/TDM elements, where feasible.

#### 3.2-1 Data Collection/Permit Applications

Purpose: To obtain existing and previously documented information for features of the proposed Project.

Methodology: Consultant shall collect pertinent information including encroachment permits from Authority, Caltrans and local jurisdictions, and perform field reconnaissance when necessary. Consultant shall be responsible for obtaining the necessary encroachment permits for the field reconnaissance and the following available information, but not limited to:

- An administrative copy of the PSR-PDS
- An administrative copy of the Preliminary Environmental Analysis Report (PEAR) used to support the PSR-PDS
- Any preliminary technical studies used to support the PEAR
- Recent traffic counts (Authority, Caltrans, and Local Agencies)
- Aerials of Project area
- Preliminary Project plans/profiles
- Existing roadway geometrics and intersection configuration
- Authority shall provide As-Built Plans obtained during the development of the PSR-PDS (as available)
- Any other information/documentation used to support the administrative copy of the PSR-PDS

#### ***Deliverables:***

- Inventory of existing planning/engineering data
- Inventory of existing environmental conditions
- Caltrans Encroachment Permit Application and Approval
- Study area traffic count database

#### 3.2-2 Aerial Topographic Mapping

Purpose: To obtain aerial topographic mapping of the Project area required to support the preparation of the PR and ED. It is assumed

that field surveys may be necessary to set ground controls.

Methodology: Consultant will obtain the necessary permits to perform aerial topographic mapping. The aerial topographic mapping will cover all areas of the proposed improvements and also provide sufficient data to support preparation of the PR and ED.

Topographic mapping will be provided from aerial photogrammetry. Design-level topography will be compiled at a scale of 1"= 50' with two (2) foot interval contours in accordance with Caltrans Photogrammetric Mapping standards. Mapping will meet the requirements in "ASPRS Accuracy Standards for Large Scale Maps", dated March 31, 1993 and will be provided in Microstation format including a digital terrain model (DTM), and color digital ortho-rectified imagery with 0.5' pixel resolution. Field quality control surveys will be run and analyzed to demonstrate surveying and mapping conformance to Caltrans accuracy standards and specifications. Three review phases will be submitted to the Caltrans Office of Photogrammetry for review and approval including, flight planning, ground control and aerotriangulation, and final compilation and photo index map delivery.

Caltrans shall designate the existing horizontal and vertical control monuments that are to be the basis of Consultant performed surveys. Caltrans shall provide the California Coordinate System values and/or elevation values for these monuments. Consultant shall adjust Consultant performed surveys to the designated control monuments and their values. No other control shall be used by Consultant.

The limits of topographic mapping assumed for this scope of work extend from south of the San Diego County Line to Avenida Pico, to a width of 500 feet from the mainline edge of pavement along each direction of the mainline. Similarly, topographic mapping will extend along the local streets and interchanges where improvements are included as depicted in the administrative copy of the PSR-PDS for the project.

**Deliverables:**

- Aerial Topographic Mapping Base File

### **3.2-3 Geometric Development**

Purpose: To develop layout plans and profiles (where necessary) to be carried forward in the PR and ED.

Methodology: Geometric layout plans shall be developed based on English design standards as defined in Caltrans HDM, latest edition. Lane, shoulder, buffer, and right-of-way widths will be labeled. Vertical profiles shall be developed at critical locations where additional engineering definition is necessary to validate the proposed build alternative(s) and/or adequately define the environmental characteristics analyzed and carried forward in the

Draft ED.

Refinements to the alternatives outlined in the administrative copy of the PSR-PDS and/or the Value Analysis will be evaluated with the intent of improving freeway operation and/or minimizing environmental effects. Additionally, refinements to the purpose and need will be conducted based on baseline traffic modeling conducted as part of Task 3.4-3a and these refinements reflected in the alternatives brought forward for evaluation into the PA/ED.

Consultant shall work with Caltrans, Authority, and affected cities and agencies to obtain geometric approval of the build alternatives. Comments received from the submittal of the geometric plans will be reviewed and incorporated as required for final approval.

Geometrics will be prepared for build alternative 2, where the basis for this alternative will be alternative 3A presented in the administrative copy of the PSR-PDS. Title sheet, typical sections, key map, layout plans, and profiles/superelevation sheets will be developed. Additional, full-size geometric drawing exhibits (scale: 1"=100') will be prepared to aid in the conceptual geometric approval process.

In addition, the layout and profile sheets for the alternatives to be carried forward, as attachments to in the PR and ED, are assumed to be 11"x17" cut sheets. [Note: the scale on the sheets in the attachments shall still read 1" = 100,' however, they will scale down to 1" = 200' on the 11" x 17" sized cut sheets.].

***Deliverables:***

- Geometric Drawing Exhibits (scale: 1"=100') (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Geometric Plans (title sheet, typical sections, key map, layout plans, and profiles/superelevation, scale 1"=100') (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-4 Intersection Control Evaluation (ICE) Analysis and Report**

Based on geometric refinements, Caltrans may require that an Intersection Control Evaluation (ICE) analysis be performed and corresponding report be prepared. The PDT will discuss and determine if an ICE analysis is warranted at interchange(s) within the Project limits. If an ICE analysis is required, the CONSULTANT will prepare an evaluation of the intersection alternatives for the identified interchange(s) along I-5. This evaluation will be in accordance with Caltrans Traffic Operations Policy Directive 13-02 for Intersection Control Evaluation dated August 30, 2013. The scope of work for this effort is limited to Step 1 of the ICE directive.

The CONSULTANT will analyze traffic operations at the identified interchange(s) along I-5 for the following:



1. The existing conventional intersection previously prepared;
2. A roundabout configuration that encompasses ramp intersections; and
3. A diverging diamond interchange (DDI) configuration that encompasses ramp intersections.

The geometric layout for items 2 and 3 noted above will be prepared using general schematics to assess and identify if the proposed alternative is feasible. This scope of work does not go beyond Step 1 of the ICE process and therefore no further geometric schematics are included in this scope.

***Deliverables:***

- Draft and Final ICE Analysis and Report (if necessary) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Attend up to two (2) ICE meetings/workshops (if necessary)

### **3.2-5 Design Standard Decision Documents**

Purpose: To develop the Design Standard Decision Documents documenting the non-standard design features of the build alternatives and to satisfy Caltrans Project Development Procedures Manual requirements.

Methodology: Design Standard Decision Documents will be prepared to document any non-standard design features within the build alternatives. The consideration of non-standard design features will be closely coordinated with Caltrans and FHWA staff to assure acceptability and compliance with state and federal requirements.

The Design Standard Decision Documents will be submitted to Authority, Caltrans, and FHWA for review and comment.

***Deliverables:***

- Draft and Final Design Standard Decision Documents (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-6 Construction Staging/Traffic Handling**

Purpose: To develop a construction staging concept for the Project build alternatives.

Methodology: Consultant shall develop a conceptual construction staging/traffic handling concept to verify constructability and feasibility of traffic handling for the Project build alternatives, primarily focusing on the mainline lanes. The construction staging/traffic handling concept will be developed on 1"=400' scale sheets that display the anticipated staging/traffic handling concept. [Note: the scale on the sheets in the legend of the exhibits shall read 1" = 400,' however, they will scale down to 1" = 800' on the 11" x 17" sized cut sheets.] Consultant shall make sure that the existing mainline capacity will be maintained during construction of the build alternative. Detour concepts that will minimize disruption and

impacts to adjacent residents and businesses will be included in the construction staging and traffic handling concept that focuses on the ramp construction. Consultant shall coordinate with the roadway discipline during the development of the geometrics to ensure that the construction staging/traffic handling concept is constructible and feasible.

***Deliverables:***

- Construction Staging/Traffic Handling Concepts

### **3.2-7 Transportation Management Plan**

Purpose: To develop a Transportation Management Plan (TMP) that minimizes Project-related traffic delays, and provides continuous traffic circulation and access, with adequate space for safe and efficient construction.

Methodology: Consultant shall prepare the TMP for the Project build alternatives in accordance with the Caltrans Transportation Management Plan Guidelines (latest edition). The TMP shall identify methods for minimizing Project-related traffic delays and accidents by implementing effective traditional traffic handling practices.

***Deliverables:***

- Draft Transportation Management Plan (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Transportation Management Plan (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-8 Structures Advanced Planning Studies**

Purpose: To evaluate the impacts of each alternative on each affected structure, including non-standard retaining walls and tie back walls for bridges. This analysis shall be the basis for a preliminary cost estimate and include an analysis of construction feasibility for proposed structure improvements.

Methodology: Prepare the appropriate number of Advance Planning Studies (APS), as necessary, for proposed structural improvements for the build alternative(s) to be carried forth in the Draft PR. Guidelines set forth in Office of Special Funded Projects (OSFP) Information and Procedures Guide for Advance Planning Studies and the Caltrans Amendments to AASHTO's Load and Resistance Factor Design (LRFD) specifications shall be used as a tool for developing the scope of this PA/ED level structural analysis. The Consultant Prepared Advance Planning Studies Checklist (available on the Caltrans website) shall be used as a guideline, to the level appropriate for a PA/ED level document, for completion of the APS. The analysis shall include identification of the following:

- Structure lengths, widths and types
- Span lengths

- Structure depths
- Vertical and horizontal clearances
- Roadway widths
- Bridge removal (if required)

***Deliverables:***

- Draft APS with Preliminary cost estimates (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final APS with Preliminary cost estimates (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.2-9 Structure Preliminary Geotechnical Reports**

Purpose: To identify subsurface conditions for each planned structure and establish preliminary geotechnical recommendations for the structure modifications. The deliverables will include a Technical Memorandum (Structure Preliminary Geotechnical Report) for each structure. Field investigations, sampling of subgrade soils, and testing are not included in this phase of the work.

Methodology: To better understand the potential geotechnical impacts to Project costs, Consultant shall review readily-available records for structures planned, including construction or as-built plans. Site subsurface data will be reviewed for background information and use in analyzing specific geotechnical design issues for improvements. Relevant published geologic, geotechnical, seismicity, and seismic hazard maps or reports, along with readily-available borings logs, will be reviewed. Consultant shall also conduct a geologic reconnaissance and general reconnaissance at the structures improvement locations along the alignment to observe potential geotechnical and geologic issues that could arise during design.

The results of the reconnaissance and review will be presented in Structure Preliminary Geotechnical Reports (SPGR). Each SPGR will include the following:

- Anticipated subsurface soil, bedrock and groundwater conditions;
- Key geologic, seismic and geotechnical issues;
- Regional geologic and seismic setting at the structure locations, including identification of major faults in the vicinity, proximity to the sites (offset distances to major faults), earthquake magnitudes, and Acceleration Response Spectra (ARS curves) developed in accordance with Caltrans current Seismic Design Criteria;
- Preliminary evaluation of secondary seismic-related hazards, including possible ground failure or displacements due to liquefaction and seismically induced settlement;
- Discussion of the existing foundation types for each bridge structure;
- Discussion of alternative foundation types for the widening or replacement of existing bridge structures; and

- Provide information sufficient to reasonably estimate foundation sizes for the Project.

***Deliverables:***

- Draft Structure Preliminary Geotechnical Reports for each planned structure (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Structure Preliminary Geotechnical Reports for each planned structure (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.2-10 Right of Way (R/W) and Utility Identification**

***Right of Way (R/W)***

Purpose: To identify R/W impacts associated with the two build alternatives. Existing and proposed R/W lines will be identified on the engineering plans.

Methodology: Existing right of way lines and centerlines will be plotted from record information to depict the land net and centerline alignment on the plans.

Based on the preliminary geometric plans, right-of-way acquisition delineation shall be prepared for each alternative for review and approval by Authority, Caltrans and the city. Potential impacts associated with proposed mainline shall be delineated via right-of-way lines on appropriate base mapping.

Each parcel potentially affected shall be identified by ownership/assessor's parcel number information and reviewed to assess the degree of impact and the likely Project impact (full take, partial take, severance, relocation assistance, etc.).

Individual parcel maps, preliminary title reports, appraisals, right-of-way acquisition negotiations, property surveys and other acquisition activities are not included as part of this Scope of Work.

A R/W Data Sheet will be prepared by qualified R/W staff for each alternative to document costs related to right of way needs in accordance with, but not limited to, the Caltrans Right of Way Manual, Chapter 4, "Estimating" and Chapter 17 "Local Programs".

A preliminary R/W cost estimate will be prepared for each build alternative.

***Utilities***

Purpose: To identify proposed utility impacts within the Project limits associated with the build alternatives. Existing utilities will be identified on the engineering plans. To the extent possible, Consultant will also identify potential replacement right of way for utility relocations.

Methodology: Consultant shall utilize previous studies (e.g., preliminary

utility investigation) to build on the analysis for utility impacts. Contacts will be made with each utility company affected and a preliminary determination of relocation requirements, prior rights determination and cost estimates will be made.

In accordance with the Project Development Procedures Manual and Caltrans Right of Way Manual, Chapter 13 "Utility Relocations", Consultant shall utilize the preliminary utility investigation to establish a detailed scope, schedule, and estimated cost of utility relocation and/or impacts for the build alternatives. This work will also identify high-priority utilities within the Project limits. Consultant shall identify any potentially affected utility impacts which may be subject to the requirements of the California Public Utility Commission General Order 131-D. Utility test holing/potholing is not included as part of this scope of work. A preliminary cost estimate and Utility Management Matrix (formerly referred to as a Utility Conflict Matrix) will be prepared for all utilities to be included in the Right of Way Data Sheet for each build alternative.

***Deliverables:***

- Right-of-Way Lines Delineated on Geometric Plans
- Ownership information for impacted parcels
- Right-of-Way Data Sheets for each build alternative
- Preliminary impacted utilities delineated on Layout Plans
- Preliminary Cost Estimate of utility relocations/impacts associated with the build alternatives
- Utility Management Matrix

### **3.2-11 Conceptual Drainage Study**

Purpose: To identify drainage impacts including the relocation or realignment of adjacent channels and storm drains and determine the drainage improvements for on-site and off-site drainage facilities. This will be identified in coordination with Water Quality Best Management Practices and is required for the various alternatives.

Methodology: A field reconnaissance of the Project will be performed to accommodate the build alternatives. Impacts on and replacement of these facilities shall be analyzed and included in the Project cost estimate. Freeway drainage will be reviewed to assess the adequacy of the existing systems. Freeway, County, and City drainage systems (including pump stations) will be reviewed and the impacts of the proposed alternatives on these facilities will be studied. Necessary replacements and/or improvements including incorporation of Water Quality Best Management practices will be reflected in the Project cost estimates.

It is assumed that the two build alternatives and a no build alternative will be analyzed.

***Deliverables:***

- Identification of major drainage improvements on Layout Plans or, if

required, Drainage Plans

- Inclusion of drainage improvements in cost estimate
- Conceptual Drainage Study Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-12 Storm Water Data Report**

Purpose: To develop a Storm Water Data Report (SWDR) to identify the selection and design of Best Management Practices (BMPs) for the build alternatives per the latest version of the Caltrans' Storm Water Quality Handbooks: Project Planning and Design Guide (PPDG) in compliance with the Caltrans statewide NPDES permit.

Methodology: The SWDR will summarize the storm water quality issues of a Project and each alternative. The SWDR will consist of a cover sheet, storm water data information, checklists, and attachments. The SWDR will summarize how the Project will address temporary, permanent, and treatment BMPs for the Project and each alternative. The SWDR will be approved by obtaining the signatures of the Project Engineer who prepared the SWDR and Caltrans' Project Manager, District Storm Water Coordinator, Maintenance Representative, and District Landscape Architect.

***Deliverables:***

- Draft Storm Water Data Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Storm Water Data Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-13 Preliminary Geotechnical Design Report**

Purpose: To identify and address potential impacts of site topography, geology, soils, and seismic activity on the Project.

Methodology: The Preliminary Geotechnical Design Report (PGDR) study will consist of reviewing readily-available geotechnical and geologic information and subsurface soil conditions along the alignment in order to provide preliminary geotechnical recommendations for Project feasibility and cost estimating. Consultant shall also conduct a geologic reconnaissance of the alignment to observe potential geotechnical and geologic issues that could arise during design. The PGDR will be prepared in accordance with Caltrans guidelines for Geotechnical Design Reports. One PGDR will be prepared to address the build alternatives and will include the following:

- General soil and groundwater conditions anticipated along the alignment;
- Discussion of the expected impact of the subsurface conditions on the proposed improvements;
- Regional and local geologic setting, topography, significant landforms, soil types, depth to bedrock, geologic hazards, soil and

- rock types, and geologic structure;
- Discussion of planned earthwork construction, including suitability of the existing on-site soil material for reuse as fill, anticipated excavation conditions for below-grade structures and foundations, and preliminary recommendations for support of the roadway and walls;
- Discussion and preliminary recommendations for proposed mechanically stabilized embankment (MSE) and standard Caltrans retaining walls; and
- Recommendations for subsurface investigations needed for the design phase.

***Deliverables:***

- Draft Preliminary Geotechnical Design Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Preliminary Geotechnical Design Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-14 Life Cycle Cost Analysis**

Purpose: To evaluate the overall-long-term economic efficiency between competing pavement options.

Methodology: Develop Life-Cycle Cost Analysis for Pavement report in conformance with Caltrans requirements. In accordance with the Life-Cycle Cost Analysis Procedures Manual, latest edition, the Consultant will prepare a Life-Cycle Cost Analysis (LCCA) for review and approval by Caltrans.

The LCCA will analyze various pavement alternatives for the build alternatives. The LCCA compares initial cost, future cost, and costs associated with user delay during construction activities in an effort to provide the most cost effective Project. The results of the approved LCCA will be incorporated into the development of the Preliminary Materials Report.

***Deliverables:***

- Draft Life Cycle Cost Analysis Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Life Cycle Cost Analysis Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-15 Preliminary Materials Report**

Purpose: To identify Preliminary Roadway Structural Sections.

Methodology: Consultant shall review readily-available pavement design reports, materials reports, as-built plans, and construction records to establish the history of the existing pavement and subgrade soil

conditions. An appropriate Traffic Index (TI) will be provided for preliminary pavement design.

Consultant shall study the compatibility of the existing and new pavement sections in widening areas and will consider drainage issues. New pavement sections will be evaluated and recommended based on the findings of the compatibility study and the LCCA with Caltrans concurrence. The results of the pavement study will be summarized in a Preliminary Materials Report. The report will summarize the results of our review, including soil and groundwater conditions and drainage issues and will present the appropriate traffic index and minimum pavement sections in accordance with Caltrans HDM and Standard Specifications requirements. The roadway structural section will be based on review of existing data.

Pavement design will be conducted utilizing procedures described in HDM Chapter 600. The materials report will generally follow the requirements of Caltrans Method of Test, CT130.

***Deliverables:***

- Draft Preliminary Materials Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Preliminary Materials Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-16 Noise Abatement Decision Report**

Purpose: To present the preliminary noise abatement decision based on acoustical and non-acoustical feasibility factors and the relationship between noise abatement allowances and the engineer's cost estimate.

Methodology: The consultant shall prepare a Noise Abatement Decision Report (NADR), as defined in the latest Caltrans Noise Analysis Protocol. The report will summarize the preliminary reasonableness determination from the Noise Study Report, present the engineer's cost estimate for the evaluated abatement, evaluation of non-acoustical factors related to feasibility, preliminary noise abatement decision, and secondary effects of abatement (impacts on cultural resources, scenic views, hazardous materials, biology, etc.). The NADR will be prepared in accordance with Caltrans guidelines, the Noise Study Work Plan, and with the best information available.

***Deliverables:***

- Draft Noise Abatement Decision Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Noise Abatement Decision Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Noise Abatement Decision Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)



### 3.2-17 Cost Estimates

Purpose: To prepare cost estimates for the build alternatives to be analyzed in the Draft and Final PR.

Methodology: Based on the preliminary engineering plans and the structure cost estimates described above, PR-level cost estimates will be prepared for the build alternatives.

***Deliverables:***

- Draft and Final Cost Estimates (up to 6 copies for each alternative, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.2-18 Value Analysis

Purpose: An independent team of experts to evaluate the build alternatives being developed to ascertain their effectiveness with regards to costs, time of delivery, and other benefits.

Methodology: As per the Caltrans PDPM, the Value Analysis (VA) process utilizes a function-oriented, structured, team approach to solving problems and reducing life-cycle costs by applying techniques that adhere to a formal VA job plan. Consultant shall provide a VA team leader/facilitator, a certified VA specialist, to consult the VA study and the facility including support materials for conducting the workshop. The VA study will be completed within the first six months after NTP.

The VA Study will include the following elements:

- Conduct a VA Study to comply with the National Highway System (NHS) VE mandate and follow the Caltrans VA methodology as outlined in the Chapter 19, "Value Analysis" of the Project Development Procedures Manual (PDPM) and detailed in the Caltrans VA Team Guide and Report Guide.
- Provide onsite team leadership and final report documentation for a five (5) days Project study.
- Provide a qualified, independent Certified Value Specialist (CVS), certified by SAVE International and a registered Professional Engineer (PE) with civil/transportation engineering background.
- Provide VA study documentation in accordance with the Caltrans VA Report Guide.
- Coordinate 6-8 additional team members with specific expertise to serve as members of a VA team. A maximum of three team members will be provided by the Consultant. This selection of team members will be coordinated with Caltrans and Authority. The potential team members may include the following disciplines:
  - Highway Design

- Traffic Design
- Traffic Analysis
- Hydraulic Design
- Structural Design
- Construction Staging
- Construction
- Environmental Planning
- Other team members to be provided by stakeholder agencies
- Provide formal presentation summarizing the VA recommendations at the conclusion of the workshop.

***Deliverables:***

- Draft Value Analysis Study Report (up to 5 copies for each alternative, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Value Analysis Study Report (up to 5 copies for each alternative, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.2-19 Asbestos Survey Report**

Purpose: To determine the presence and quantity of asbestos in identified structures and develop Asbestos Survey Report in conformance with Caltrans requirements.

Methodology: The Code of Federal Regulations (CFR), 40 CFR 61, Subpart M, National Emissions Standards for Hazardous Air Pollutants (NESHAP) and Federal Occupational Safety and Health Administration (FED OSHA) classify asbestos-containing material (ACM) as any material or product that contains greater than 1% asbestos. Nonfriable ACM is classified by NESHAP as either Category I or Category II material defined as follows:

- Category I – asbestos-containing packings, gaskets, resilient floor coverings, and asphalt roofing products.
- Category II – all remaining types of nonfriable asbestos-containing material not included in Category I that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Regulated asbestos-containing material (RACM), a hazardous waste when friable, is classified as any manufactured material that contains greater than 1% asbestos by dry weight and is:

- Friable (can be crumbled, pulverized, or reduced to powder by hand pressure); or
- Category I material that has become friable; or
- Category I material that has been subjected to sanding grinding, cutting

or abrading; or

- Category II nonfriable material that has a high probability of becoming crumbled, pulverized, or reduced to a powder during demolition or renovation activities.

Activities that disturb materials containing any amount of asbestos are subject to certain requirements of the Cal/OSHA asbestos standard contained in Title 8, CCR Section 1529. Typically, removal or disturbance of more than 100 square feet of material containing more than 0.1% asbestos must be performed by a registered asbestos abatement contractor, but associated waste labeling is not required if the material contains 1% or less asbestos. When the asbestos content of a material exceeds 1%, virtually all requirements of the standard become effective. Materials containing greater than 1% asbestos are also subject to NESHAP regulations (40 CFR Part 61, Subpart M). RACM (friable ACM and nonfriable ACM that will become friable during demolition operations) must be removed from structures prior to demolition. Certain nonfriable ACM and materials containing 1% or less asbestos may remain in structures during demolition; however, there are waste handling/disposal issues and Cal/OSHA work requirements that must be addressed.

With respect to potential worker exposure, notification, and registration requirements, Cal/OSHA defines asbestos-containing construction material (ACCM) as construction material that contains greater than 0.1% asbestos (Title 8, CCR 341.6).

Testing – Suspect ACM shall be grouped into homogeneous areas with representative samples randomly collected from each. Each potential ACM shall be evaluated for friability.

Procedures for inspection and sampling:

- Collect bulk asbestos samples after first wetting friable material with a light mist of water. Cut samples from the substrate and transfer to a labeled container. Note that when multiple samples are collected, the sampling locations are distributed throughout the homogeneous area (spaces where the material is observed).
- Relinquish bulk asbestos samples under chain-of-custody protocol to a California-licensed and Caltrans-approved subcontractor, for asbestos analysis in accordance with United States Environmental Protection Agency (EPA) Test Method 600/R-93/116 using polarized light microscopy (PLM). The laboratory shall be accredited by the National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program (NISTNVLAP) for bulk asbestos fiber analysis.

Sample group identification numbers, material descriptions, approximate quantities, friability assessments, and photo references shall be

summarized. Approximate sample locations shall be presented. Materials represented by the samples collected shall be photographed. Asbestos Survey Workplan shall be submitted to Caltrans for approval prior to initiating field inspection and sample.

***Deliverables:***

- Asbestos Survey Workplan (5 copies)
- Draft Asbestos Survey Report (up to 6 copies for each alternative, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Asbestos Survey Report (up to 6 copies for each alternative, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.3 PROJECT REPORT PREPARATION

This task will involve the preparation of the Draft and Final PR and any needed engineering exhibits for the ED under concurrent preparation.

#### 3.3-1 Administrative Draft Project Report

Purpose: To develop the Administrative Draft PR documenting the engineering evaluation of the proposed alternatives and to satisfy Caltrans Project Development Procedures.

Methodology: An Administrative Draft PR will be prepared in accordance with the Caltrans PDPM. The Administrative Draft PR will contain a discussion of the existing conditions, the need for improvements, and the alternatives considered.

The Administrative Draft PR will be submitted for Authority, Caltrans, and FHWA for review and comment.

***Deliverables:***

- Administrative Draft Project Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

#### 3.3-2 Draft Project Report

Purpose: To incorporate Authority, Caltrans, and FHWA review comments into Draft PR.

Methodology: Upon receipt of Authority, Caltrans, and FHWA review comments on the Administrative Draft PR and after adequate time to develop response actions, a meeting will be held with the agencies and Consultants to discuss the comments and the appropriate action to be taken. This step reduces the opportunity for misunderstanding and provides clear direction toward the development of an approved product. The resubmittal of the Draft PR to Caltrans and Authority following the incorporation of these comments is expected to be for concurrence only. Once concurrence has been reached on all outstanding issues, the draft PR will be signed by a Registered Civil Engineer and submitted to Caltrans for signature and approval.

***Deliverables:***

- Draft Project Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

#### 3.3-3 Administrative Final Project Report

Purpose: To document recommendation of the Preferred Alternative for the Project.

Methodology: After circulation of the Draft ED and concurrent with the

preparation of the Final ED, Consultant shall prepare a Final PR which includes the recommendation of the Preferred Alternative. The report will review the development of the Preferred Alternative including public and agency comments obtained during the public meeting and environmental review period.

***Deliverables:***

- Administrative Final Project Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.3-4 Final Project Report**

Purpose: To incorporate Authority, Caltrans, and FHWA review comments into the Final PR.

Methodology: Upon receipt of Authority, Caltrans, and FHWA review comments of the Administrative Final PR and after adequate time to develop response actions, a meeting will be held with the agencies and Consultants to discuss the comments and the appropriate action to take. The resubmittal of the Draft PR to Caltrans and Authority following the incorporation of these comments is expected to be for concurrence only. Once concurrence has been reached on all outstanding issues, the Final PR will be signed by a Registered Civil Engineer and submitted to Caltrans for signature and approval.

***Deliverables:***

- Final Project Report (up to 6 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.4 ENVIRONMENTAL DOCUMENT

The activities will consist of the development of environmental studies to support the evaluation of the Project Build Alternatives. The anticipated CEQA/NEPA document will be a draft and final EIR/EA, leading to a NOD/FONSI (anticipated). If, throughout the course of the environmental studies, it is found that the project is significantly affecting the quality of the human environment, then a higher-level document would need to be prepared for NEPA, such as an EIS, which is not part of this scope. Consultant shall coordinate with the Authority Project Manager and Caltrans at various stages in the environmental preparation process to determine if there is a need to elevate the NEPA document. This assessment shall be done in the following phases: scoping, completion of technical studies, and release of draft environmental document.

#### 3.4-1 Base Maps for Environmental Studies

Purpose: To prepare base maps for use in the environmental studies and to establish environmental baseline data in a manner compatible with engineering and topographic mapping.

Methodology: Upon receipt of design files, Consultant shall develop Project Vicinity and Project Location Maps, as well as a set of maps that clearly shows the location and features of each alternative under consideration. Additionally, base mapping of the environmental components/data to be included in the GIS database will be developed. These components/data include Section 4(f) resources, historic properties, 100-year floodplain, hazardous materials sites, sensitive visual features, land uses and right-of-way, and noise receptors. Data from publicly available sources will be used as a starting point and adjusted, where appropriate, based on field surveys and observations conducted by the Consultant.

***Deliverables:***

- GIS mapping of environmental considerations/surveys consistent with Caltrans Projection/coordinate system.

#### 3.4-2 Issuance of Environmental Notices and Public Information Meeting Notice

Purpose: Consultant will initiate the environmental process by preparing a Notice of Preparation (NOP), coordinate with the outreach consultant, the Authority, Caltrans, and other PDT members to assist in preparation of a public information meeting and the appropriate public notice.

Methodology: The NOP is the first step in the EIR process. The Consultant must prepare the NOP to obtain early comments on the proposed project, alternatives, and potential environmental impacts.

The NOP must be sent out to responsible agencies, to every federal

agency involved in approving or funding the project and to each trustee agency responsible for natural resources affected by the project.

A meaningful and constructive relationship with the local community is always advisable and therefore comments will be requested from stakeholders and interested parties. The Consultant will prepare the public notice for the public information meeting and will work with the Authority public outreach group and/or their consultant to prepare for and attend the public information meeting. The consultant shall review advertisements for posting in a widely circulated newspapers in Orange and San Diego Counties (e.g., The Orange County Register, Los Angeles Times, San Diego Union-Tribute) and in a local Spanish newspaper (e.g. La Opinión). Consultant shall coordinate with Authority and Caltrans to ensure that the notices are properly posted (e.g., newspaper, mass mailers). Consultant shall designate an individual (with concurrence by Authority's Project Manager) as the main point of contact with interested parties during the public information meeting process.

***Deliverables:***

- Public Notices for the Public Information Meeting (preparation support)
- Notice of Preparation
- Attendance at public information meeting
- Agency letters/notifications

### **3.4-3 Conduct Environmental Evaluation**

Environmental analyses shall be prepared to meet CEQA and NEPA requirements, and in accordance with the most current Caltrans SER, which has been updated to reflect the changes made by NEPA Assignment and FHWA guidelines. It will include concise application and enforcement of various regulations governing topic areas, including Federal, State and local laws, acts, policies, and ordinances as well as direct, indirect, and cumulative impacts. As appropriate, the following studies, reports or evaluations shall be prepared in accordance with Caltrans SER. Consultant shall coordinate with Caltrans in determining the specific content and format requirements for the studies.

Technical studies and other information to be prepared include, but not limited to:

#### **3.4-3a Preliminary/Baseline Traffic Analysis**

Purpose: To establish the existing and future traffic forecasts to be used in the analysis.

Methodology: With an anticipated Project opening date of 2030 and the requirement to analyze conditions at least 20 years after opening, a forecast year of 2050 will be used.



In addition to the Task 3.2-1 deliverable (study area traffic count database), ten 24-hour average daily traffic counts at select arterial locations in the corridor and forty AM/PM peak hour intersection turning movement counts (to be determined at the Project kick-off meeting with the PDT) will be collected to represent the study area for the traffic analysis. There are 23 study area intersections identified in the administrative copy of the PSR-PDS.

***Deliverables:***

- Traffic forecast volumes for 2050 with documentation of assumptions
- Existing traffic data with analysis

**3.4-3b Traffic Impact/Circulation Study**

Purpose: To analyze the traffic/circulation impacts of the Project utilizing the latest Orange County Transportation Analysis Model (OCTAM), HCM, Intersection Capacity Utilization methodologies, and vehicle miles traveled (VMT) analysis based on local and state requirements. This scope of work assumes that HCM methodologies will be applied to all study area intersections while the Intersection Capacity Utilization (ICU) methodology will only be applied to City of San Clemente study area intersections (i.e., the Caltrans study area intersections will be excluded for ICU methodology). The ICU methodology is consistent with traffic analysis provided for local jurisdictions, as well as with the Authority Congestion Management Program (CMP). In addition, SB 743 Analysis should be performed as this project is considered capacity increasing. The VMT analysis should be consistent with CEQA guidelines.

Methodology: The Traffic Impact/Circulation Study shall be prepared in accordance with Caltrans Traffic Manual, the HOV Guidelines, the HCM, the Ramp Meter Design Guidelines, and CEQA guidelines, including Caltrans SB 743 implementation guidance (Transportation Analysis Framework [TAF] and Transportation Analysis under CEQA [TAC]) posted on the Caltrans website. Available data, reports, and relevant studies including Corridor System Management Plan shall be reviewed in the preparation of the Traffic Impact/Circulation Study. Existing and future deficiencies in the arterial system or traffic control devices shall be identified. VMT analysis consistent with CEQA guidelines and Caltrans SB 743 implementation guidance (TAF/TAC) shall be incorporated into the Traffic Impact/Circulation Study. Dependent on state requirements, it is possible that the VMT analysis may require the use of OCTAM and elasticity-based tool. OCTAM and the elasticity tool may produce different VMT output which will need to be reconciled. OCTA staff will perform required OCTAM model runs. In addition, Project related impacts and

mitigation measures shall be identified. This work shall take into consideration the previous analyses that have been prepared to support the administrative PSR-PDS.

The existing, opening year (with and without improvements) and future design year (with and without improvements) traffic data for the freeway shall be presented in the following formats: Annual Average Daily Traffic (AADT), peak month Average Daily Traffic (ADT), peak hour and peak hour directional split — including percentage of trucks, if appropriate. Also, discussion of the growth assumptions that provided the basis for the forecast should be included.

Traffic analyses of the continuous HOV lane access design will be performed by the CONSULTANT. If the future No Build Alternative is determined by OCTA to incorporate continuous HOV lane access, the CONSULTANT will also perform traffic analyses of the continuous HOV lane access of the No Build Alternative. These analyses will include HOV versus general purpose lane traffic forecasts (to be provided by OCTA) and weaving analysis. These analyses will be incorporated into the Traffic Impact/Circulation Study.

In support of the Air Quality Report, the following traffic data is needed for each scenario (existing, opening year build/no build, and forecast design year build/no build):

- ADT roadway segment traffic volumes;
- Percent trucks;
- Intersection Levels of Service (LOS);
- Vehicle Miles Traveled (VMT): VMT numbers will be reconciled between OCTAM output and the elasticity / induced travel demand calculator. VMT shall be arranged by roadway type (e.g., freeway general purpose lanes, ramps, HOV lanes, arterial roads, local streets, etc.). VMT shall be broken down in 5 mph speed bins for both peak and off-peak periods.
- Vehicle Hours Traveled (VHT): VHT should be arranged by roadway type (e.g., freeway general purpose lanes, HOV lanes, ramps, arterial roads, local streets, etc.).

The most recent three-year accident history by type, as well as the comparable breakdown of the state-wide average accident rates for similar facilities shall be included (e.g., TASAS Table B, C, and C[wet,dark] data).

The exact methodology for the Traffic Impact / Circulation Study is subject to further refinement. Therefore, coordination with the Caltrans Traffic Operations unit will be critical to the timely completion of this study.

***Deliverables:***

- Draft Traffic Impact/Circulation Study (5 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Traffic Impact/Circulation Study (5 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3c Water Quality Assessment Report (WQAR)**

Purpose: To evaluate the potential impacts on water quality that may be caused by the direct introduction of pollutants into surface bodies of water, the alteration of surface drainage patterns, and changes to area groundwater levels due to an increase of impermeable surfaces.

Methodology: A water quality Water Quality Assessment Report (WQAR) shall be prepared in accordance with the Caltrans SER and CEQA guidelines. The Project may be subject to the state, federal, and local water quality requirements under the National Pollutant Discharge Elimination System (NPDES) program. Local surface and groundwater water quality requirements are regulated in this region by the Santa Ana Regional Water Quality Control Board and its Basin Plan water quality standards. A Water Quality Assessment Report (WQAR) will be developed for use in the environmental document. The WQAR will qualitatively assess the Project's impacts on receiving water quality during construction and post-construction conditions based on the region's applicable stormwater regulations and consistent with the NPDES permit requirements in Order No. 2012-0011-DWQ. The WQAR will assess the baseline water quality conditions from available information and beneficial uses of receiving waters downstream of the Project. The WQAR will also identify the potential water quality issues from Project construction, post-construction and operation activities, and identify applicable mitigation measures (Best Management Practices and hydromodification measures) to address the short-term and long-term impacts.

The WQAR will discuss the following:

- The approach for the water quality assessment and the evaluation of the potential impacts related to implementing the Project.
- Regional Hydrology, Local Hydrology, Floodplains, Groundwater Resources, Topography, Climate, and Soils/Erosion Potential.
- The applicable requirements of the Federal Clean Water Act (CWA), State Water Quality Regulations (Statewide General Construction Permit), State Requirements under Section 402

of the Federal CWA, Beneficial Uses, Groundwater and Surface Water Quality Objectives, and Impaired Waters. The WQAR will discuss the risk analysis that will be conducted as part of the Storm Water Data Report consistent with the California Statewide General Construction Permit (Order 2009-0009- DWQ). The appropriate Risk Level based on planned construction schedule duration and the condition of the receiving waters will be determined.

- Potential stormwater quality mitigation measures (Best Management Practices) that may be needed per the water quality requirements applicable to the Project to address urban runoff treatment, TMDLs/watershed mandates, and hydromodification management will be obtained from the Storm Water Data Report and incorporated in the WQAR.
- Receiving waters will be confirmed as to status of being impaired water which may be subject to addressing measures to comply with 303(d) listed waterbodies and/or Total Maximum Daily Loads (TMDL).

***Deliverables:***

- Draft Water Quality Assessment Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Water Quality Assessment Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Water Quality Assessment Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3d Floodplain Evaluation Report**

Purpose: To prepare a report that discusses the requirements of Executive Order 11988 and the responsibilities of FHWA, Caltrans and local agencies when Projects encroach on a 100-year base floodplain.

Methodology: Consultant shall prepare the Floodplain Evaluation Report in accordance with Caltrans Environmental Handbook, Volume 1, Chapter 17 to support the ED. If it is determined that there are minimal to no impacts to floodplain, a Summary Flood plain Encroachment Report shall be prepared. If there is substantial encroachment, completion of a Floodplain Evaluation Report shall be prepared. Coordination with the Caltrans Hydraulics unit will be critical to the timely completion of this study.

Consistent with Caltrans District 12 guidance for the Location Hydraulic Study (LHS), the Floodplain Evaluation Report will be integrated with the Location Hydraulic Study.

Floodplains will be evaluated in a qualitative manner; addressing the

Project Purpose and Need, the Affected Environment, including Natural and Beneficial Uses, and the Project Risks and Impacts for the alternatives as required by the floodplain ordinance (23 CFR 650), Executive Order 11988, and the National Flood Insurance Program (NFIP).

Where alternatives will cause impacts to the floodplain, regulatory floodway, or where a longitudinal encroachment will occur, the project design elements alternatives will be evaluated to reduce or eliminate the impacts or encroachment. The two build alternatives will involve evaluation of grading, retaining walls, channel improvements, and improved culvert entrances. Adequate information will be developed to demonstrate the impacts are within allowable tolerances, or identify a feasible means to bring the impact within tolerances and quantify the probable costs associated with the mitigation measure.

***Deliverables:***

- Draft Floodplain Evaluation Report (See Location Hydraulics Study) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Floodplain Evaluation Report (See Location Hydraulics Study) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3e Location Hydraulics Study**

Purpose: To research the available FEMA floodplain data, Orange County Flood Control, City of San Clemente, and US Army Corps of Engineers data to identify any potential encroachments into existing mapped floodplains.

Methodology:

Research and Data Collection - This task includes requesting FEMA back-up technical data for the mapped floodplains.

The task also includes field review of all culvert crossings. The flooding sources and the resulting floodplains shall be analyzed as part of the Location Hydraulics Study (LHS). The LHS will be prepared according to Caltrans District 12 guidance for preparing an LHS.

Base Map Preparation - Based on the results of Research and Data Collection, overlay the FEMA floodplain and any other available floodplain data on the Project base maps. Determine locations of longitudinal encroachment on the mapped floodplains.

Alternatives Analysis - Prepare alternatives analysis for build alternatives which will be evaluated based on:

- 1) the risk associated with implementation of the action

- 2) the impacts on natural and beneficial floodplain values
- 3) the support of probable incompatible floodplain development
- 4) the measures to minimize floodplain impacts associated with the action
- 5) the measures to restore and preserve the natural and beneficial floodplain values impacted by the action
- 6) the practicability of alternative to any significant encroachment
- 7) the practicability of alternatives to any longitudinal encroachment

Location Hydraulics Study - Prepare a LHS summarizing the analysis. The LHS will determine if there is a significant encroachment or impact to the base flooding. Also, Caltrans requires that there be no increases in Base Flood Elevations (BFEs) in areas with floodways.

Hydraulic Modeling Proposed Project - In order to better identify potential impacts to the floodplain, preliminary hydraulic models of the effected watercourses will be analyzed immediately upstream and downstream of the proposed encroachments.

***Deliverables:***

- Location Hydraulic Study (Included as part of the Floodplain Evaluation Report) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.4-3f Noise Study Report**

Purpose: To prepare a traffic Noise Study Report (NSR) based on the Caltrans Traffic Noise Analysis Protocol and Technical Noise Supplement (latest editions).

Methodology: The consultant will prepare a Noise Study Work Plan for Caltrans review prior to commencement of the NSR. The NSR shall be prepared in accordance with the latest Caltrans Traffic Noise Analysis Protocol (Protocol), and the latest Technical Noise Supplement (TeNS), as well as specific requirements of Caltrans District 12 and FHWA requirements to support the ED. The NSR format should follow Caltrans Annotated Noise Study Report (NSR) template. Coordination with the Caltrans Environmental Engineering unit will be critical to the timely completion of this study.

***Deliverables:***

- Noise Study Work Plan
- Draft Noise Study Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Noise Study Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Noise Study Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.4-3g Noise Abatement Survey Report

Purpose: To present viewpoints either to approve or oppose the proposed noise abatement.

Methodology: After the NADR is completed, the consultant shall prepare registered letters and/or voting ballots to send to all property owners and non-owner occupants at benefited receptors to survey their viewpoints on the proposed noise abatements. Consultants shall tabulate the results and present in a Noise Abatement Survey Report. The report should be in accordance with Caltrans guidelines and Protocol, and with the best information available.

***Deliverables:***

- Draft Noise Abatement Survey Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Noise Abatement Survey Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Noise Abatement Survey Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.4-3h Community Impact Assessment

Purpose: To prepare a Community Impacts Assessment in accordance to Caltrans SER, Volume 4, Caltrans Community Impact Assessment guidance (latest edition), and FHWA's guidance on Community Impact Assessment, to identify and analyze community impacts associated with the project. This will be prepared to support the Draft and Final ED.

Methodology: Consultant will prepare a mid-level Community Impact Assessment (CIA) to identify the socioeconomic effects of the project on the local community. Potential impacts to consider for the CIA report:

- Land use, including consistency with the Coastal Zone Management Act of 1972 and California Coastal Act of 1976
- Growth
- Community character and cohesion
  - Population and housing
  - Economic conditions
  - Community facilities and services, including utility/emergency services
  - Relocations and real property acquisition
  - Environmental justice
- Traffic and transportation/pedestrian and bicycle facilities

- A Ramp Closure Study, should long-term ramp closures be needed
- Cumulative impacts

Avoidance, minimization, and/or mitigation measures will be recommended to reduce the community impacts from the project.

***Deliverables:***

- Draft Community Impact Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Community Impact Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.4-3i Visual Impact Assessment**

Purpose: To prepare a Visual Impact Assessment in accordance to Caltrans Environmental Handbook, Volume 1, Chapter 27, Caltrans Visual Impact Assessment guidance (latest edition), Caltrans Visual Impact Guide Checklist, and FHWA's guidance on *Visual Impact Assessment for Highway Projects* (latest edition), to identify and analyze visual resource impacts associated with the project. This will be prepared to support the Draft and Final ED.

Methodology: Consultant will prepare a Moderate Visual Impact Assessment (VIA) in accordance with the annotated outline recommended by the Caltrans Landscape Architecture Program. Consultant will conduct a field reconnaissance, at which time, on-site and adjacent visual resources will be documented. Consultant will complete a Visual Contrast Rating System analysis. Avoidance, minimization, and/or mitigation measures will be recommended to reduce the visual impacts from the project.

Photosimulations. Consultant will select the four preliminary Key Views for the proposed project, in consultation with the Authority and Caltrans staff. Key Views represent areas within sensitive viewer locations within and surrounding the project site, which also have views to the project features.

Computer models will be prepared to simulate the project for a total of four (4) Key Views. The rendered subject will be superimposed into a photograph and foreground objects will be masked.

Consultant will analyze the existing and proposed conditions of each photosimulation pursuant to FHWA guidelines to provide an analysis of the visual contrast/change. This analysis will be included consistent with the Methodology section discussed above.

Viewshed Mapping. A viewshed analysis will be performed to



determine potential areas that the proposed improvements would be visible within a one-mile radius.

***Deliverables:***

- Draft Visual Impact Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Visual Impact Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3j Air Quality Report**

Purpose: To conduct an air quality analysis to satisfy CEQA, state, and federal environmental requirements and conformity provisions of the Clean Air Act Amendments (CAAA) to support the Draft and Final Environmental Document.

Methodology: The Air Quality Report shall be prepared in accordance with the latest following protocols/guidelines: Caltrans Standard Environmental Reference (SER) Air Quality Annotated Outline and Air Quality Conformity Annotated Outline, SB743, Caltrans *Transportation Project-Level Carbon Monoxide Protocol*, EPA *Transportation Conformity Guidance for Quantitative Hot-spot Analyses in PM<sub>2.5</sub> and PM<sub>10</sub> Nonattainment and Maintenance Areas*, *Transportation Project-Level Carbon Monoxide Protocol (CO Protocol)*, FHWA *Interim Guidance on Air Toxic Analysis in NEPA Documents*, and Caltrans' policy on greenhouse gas emissions.

Analysis:

The Air Quality Report will document whether the proposed Project is included in the latest Regional Transportation Plan (RTP) and Federal Transportation Improvement Program (FTIP) for preliminary engineering/environmental documentation. The Air Quality Report will make a final determination whether the build alternatives will conform to applicable state and federal air quality plans. Mitigation measures will be defined for any construction and/or operational impacts that are identified.

Based on recent determinations by the Transportation Conformity Working Group (TCWG) for projects of a similar size and scale, this scope assumes that the TCWG will consider the project to be a Project of Air Quality Concern (POAQC). Interagency consultation will be used to determine whether the project is POAQC or not; and to develop and choose methods, associated methods and assumption to be used in the hot-spot analysis. Therefore, the scope assumes the preparation of a quantitative PM<sub>10</sub> and PM<sub>2.5</sub> Hot-Spot assessment. This assumes coordination with Caltrans District and Headquarters staff, as well as member agencies of the TCWG. Traffic data will be analyzed using DataBridge 2017 (v 1.02) model and the result will be used for

calculating the Emission Factors. Emissions factors will be gathered from the CT-EMFAC2017 (v1.02) model and the quantitative hotspot analysis will be conducted with the AERMOD model. Meteorological data will be obtained from concerned agencies to use in AERMOD.

The modeled emissions will reflect the following scenarios: existing (base year), No Build (Opening Year), Build (Opening Year), No build (Forecast Design Year), Build (Forecast Design Year) for all the alternatives.

A quantitative Mobile Source Air Toxic (MSAT) analysis will be prepared according to FHWA Interim Guidance on Air Toxic Analysis in NEPA Documents. The quantitative emissions will be calculated by using CT-EMFAC2017 model.

Construction related emissions will also be quantified using CAL-CET 2018 (v1.3). Caltrans Standard Specifications for Construction, as well as mitigation measures if necessary, will be recommended to reduce short-term construction related impacts.

The Greenhouse Gas Emissions Analysis will be based on the Caltrans Climate Action Program and the CT-EMFAC2017 model will be used to calculate the GHG emissions. It is assumed the greenhouse gas (GHG) emissions will be modeled for the following conditions: existing (Base Year), No Build (Opening Year), Build (Opening Year), No build (Forecast Design Year), Build (Forecast Design Year) for all the alternatives. Consultant will require coordination with District Headquarter staff on the methodologies.

The City of San Clemente prepared the City of San Clemente Climate Action Plan (April 2012) and City of San Clemente Sea Level Rise Vulnerability Assessment (October 2019). A brief summary of these efforts should be included in the Air Quality Report as well as applicable measures that have been identified.

The Air Quality Report will include a local analysis for CO consistent with the CO Protocol. Construction emissions will be quantified commensurate with available Project specific information. NEPA and CEQA requirements will also be discussed in the air quality report. A work plan will be submitted to the Caltrans District 12 and get approval before start of the work.

***Deliverables:***

- Draft Air Quality Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Air Quality Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Supporting Documentation including backup data/

documentation for the air quality model runs. The model runs will be provided to Caltrans before moving to the next model calculation.

### **Air Quality Conformity Report**

After circulation of the Draft ED and prior to issuance of the Final ED, FHWA approval will be required. Therefore, Consultant will also prepare a standalone Air Quality Conformity Report for the proposed Project pursuant to the Surface Transportation Project Delivery Program (23 United States Code [USC] 327). The report will focus on the conformity provisions of the Clean Air Act Amendments, including regional conformity and project level conformity (CO hotspots, PM10/PM2.5 hotspots, and construction-related hotspots). The standalone Air Quality Conformity Report will also describe the public and interagency consultation process, which includes TCWG review and relevant public review comments and responses. The additional documentation includes the Conformity Analysis Checklist, which highlights criteria from the Code of Federal Regulations (40 CFR 93.102 through 93.123). FHWA approval will be required for the stand alone Air Quality Conformity document.

#### ***Deliverables:***

- Draft Air Quality Conformity Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Air Quality Conformity Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.4-3k Paleontological Identification Report/ Paleontological Evaluation Report**

Purpose: To identify paleontological resources and to evaluate the significance of those resources.

Methodology: A number of federal statutes specifically address paleontological resources, their treatment, and funding for mitigation as a part of federally authorized or funded Projects (e.g., Antiquities Act of 1906 [16 USC 431-433], Federal-Aid Highway Act of 1935 [20 USC 78]). Under California law, paleontological resources are protected by CEQA, the California Code of Regulations, Title 14, Division 3, Chapter 1, Sections 4307 and 4309, and Public Resources Code Section 5097.5.

A paleontology study shall be undertaken, consistent with CEQA, and following the Caltrans SER, Environmental Handbook, Volume I, Chapter 8 to determine the presence/absence of paleontological resources within the Area of Potential Effect (APE).

This initial review is what is known as a Paleontological Investigation Report (PIR). If paleontological resources are identified, a second document known as a Paleontological Evaluation Report (PER) will be prepared to evaluate the significance of those resources. Often the PIR and PER are combined into a single document. If paleontological resources, or sediments that are conducive to the preservation of paleontological resources, are located within the APE, the PIR/PER will likely recommend the preparation of an additional document known as a Paleontological Mitigation Plan (PMP). The PMP, if needed, is not part of this scope and is usually prepared after the final Project design elements have been determined.

***Deliverables:***

- Draft Combined Paleontological Investigation Report / Paleontological Evaluation Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Combined Paleontological Investigation Report / Paleontological Evaluation Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### **3.4-3I Historic Property Survey Report**

Purpose: In accordance with Caltrans, FHWA, and the State Historic Preservation Officer (SHPO) requirements, a Historic Property Survey Report (HPSR) and Archaeological Survey Report (ASR) shall be prepared to support the ED. In addition, Historical Resources Evaluation Report (HRER) may be necessary if the proposed project impacts structures. Furthermore, Native American consultation is required to ensure that proper coordination takes place early in the environmental documentation process.

Methodology: The HPSR, ASR, and HRER shall be prepared in conformance with current requirements, as outlined in the Caltrans Environmental Handbook, Volume 2. Where applicable, these documents shall comply with requirements of Section 106 of the National Historic Preservation Act and its relationship to Section 4(f) of the Department of Transportation Act, and at the state level, the CEQA and the Public Resources Code. Coordination with the Caltrans Environmental Planning unit will be critical to the timely completion of this study.

The HPSR, ASR, and HRER shall adhere to the Section 106 Programmatic Agreement (PA) that governs Caltrans cultural resources actions on federally-assisted state and local Projects. All actions taken under the Section 106 PA must be conducted by or under the supervision of Caltrans Professionally Qualified Staff (PQS).

Research/Records Search – An archaeological and historical

records review and literature search will be conducted at the South Central Coastal Information Center (SCCIC) located at California State University, Fullerton and at the South Coastal Information Center (SCIC), located at San Diego State University. The SCCIC and the SCIC are the state-designated repository for records concerning cultural resources in Orange County and San Diego County, respectively. The records search will provide information on known cultural resources and on previous cultural resources investigations within a one half-mile radius of the Area of Potential Effects (APE). Data sources that will be consulted at the SCCIC will include archaeological site and isolate records, historic maps, reports from previous studies, and the state's Historic Resource Inventory (HRI) for Orange County, which contains listings for National Register of Historic Places (National Register), California Register of Historical Resources (California Register), California Historical Landmarks (CHL), and California Points of Historical Interest (CPHI). Consultant will conduct historic context and bridge specific research. Consultant team will digitize the results of the records search to provide a data base of information for the cultural studies and mitigation efforts. Digitizing the records search prior to field work effectively reduces the amount of time spent during reconnaissance surveys since it provides the survey team with an annotated map of the area to be covered.

Field Survey - An architectural historian from Consultant will conduct reconnaissance and intensive field surveys of the APE. During the reconnaissance-level survey buildings that appear to be 45 years of age or older will be identified and those that appear to be exempt from further study pursuant to the Caltrans Section 106 Programmatic Agreement will be noted. During the intensive survey, an architectural historian will walk along the public ROW to identify historic buildings, if any. The architectural historian will photograph and make detailed notations about each of the buildings' structural and architectural characteristics, as well as current conditions and the setting and associated features.

Consultant will conduct a systematic archaeological field survey of portions of the APE that are not obscured by asphalt/concrete. The ground surface will be visually examined by an archaeologist for evidence of prehistoric (Native American) or historic (non-Native American) archaeological remains.

To meet state standards, any previously unrecorded resources identified during the surveys will be recorded on State of California Department of Parks and Recreation Series 523 (DPR) forms. Existing documentation for previously recorded resources will be updated on DPR forms following a field examination of the resource to assess its current condition. The project budget allows for a maximum of five buildings/ structures/objects to be evaluated using

the DPR forms. It is expected that findings will be negative for archaeological remains and that no new DPR forms or revised DPR forms will be prepared for these resources nor will an Extended Phase I survey be required).

Coordination with Caltrans, and Native Americans - As directed by Caltrans, the Consultants team will initiate Native American consultation for the Project. Consultant will contact the Native American Heritage Commission (NAHC), the State Commission concerned with Native American Issues. The NAHC will be asked to review the Sacred Lands File to determine whether any traditional cultural properties or other sacred/religious sites are in or near the APE. The NAHC will also provide a list of Native Americans who may have knowledge of cultural resources that could be impacted by the Project. Consultant shall contact these parties by certified letter to inform them of the Project and request their input. If no response is received, Consultant shall follow up with up to two telephone calls and/or emails to ensure that any concerns Native Americans may have about the Project are addressed. Consultation shall continue throughout the Section 106 compliance effort.

***Deliverables:***

- Draft Historic Property Survey Report, Archaeological Survey Report, and Historical Resources Evaluation Report (if necessary), and supporting documents (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Historic Property Survey Report, Archaeological Survey Report, and Historical Resources Evaluation Report (if necessary), (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Historic Property Survey Report, Archaeological Survey Report, and Historical Resources Evaluation Report (if necessary), (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Native American Coordination Documented in the Historic Property Survey Report and Archaeological Survey Report (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3m Area of Potential Effects Map/Records Search**

Purpose: To prepare an Area of Potential Effects (APE) map delineating direct and indirect cultural resources impacted areas.

Methodology: The APE map shall be done in accordance with Caltrans Environmental Handbook, Volume 2. The APE map shall be at an appropriate scale (1" = 200') and approval shall be obtained from the Caltrans District Archaeologist and Project Manager.

Archaeological and historic property surveys of the Project's APE will be completed as part of the HPSR, ASR, and HRER document preparation process.

***Deliverables:***

- Draft Area of Potential Effects map (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Area of Potential Effects map (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Area of Potential Effects map (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Approved/Signed Area of Potential Effects map for inclusion and delineating the analyses in the Historic Property Survey Report, Archaeological Survey Report, and Historical Resources Evaluation Report (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3n Initial Site Assessment**

Purpose: To identify existing hazardous materials and waste sites, extent of contamination and remediation measures.

Methodology: Consultant will prepare a Phase I Initial Site Assessment (ISA) for the Project. The ISA will be prepared in accordance with the American Society for Testing and Materials (ASTM) Standard Practice E 1527-05 and the Caltrans SER.

The objectives of the ISA are to: (1) evaluate the potential for hazardous materials on the site based upon readily discernible and/or documented present and historic on-site uses and uses immediately adjacent to the site, and (2) generally characterize the expected nature of hazardous materials that may be present as a result of such uses, within the limits imposed by the scope of the ISA. Materials that may constitute a hazardous waste include, but are not limited to petroleum products, pesticides, organic compounds, heavy metals, or other compounds injurious to human health and the environment.

The ISA is not intended to provide specific qualitative or quantitative information as to the actual presence of hazardous materials at the site, but is to merely identify the potential presence based on available information and provide preliminary conclusions relative to site conditions. This scope specifically excludes laboratory testing, field sampling, environmental lien searches, and chain of title documents.

The Phase I ISA will include the following components:

Consultant will perform a site visit, which will consist of a visual examination of the proposed Project site for visual evidence of potential environmental concerns, including existing or potential soil

and groundwater contamination as evidenced by soil or pavement staining or discoloration; stressed vegetation; indications of waste dumping or burial; pits; ponds; or lagoons; containers of hazardous substances or petroleum products; electrical and hydraulic equipment that may contain PCBs, such as electrical transformers and hydraulic lifts; and underground and aboveground storage tanks. Consultant will examine the physical characteristics of the property (i.e., apparent runoff directions, location of paved areas, etc.).

A preliminary visual examination of immediately adjacent property conditions and their general nature will be conducted.

An investigation of historical uses of the proposed Project site by examining locally available aerial photographs (including historical aerial photos), historical topographic maps, and other available documentation for evidence of potential environmental concerns associated with prior land uses.

Investigations will be conducted for each proposed Assessor's Parcel Number (APN) to be acquired as part of the proposed Project. This analysis will include an exhibit illustrating the proposed Project, the existing roadway right-of-way, the proposed roadway right-of-way, APNs, and the proposed acquisition areas (to be provided by the proposed Project Engineer). A table will also be provided that will summarize potential recognized environmental conditions (RECs) per each APN to be acquired. Consultant shall initially assume that both partial and full acquisition of properties would occur as part of the proposed Project and ultimately confirm that assumption during the course of the Project development.

Consultant will interview knowledgeable persons (i.e., current property owners, operators, occupants, adjacent residents, as well as applicable public agencies, if available) to identify operations conducted on the proposed Project site and neighboring properties, if any. Consultant will also identify the uses of all adjoining properties (i.e., those contiguous to the proposed Project site). If such operations are likely to affect the proposed Project site by contamination with hazardous substances or petroleum products, Consultant will describe the risks presented to the proposed Project site within the ISA.

A review of information available on general geology and topography of the proposed Project site and local groundwater conditions will be conducted.

Consultant will include a review of the commercial database summaries, provided by Environmental Data Resources, Inc. (EDR), regarding public agency records for the proposed Project site and surrounding area. Consultant will conduct additional file review at regulatory agencies, document the findings, and recommend the proposed actions for the acquired ROW parcels that have



contaminants of concern.

A review of available property data for the proposed Project site, if available, will be conducted.

Consultant will complete the ISA checklist, as required by Caltrans, for the proposed Project.

After ISA and ROW determinations are completed, Consultant shall perform a Phase II. The scope of work will be determined at that time. Phase II Investigation will be conducted at PAED phase except for the Aerial Deposited Lead Investigation that will be conducted early in the design phase of the project.

***Deliverables:***

- Draft Initial Site Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Draft Initial Site Assessment (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Site Investigation, as required, prior to Environmental Document approval

**3.4-3o Jurisdictional Delineation Report**

Purpose: To conduct a jurisdictional delineation in accordance with U.S. Army Corps of Engineers (ACOE) and California Department of Fish and Wildlife (CDFW) guidelines.

Methodology: To identify jurisdictional wetlands, a three parameter delineation will be conducted according to the Interim Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region (Regional Supplement) and the 1987 Corps Wetland Delineation Manual, and to delineate the jurisdictional limit of non-wetland waters of the U.S. following the procedures set forth in 33 Code of Federal Regulations (CFR) 328.3(e). The wetlands delineation and jurisdictional determination will be conducted for all proposed alternatives. It is anticipated that a routine delineation (as defined by ACOE), tailored to the site characteristics, will be adequate. The delineation should also consider any additional information needs based on the April 2020 Implementation Guidance for the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. Further, the extent of any streambed and associated riparian areas subject to review by the CDFW under Section 1602 of the Fish and Game Code will be determined. The results of the draft jurisdictional delineation will require verification and approval by the ACOE and CDFW. A request for an approved Jurisdictional Determination from the ACOE is included in the scope of work. However, CDFW typically does not verify jurisdictional determinations until a Notification of Streambed Alteration is submitted, as part of the permitting process,

which is not included in this scope of work. An informal verification of the jurisdictional delineation will be requested as part of the project coordination with CDFW, but verification may not be obtained.

A technical report will be prepared presenting the results of the jurisdictional delineation. The report will be suitable for submittal to the involved agencies for purposes of permit application and for inclusion as a technical appendix. Accordingly, the report will identify and quantify jurisdictional areas and features, including a breakdown of wetlands and non-wetland waters of the U.S. The report will also identify features as earthen or concrete. An estimate of permanent and temporary impacts (as well as earthen vs. concrete) resulting from the discharge of fill material into jurisdictional area will not be included in this delineation report, but will be included in the NESMI.

***Deliverables:***

- Draft Jurisdictional Delineation (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Jurisdictional Delineation (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Jurisdictional Delineation (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3p Natural Environment Study (Minimal Impacts)**

Purpose: To document and evaluate the natural habitat in the Project area, and determine whether the proposed Project would result in impacts on sensitive species/habitat, and waters of the United States to support the ED.

Methodology: A Natural Environment Study (Minimal Impacts) [NES(MI)] shall be prepared in accordance with the Caltrans Environmental Handbook, Volume 3. The NES(MI) shall be prepared using the Caltrans prescribed format, available on the Standard Environmental Reference website. Potential effects on endangered species are not anticipated, and a Biological Assessment is not included in the scope of work. Consultant shall coordinate with the appropriate agencies to delineate the biological study area and determine the need for a Section 404 (individual or nationwide) permit and Section 1602 Agreement (Streambed Alteration Agreement). Consultant shall also coordinate with the U.S. Fish and Wildlife Service (USFWS) and CDFW to identify state and federally listed threatened and endangered species potentially in the area. The sensitive plant and animal species potentially occurring within a 1-mile radius of the Project freeway segment are identified but not limited to the ones listed in the Preliminary Environmental Analysis Report (PEAR). A Section 401 (pursuant to the Clean Water Act) permit may also be required for the Project.

A portion of the project occurs within the Coastal Zone Boundary as mapped in the City of San Clemente's Local Coastal Program. A Coastal Development Permit (CDP) from either the California Coastal Commission or City of San Clemente will also be required.

This project is not currently covered by the OCTA M2 Natural Community Conservation Plan/Habitat Conservation Plan (Conservation Plan). However, if any habitat of the OCTA's Conservation Plan Covered Species occur in the project area, the Conservation may be amended to extend coverage for those species. The NES(MI) should include an assessment of potential project impacts to the OCTA M2 Covered Species. The potential Conservation Plan amendment is not included in the scope of work.

Consultant shall identify applicable permits necessary for implementation of the construction phase of the Project. Coordination with USFWS, CDFW, United State Army Corps of Engineers (ACOE), RWQCB, California Coastal Commission, etc. will be necessary under the guidance of the Caltrans Environmental Planning unit, but application for the required permits is not included in the scope of work.

Many cities and counties within California have tree preservation ordinances and local land use policies with which transportation agencies and their agents must comply. During the planning phases, there should be a thorough investigation to determine if such ordinances or regulations apply.

***Deliverables:***

- Draft Natural Environment Study (Minimal Impacts) and supporting documentation including but not limited to: detailed literature review and database search, field review, vegetation/habitat assessment of the Project and documentation of coordination efforts with state and federal resources agencies (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final Natural Environment Study (Minimal Impacts) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Natural Environment Study (Minimal Impacts) (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-3q Relocation Impact Document**

Purpose: To prepare the Relocation Impact Document (RID) in accordance with 49 Code of Federal Regulations (CFR) 24 The Uniform Act, Caltrans' Standard Environmental Reference

Handbook, Volume 4, and the Caltrans Right-of-Way Manual to support the ED.

Methodology: The RID shall identify the potential displacement of adjacent commercial/businesses/residential properties, and include a discussion of the impacts to these businesses/properties as a result of the proposed Project. A table summarizing the impacts to each property shall be included in the analysis. In addition, minimization measures to displaced businesses and identification of alternate site(s) for potentially displaced business shall be identified. Coordination with the Caltrans Right-of-Way Division will be critical to the timely completion of this study. The Draft RID will be a supporting document to the DED and the Final RID will be prepared and a supporting document to the FED.

***Deliverables:***

- Draft Relocation Impact Document (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Relocation Impact Document (3 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-4 Screencheck Draft EIR/EA (accompanied by Draft Environmental Document Checklist)**

Purpose: A screencheck Draft EIR/EA shall be prepared in accordance with the SER and Caltrans Environmental Handbook (latest Annotated Outline), FHWA Technical Advisory T6640.8A, and Council on Environmental Quality (CEQ) guidance. Concurrent with the aforementioned technical analyses, Consultant shall prepare the screencheck Draft EIR/EA incorporating the environmental checklist, technical analyses, a discussion of critical environmental issues identified, an analysis of the cumulative and indirect effects of the Project, proposed avoidance, minimization and/or mitigation measures, an environmental commitment record (ECR) and a listing of environmental (and related) permits required for implementation of the Project.

Methodology: The screencheck Draft EIR/EA shall fully utilize and update as appropriate the previous environmental analyses prepared to support the Project Report. This document shall be provided to Authority and Caltrans for the appropriate reviews once all technical studies have been approved by Caltrans. Caltrans would conduct its review in accordance with the Environmental Document Quality Control Program under the NEPA provisions of the Memorandum of Understanding (MOU) between the Federal Highway Administration (FHWA), California Division, and the California Department of Transportation (Caltrans) on June 7, 2007 and amended on December 30, 2016. This will be accompanied by the completed Environmental Document Preparation and Review Tool and External QC Certification Sheet. Once the Authority and Caltrans provide

comments on the document, Consultant shall revise the document appropriately. The revised screencheck Draft EIR/EA will then be resubmitted to the Authority and Caltrans for approval. Consultant shall prepare a response-to-comments matrix demonstrating how and where the comments have been addressed in the screencheck Draft EIR/EA. Coordination with the Caltrans Environmental Planning unit will be critical to the timely completion of this document. Once Authority and Caltrans District 12 are satisfied with the document, the next round of reviews would commence, i.e. NEPA QC. Once all reviews have been completed, the District 12 Environmental Branch Chief will certify that the document is ready for public circulation. A Section 4(f) Evaluation will be prepared as an appendix to the EIR/EA. This Evaluation will assess resources that qualify for protection under Section 4(f).

***Deliverables:***

- Screencheck Draft EIR/EA with Environmental Document Preparation and Review Tool and External QC Certification Sheet for draft environmental documents for Authority and Caltrans to review/comment. (5 copies, 2 copies in electronic format Microsoft Word and Adobe Acrobat Reader – Includes Resource/Technical Specialist and Technical Editor Review as outlined in the NEPA QA/QC guidance.)
- Final Technical Studies (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

**3.4-5 Draft EIR/EA (accompanied by Draft Environmental Document Checklist)**

Purpose: To incorporate Authority and Caltrans review comments to the Screencheck.

Methodology: The revised screencheck Draft EIR/EA along with the Environmental Document Preparation and Review Tool and External QC Certification Sheet for draft environmental documents and response-to-comments matrix shall be resubmitted to Authority and Caltrans. The environmental document will be routed to the Caltrans District Director for signature and approval to publicly circulate. Following approval by Caltrans and FHWA, the approved Draft EIR/EA will be distributed to agencies and the public for review and comment. The Consultants team shall be responsible for updating the distribution list.

***Deliverables:***

- Approved Draft EIR/EA (5 copies, and in electronic format Microsoft Word and Adobe Acrobat Reader)
- Final Technical Studies (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- All files will be filed in accordance with the Uniform Filing System and will be submitted to Caltrans.

### 3.4-6 Public Hearing (Open House Format and Virtual Meeting) and Public Outreach Support

Purpose: To receive agency and public comments on the Draft EIR/EA.

Methodology: Consultant shall support the Public Outreach efforts and support the Authority Public Outreach Coordinator, who is the lead on providing a minimum of one open house/virtual meeting during the Draft EIR/EA public review period, following procedures as required by CEQA/NEPA and the Caltrans Environmental Handbook and SER. Consultant shall support Authority Public Outreach and/or their consultant in providing public notice for and coordinating the open house meeting, including handouts, materials, exhibits, presentation boards, etc. In coordination and consultation with Authority and Caltrans, the Consultant's team shall also be responsible for ensuring that copies of the Draft EIR/EA are available for review/comment at city halls and libraries along the Project corridor. Consultant shall be responsible for providing a newspaper advertisement to be posted by Authority Public Outreach consultant in newspapers in Orange and San Diego Counties announcing the availability of the document and open house meeting date for the Project in accordance with CEQA/NEPA and the SER (e.g., The Orange County Register, Los Angeles Times, San Diego Union-Tribune, La Opinión, and local community papers). The Consultant shall designate an individual (with concurrence by the Authority Project Manager) as the main point of contact with interested parties during CEQA/NEPA public review process. Consultant shall prepare a Notice of Availability (NOA) and work with the Authority Public Outreach consultant on distribution and any necessary agency letters/notifications as needed. In addition, Caltrans email contact/general address for receipt of comments will be coordinated with the PDT. Consultant shall support Authority Public Outreach and/or their consultant to document and gather public comments from the open house meeting. The cost of a court reporter and translation services is not included. Consultant shall coordinate with Caltrans for distributing the draft and final environmental document. Consultant shall assist Authority Public Outreach and/or their consultant with coordinating series of community meetings, including handouts, materials, presentation boards, etc. and be available for presentations at up to two community meetings during the public review period for the DED, as needed.

The virtual public meeting will consist of a video presentation explaining the Project, which includes both audio and video components, along with other exhibits and materials for review. All the materials presented at the virtual public meeting must also be ADA accessible.

#### ***Deliverables:***

- Draft EIR/EA as approved in Task 3.4-5 (25 copies, 75 CDs)
- Final Technical Studies as approved in Task 3.4-5 (10 copies)
- Mailing of EIR/EA to distribution list outlined in the document (25 CDs)

- Notice of Availability to project distribution list
- Newspaper advertisement for the Draft EIR/EA availability and Open House meeting for the Project in accordance with CEQA/NEPA and the SER
- Presentations at community meetings (up to two)
- Public Hearing (Open House Format and Virtual Meeting) and community meeting assistance including handouts, exhibits, visual displays and other materials
- Documentation and gathering of public comments for the Project records (10 copies)
- Submittal of the Draft EIR/EA (as approved in Task 3.4-5) and Notice of Completion (NOC) to the State Clearinghouse (in an electronic format subject to their guidance and 15 copies)
- Submittals to the Orange County and San Diego Clerk-Recorder offices
- Submit audio and video components (ADA accessible), including link to view the Virtual Public Hearing and all the presentation
- Web-based accessible comment submittal portal
- Special accommodations: if special communication accommodation or need for an interpreter, a request can be made. In addition, special arrangements for other disability and need assistance will also be offered.
- Virtual Public Hearing Notice (English) and Virtual Public Hearing Notice (Spanish)
- Project Location Map
- Virtual Public Hearing Information
- Comment Forms in English and Spanish
- Virtual Public Meeting record and documentation

### **3.4-7 Prepare Response to Comments Matrix**

Purpose: To document the responses to comments on the Draft EIR/EA

Methodology: Consultant shall be responsible for maintaining documentation and providing the adequate response to internal and public comments on the Project and Draft EIR/EA. A response-to-comments matrix outlining how and where the revisions to the documents have been made shall be included in the revised screencheck and anticipated Final EIR/FONSI. The response-to-comments matrix shall be provided to Authority and Caltrans for review and concurrence prior to finalization of the screencheck and anticipated Final EIR/FONSI.

***Deliverables:***

- Draft Response to Comments Matrix (5 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final Response to Comments Matrix (5 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

### 3.4-8 Screencheck Final EIR/FONSI

Purpose: A screencheck anticipated Final EIR/FONSI shall be prepared in accordance with the Caltrans SER, Caltrans Environmental Handbook, FHWA Technical Advisory T6640.8A, and CEQ regulations (as outlined in the SER). The Final EIR/FONSI shall be prepared using the latest Caltrans environmental document template. Concurrent with the aforementioned technical response to comments, Consultant shall prepare the screencheck anticipated Final EIR/FONSI incorporating the public comments, technical evaluation, a discussion of critical environmental issues identified, an analysis of the cumulative and indirect effects of the Project, proposed mitigation measures, and a listing of environmental (and related) permits required for implementation of the Project. Substantive new technical analysis which requires modification of the approved technical studies and/or technical analysis conducted for the EIR/EA are not included in this scope.

Methodology: The screencheck anticipated Final EIR/FONSI shall be provided to Authority and Caltrans per the Environmental Document Quality Control Program under the NEPA Program memo, accompanied by the completed Environmental Document Preparation and Review Tool and External QC Certification Sheet for final environmental documents. The revised anticipated Final EIR/FONSI will then be resubmitted to Caltrans for approval. Caltrans will seek formal approval from FHWA for the responsibilities that have not been delegated under the NEPA Delegation, including FHWA's air quality conformity responsibilities (MOU 3.2.4) and government to government consultation with Indian tribes (MOU 3.2.3). Consultant shall prepare a response-to-comments (RTC) matrix indicating how and where the public comments have been addressed in the screencheck anticipated Final EIR/FONSI.

**Deliverables:**

- Screencheck anticipated Final EIR/FONSI for the Project along with the External QC sheet and the Environmental Document Review Checklist (5 copies, 2 copies in electronic format Microsoft Word and Adobe Acrobat Reader – Includes Resource/Technical Specialist and Technical Editor Review outlined in the NEPA QA/QC guidance).

### 3.4-9 Final EIR/Findings and Statement of Overriding Considerations (SOC) [if necessary]/FONSI

Purpose: To document the selection of the Preferred Alternative, timing and responsibility of mitigation measures identified in the Final EIR/FONSI, and as required by CEQA, the project will document its significant environmental effects before mitigation and will document the results if unavoidable significant environmental impacts remain after mitigation.

Methodology: Following review by the Authority and Caltrans, Consultant shall revise the screencheck anticipated Final EIR/FONSI. In accordance with CEQA, the Consultant shall prepare Findings and SOC (if necessary)



and submit for review to the Authority and Caltrans and respond to their comments. Six copies of the revised anticipated Final EIR/FONSI along with the final environmental documents, response-to-comments matrix, and Findings and SOC (if necessary) shall be resubmitted to Authority and Caltrans for District Director signature. Following approval by Caltrans and FHWA, the anticipated Final EIR/FONSI shall be made available to the public upon request. Consultant will be responsible for updating the distribution list.

***Deliverables:***

- Approved anticipated Final EIR/FONSI (6 copies, 2 copies in electronic format Microsoft Word and Adobe Acrobat Reader –
- Findings and SOC (if necessary)
- Files will be submitted to Caltrans in accordance with the Uniform Filing System.
- External QC Sheets and ED Checklist

**3.4-10 Circulation of the Final Environmental Document and California Transportation Commission (CTC) and Statute of Limitations (SOL) Submittals**

Purpose: To notify the agencies and general public regarding the determination of the environmental document.

Methodology: The FED along with the RTC letters will be sent out to the agencies that commented on the DED. As an option, Caltrans may consider the option to make the FED available to the public for review. Once the public review period has been completed, the consultant will provide hard copies (with electronic copy) of the Final EIR/Notice of Determination (NOD)/EA with FONSI and Notice of Availability (NOA) of the FONSI to the State Clearinghouse and County Clerk's Offices (including County of Orange and County of San Diego). In addition, the consultant will assist the authority and Caltrans with preparation and filing of the Statute of Limitations (SOL) notice in the Federal Register and prepare and submit the package to the CTC for action.

***Deliverables:***

- Approved anticipated Final EIR/FONSI (2 copies of the FED and 2 copies in electronic format in Microsoft Word and Adobe Acrobat Reader)
- NOC
- NOD
- NOA
- CTC Package
- SOL

**3.4-11 Mitigation, Monitoring and Reporting Record (MMRR) / Environmental Commitment Record (ECR)**

Purpose: To ensure environmental commitments are met by 1) recording each environmental mitigation, compensation and enhancement commitment made; 2) specifying how each commitment will be met; and 3) documenting the completion of each commitment.

Methodology: The Mitigation Monitoring and Reporting Record (MMRR) / Environmental Commitment Record (ECR) brings all relevant environmental compliance information together in a single place, making it easier to track the progress of environmental commitments in the next phases of project development and beyond construction. The MMRR / ECR will be initiated in the PA/ED phase but can be updated during any project delivery phase.

***Deliverables:***

- Draft MMRR/ECR in Microsoft Excel format including all mitigation measures outlined in the Final Environmental Document (10 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Draft Final MMRR/ECR (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)
- Final MMRR/ECR (2 copies, 2 copies in electronic format original and Adobe Acrobat Reader)

## SECTION 4

### **PROJECT SCHEDULE**

The current project schedule for the preparation of the project report and documents will be as follows:

ACTIVITY	DATE
A. Begin Work	April 2021
B. Draft PR and ED	February 2023
C. Final ED	December 2023

**EXHIBIT B: PROPOSED AGREEMENT**

1 **PROPOSED AGREEMENT NO. C-0-2335**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 \_\_\_\_\_  
6 **THIS AGREEMENT** is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective  
7 Date"), by and between the Orange County Transportation Authority, 550 South Main Street, PO Box  
8 14184, Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as  
9 "AUTHORITY"), and \_\_\_\_\_ (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT for the preparation of the  
12 Project Report and Environmental Document for Interstate 5 Improvement Project from San Diego  
13 County Line to Avenida Pico; and

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

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

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

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

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

21 **ARTICLE 1. COMPLETE AGREEMENT**

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

B. AUTHORITY's failure to insist in any one or more instances upon the 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 by CONSULTANT or to future performance of such terms or conditions and CONSULTANT obligation in respect thereto shall continue in full force and effect. This Agreement may be amended or modified only by mutual written agreement of the parties. CONSULTANT shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by AUTHORITY.

**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. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY, the services set forth in Exhibit A, entitled "Scope of Work," which is 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. CONSULTANT shall provide the personnel listed below to perform the above-specified services, which persons are hereby designated as key personnel under this Agreement.

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

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written approval by AUTHORITY's Contract Administrator. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the

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

**ARTICLE 4. TERM OF AGREEMENT**

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

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

**ARTICLE 5. ALLOWABLE COSTS AND PAYMENT**

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

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

<u>Task</u>	<u>Description</u>	<u>Firm Fixed Price</u>
1	Project Management/Coordination/Administration	\$____.00
2	Engineering Development	\$____.00
3	Project Report Preparation	\$____.00
4	Environmental Document	\$____.00
<b>TOTAL FIRM FIXED PRICE (LUMP SUM) PAYMENT</b>		<b>\$____.00</b>

C. The method of payment for this Agreement is based on lump sum. The total lump sum price paid CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Exhibit A entitled "Scope of Work" to this agreement. No additional compensation will be paid to CONSULTANT unless there is a change in the Scope of Work or the scope of the project.

1 In the instance of a change in the scope of work or scope of the project, adjustment to the total lump sum  
2 compensation will be negotiated between CONSULTANT and AUTHORITY. Adjustment in the total lump  
3 sum compensation will not be effective until authorized by amendment to this Agreement that is approved  
4 by AUTHORITY.

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

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

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

20 G. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments  
21 corresponding to the work actually completed by CONSULTANT. Percentage of work completed shall  
22 be documented in a monthly progress report prepared by CONSULTANT, which shall accompany each  
23 invoice submitted by CONSULTANT. CONSULTANT shall also furnish such other information as may  
24 be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY  
25 may decline to make full payment for any task listed in paragraph B of this Article until such time as  
26 CONSULTANT has documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed



1 all work required under the task. AUTHORITY's payment in full for any task completed shall not constitute  
2 AUTHORITY's final acceptance of CONSULTANT's work under such task.

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

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

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J. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office or may be emailed to VendorInvoices@octa.net. Each invoice shall be accompanied by the monthly progress report specified in paragraph G of this Article. Invoices shall be submitted no later than 45-calendar days after the performance of work for which CONSULTANT is billing. 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-0-2335;
2. Specific task number for which payment is being requested;
3. The time period covered by the invoice;
4. Total monthly invoice by task (including project to-date cumulative invoice amount); and retention amount;
5. Monthly Progress Report;
6. Weekly certified payroll for personnel subject to prevailing wage requirements;
7. Certificate signed by the CONSULTANT 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 invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.
8. Any other information as agreed or otherwise requested by AUTHORITY to substantiate the validity of an invoice.

K. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this Agreement number and project title. Invoices shall include all reimbursable costs/expenditures to satisfy Caltrans' Local Assistance Procedures Manual (LAPM), Chapter 5 Accounting/Invoices.

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

4 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

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

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

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

19 **ARTICLE 7. MAXIMUM OBLIGATION**

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

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**ARTICLE 8. NOTICES**

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

To CONSULTANT:		To AUTHORITY:	
		Orange County Transportation Authority	
		550 South Main Street	
		P.O. Box 14184	
		Orange, CA 92863-1584	
ATTENTION:		ATTENTION:	Michael Le Contract Administrator
Tel:		Tel: (714) 560-5314	
Email:		Email: <a href="mailto:mle1@octa.net">mle1@octa.net</a>	
		CC: Josue Vaglienty Project Manager	
		Tel: (714) 560-5852	
		Email: <a href="mailto:jvaglienty@octa.net">jvaglienty@octa.net</a>	

**ARTICLE 9. INDEPENDENT CONTRACTOR**

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

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

5           **ARTICLE 10.   INSURANCE**

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

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

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

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

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

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

18           B.       Proof of such coverage, in the form of a certificate of insurance, with the AUTHORITY, its  
19 officers, directors, employees and agents, designated as additional insureds as required by contract. In  
20 addition, provide an insurance policy blanket additional insured endorsement. Both documents must be  
21 received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be  
22 received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement. Such  
23 insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the  
24 AUTHORITY. Furthermore, AUTHORITY reserves the right to request certified copies of all related  
25 insurance policies.

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1 C. CONSULTANT shall include on the face of the certificate of insurance the Agreement No.  
2 C-0-2335; and, the Contract Administrator's Name, Michael Le, Contract Administrator.

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

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

8 **ARTICLE 11. ORDER OF PRECEDENCE**

9 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:  
10 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 0-2335; (3)  
11 CONSULTANT's technical proposal dated \_\_\_\_\_, CONSULTANT's cost proposal dated \_\_\_\_\_ and  
12 final cost proposal dated \_\_\_\_\_, and (4) all other documents, if any, cited herein or incorporated by  
13 reference.

14 **ARTICLE 12. CHANGES**

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

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

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

4 **ARTICLE 13. DISPUTES**

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

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

16 **ARTICLE 14. TERMINATION**

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

19 B. AUTHORITY may terminate this Agreement with CONSULTANT should CONSULTANT  
20 fail to perform the covenants herein contained at the time and in the manner herein provided. In the event  
21 of such termination, AUTHORITY may proceed with the work in any manner deemed proper by  
22 AUTHORITY. If AUTHORITY terminates this Agreement with CONSULTANT, AUTHORITY shall pay  
23 CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost  
24 of completion to AUTHORITY exceeds the funds remaining in the Agreement. In which case the overage  
25 shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall  
26 be paid to CONSULTANT upon demand. Said termination shall be construed in accordance with the

1 provisions of the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 49, of the Federal  
2 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination  
3 for convenience.

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

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

17 **ARTICLE 15. INDEMNIFICATION**

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

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**ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

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

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

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

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

G. AUTHORITY hereby consents to CONSULTANT's subcontracting of portions of the Scope of Work to the parties identified below for the functions described below. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely

responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

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

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

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

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

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

5 **ARTICLE 18. AUDIT REVIEW PROCEDURES**

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

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

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

13 D. CONSULTANT and subconsultant contracts, including cost proposals and ICR, are  
14 subject to audits or reviews such as, but not limited to, an Agreement audit, an incurred cost audit, an  
15 ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Agreement, cost  
16 proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48  
17 CFR, Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper  
18 review it is CONSULTANT's responsibility to ensure federal, state, or local government officials are  
19 allowed full access to the CPA's work papers including making copies as necessary. The Agreement,  
20 cost proposal, and ICR shall be adjusted by CONSULTANT and approved by AUTHORITY's Contract  
21 Administrator to conform to the audit or review recommendations. CONSULTANT agrees that individual  
22 terms of costs identified in the audit report shall be incorporated into the Agreement by this reference if  
23 directed by AUTHORITY at its sole discretion. Refusal by CONSULTANT to incorporate audit or review  
24 recommendations, or to ensure that the federal, state or local governments have access to CPA work  
25 papers, will be considered a breach of Agreement terms and cause for termination of the Agreement and  
26 disallowance of prior reimbursed costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY**

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

**ARTICLE 22. PROHIBITED INTERESTS**

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

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

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

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

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the

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

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

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

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

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

20 A. In lieu of any other warranty by CONSULTANT against patent or copyright infringement,  
21 statutory or otherwise, it is agreed that CONSULTANT shall defend, at its expense, any claim or suit  
22 against AUTHORITY on account of any allegation that any item furnished under this Agreement or the  
23 normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently  
24 existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally  
25 awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit  
26 or claim and given authority, information and assistance at CONSULTANT's expense for the defense of

1 same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results from: (1)  
2 AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any  
3 presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other  
4 material not provided by CONSULTANT when such use in combination infringes upon an existing U.S.  
5 letters patent or copyright.

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

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

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

25 B. CONSULTANT will promptly advise AUTHORITY if it finds that the project being designed  
26 will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within



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

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

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

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

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

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

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

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

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

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

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

20 B. When prevailing wages apply to the services described in the scope of work,  
21 transportation and subsistence costs shall be reimbursed at the minimum rates set by the Department  
22 of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See  
23 <http://www.dir.ca.gov>.

24 C. CONSULTANT warrants that all mechanics, laborers, journeypersons, workpersons,  
25 craftspersons or apprentices employed by CONSULTANT or subconsultant at any tier for any work  
26 hereunder, shall be paid unconditionally and not less often than once a week and without any subsequent

1 deduction or rebate on any account (except such payroll deductions as are permitted or required by  
2 federal, state or local law, regulation or ordinance), the full amounts due at the time of payment, computed  
3 at a wage rate and per diem rate not less than the aggregate of the highest of the two basic hourly rates  
4 and rates of payments, contributions or costs for any fringe benefits contained in the current general  
5 prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial  
6 Relations of the State of California, (as set forth in the Labor Code, commencing at Section 1770 et. seq.),  
7 or as established by the Secretary of Labor (as set forth in the Davis-Bacon Act, 40 U.S.C. 267a, et. seq.),  
8 regardless of any contractual relationship which may be alleged to exist between CONSULTANT or  
9 subconsultant and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or  
10 apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on  
11 file at AUTHORITY's offices and will be made available to CONSULTANT upon request. CONSULTANT  
12 shall post a copy thereof at each job site at which work hereunder is performed.

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

17 E. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for  
18 public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of  
19 public works, shall contain all of the provisions of this Article. CONSULTANT agrees to insert or cause to  
20 be inserted the preceding clause in all subcontracts which provide for workers to perform work hereunder  
21 regardless of the subcontractor tier.

22 **ARTICLE 29. STATEMENT OF COMPLIANCE**

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

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1           A.       CONSULTANT's signature affixed herein, and dated, shall constitute a certification under  
2 penalty of perjury under the laws of the State of California that CONSULTANT has, unless exempt,  
3 complied with, the nondiscrimination program requirements of Government Code Section 12990 and Title  
4 2, California Administrative Code, Section 8103.

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

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

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

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

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

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

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

21 G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections  
22 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs,  
23 activities, and services of public entities, as well as imposes specific requirements on public and private  
24 providers of transportation.

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

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

At the time of Agreement execution, the CONSULTANT committed to utilize DBE(s) in the performance of this DOT-assisted Agreement, and further agrees to ensure that DBE subcontractors listed on the Attachment "Consultant Contract DBE Commitment Caltrans Exhibit 10-O2," perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the AUTHORITY prior to the CONSULTANT effectuating any changes to its race-conscious DBE participation commitment(s). CONSULTANT shall comply with all the requirements set forth in Attachment A titled, "RACE -CONSCIOUS DBE CONTRACT PROVISIONS FOR FHWA-ASSISTED CONSULTANT CONTRACTS DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION", which is attached to and, by this reference, incorporated in and made a part of this Agreement.

**ARTICLE 31. PRIVACY ACT**

CONSULTANT shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a. Among other things, CONSULTANT agrees to obtain the express consent of the Federal Government

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

5 **ARTICLE 32. CONFLICT OF INTEREST**

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

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

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

20 **ARTICLE 33. CODE OF CONDUCT**

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

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

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

**ARTICLE 35. INCORPORATION OF FEDERAL TERMS**

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

**ARTICLE 36. FEDERAL CHANGES**

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

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

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



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

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

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

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

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

23 **ARTICLE 39. RECYCLED PRODUCTS**

24 CONSULTANT shall comply with all the requirements of Section 6002 of the Resource  
25 Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the  
26 regulatory provisions of CFR, Title 40, Part 247, and Executive Order 12873, as they apply to the

1 procurement of the items designated in subpart B of CFR, Title 40, Part 247. CONSULTANT agrees to  
2 include this requirement in all of its subcontracts entered into as a result of this Agreement.

3 **ARTICLE 40. ENERGY CONSERVATION REQUIREMENTS**

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

7 **ARTICLE 41. CLEAN AIR**

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

13 **ARTICLE 42. CLEAN WATER REQUIREMENTS**

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

20 **ARTICLE 43. CONTINGENT FEE**

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

deduct from the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**ARTICLE 44. DEBARMENT AND SUSPENSION CERTIFICATION**

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

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

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

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

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

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or

1 federal grant; the making of any state or federal loan; the entering into of any cooperative agreement,  
2 and the extension, continuation, renewal, amendment, or modification of any state or federal contract,  
3 grant, loan, or cooperative agreement.

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

10 B. This certification is a material representation of fact upon which reliance was placed when  
11 this transaction was made or entered into. Submission of this certification is a prerequisite for making or  
12 entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file  
13 the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than  
14 \$100,000 for each such failure.

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

18 **ARTICLE 46. FUNDING REQUIREMENTS**

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

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

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

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

6 A. CONSULTANT hereby agrees to attain DBE participation in the amount of fourteen  
7 percent (14%) of the total Agreement amount. CONSULTANT shall enter into agreements for the services  
8 identified in Attachment entitled "Consultant Contract DBE Information Caltrans Exhibit 10-O2".

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

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

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

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

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

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

23 F. CONSULTANT, subconsultants and suppliers shall permit access to their books, records,  
24 and accounts by the Contract Administrator, or a designated representative, for the purpose of  
25 investigation to ascertain compliance with these specified requirements. Such records shall be

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maintained in a fashion which is readily accessible to AUTHORITY, as described in Article 17 Audit and Inspection of Records, for a minimum of four (4) years from the date of final payment by AUTHORITY.

**ARTICLE 48. EQUIPMENT PURCHASE**

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

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

C. Any equipment purchased as a result of this Agreement is subject to the following: "CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of \$5,000.00 or more. If the purchased equipment needs replacement and is sold or traded in, AUTHORITY shall receive a proper refund or credit at the conclusion of this Agreement, or if the Agreement is terminated, CONSULTANT may either keep the equipment and credit AUTHORITY in an amount equal to the its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established AUTHORITY procedures; and credit AUTHORITY in an amount equal to the sales price. If CONSULTANT elects to keep the equipment, fair market value shall be determined at CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser agreeable to both AUTHORITY and CONSULTANT. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by AUTHORITY." CFR, Title 49, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000.00 is credited to the project.

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**ARTICLE 49. HEALTH AND SAFETY REQUIREMENTS**

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

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

**ARTICLE 50. CONFIDENTIALITY OF DATA**

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

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

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

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

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

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

CONSULTANT warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any AUTHORITY employee. For breach or violation of this warranty, AUTHORITY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the

1 Agreement price; or otherwise recover the full amount of such rebate, kickback or other unlawful  
2 consideration.

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

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

9 **ARTICLE 53. EVALUATION OF CONSULTANT**

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

13 **ARTICLE 54. FORCE MAJEURE**

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

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1           **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-0-2335 to be  
2 executed as of the date of the last signature below.

3           **CONSULTANT**

4           **ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

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

Darrell E. Johnson  
Chief Executive Officer

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

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

9           **APPROVED AS TO FORM:**

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

11 James M. Donich  
12 General Counsel

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

14           **APPROVED:**

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

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

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

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

**I. DBE Participation**

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

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

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

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

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

- A. Take appropriate actions to ensure that it will continue to meet the DBE Commitment at the minimal level committed to at award or will satisfy the good faith efforts to meet the DBE Commitment, when change orders or other contract modifications alter the

dollar amount of the contract or the distribution of work. The Consultant must apply and report its DBE goal commitments against the total Contract Value, including any contract change orders and/or amendments.

## **II. DBE Policy and Applicability**

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

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

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

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

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

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

### III. Authority's DBE Policy Implementation Directives

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

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

#### A. Definitions

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

1. **"Disadvantaged Business Enterprise (DBE)"** means a small business concern:  
(a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. **"Small Business Concern"** means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern must not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.
3. **"Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and

who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

- a) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - c) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - d) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas;
  - e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and
  - f) Women, regardless of ethnicity or race.
4. **"Owned and Controlled"** means a business: (a) which is at least 51 percent owned by one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled by one or more such individuals.
5. **"Manufacturer"** means a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Consultant.
6. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
7. **"Fraud"** includes a firm that does not meet the eligibility criteria of being a certified DBE and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under

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

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

**B. "Social Disadvantage"**

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

**C. "Economic Disadvantage"**

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

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

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

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

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

The Form 103 must include the following information:

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

- c) DBE Contract Goal
- d) Total Dollar Amount of DBE Commitment
- e) DBE Commitment as Percentage of Current Contract Amount

2. Listed and/Proposed Consultant/Subconsultant Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:

- a) DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.
- b) DBE Firm Contract Value Information:  
Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.

3. Consultant Assurance of Full Compliance with Prompt Payment Provisions

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

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

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

4. DBE Subcontract Agreements

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



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

5. "Monthly DBE Trucking Verification" Form

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

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

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

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

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

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

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

**V. DBE Eligibility and Commercially Useful Function Standards**

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

1. A certified DBE must be a small business concern as defined pursuant to Section 3 of the U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
2. A DBE may participate as a Prime Consultant, Subconsultant, joint venture partner with a Prime or Subconsultant, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
4. At time of proposal submission, DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
  - A. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
1. A DBE must perform a commercially useful function in accordance with 49 CFR 26.55 (i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work). A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

**VI. DBE Crediting Provisions**

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

credited toward the Prime Consultant's DBE attainment.

2. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
  - a) Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
  - b) One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and Packers may be credited toward the prime Consultant's DBE attainment, provided that the fee or commission is reasonable, and not excessive, as compared with fees or commissions customarily allowed for similar work, including:
  - a) Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
  - b) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
  - c) Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
4. Consultant may count the participation of DBE trucking companies toward DBE attainment, as follows:
  - a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  - b) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease

arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

5. If the Consultant listed a non-certified 1<sup>st</sup> tier Subconsultant to perform work on this contract, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE Consultant performs the installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

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

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

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

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

G. Listed DBE becomes bankrupt or insolvent.

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

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

**VIII. Additional DBE Subconsultants**

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

**IX. DBE "Frauds" and "Fronts"**

Only legitimate DBEs are eligible to participate as DBEs in the Authority's federally -assisted contracts. Proposers are cautioned against knowingly and willfully using "fronts." The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following: 245 Murray Drive, Building 410, Washington, DC 20223; Telephone: (202) 406-570.

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

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

**XI. Prompt Payment Clause**

Upon receipt of payment by Authority, Consultant agrees to promptly pay each Subconsultant for the satisfactory work performed under this Agreement, no later than seven

(7) calendar days. Consultant agrees further to return retainage payments to each Subconsultant within thirty (30) calendar days after the Subconsultant's work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from Consultant showing payment has been made to the Subconsultants. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by Authority.

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

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

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

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

## **XII. Administrative Remedies and Enforcement**

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

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

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

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

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

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

**EXHIBIT C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**



**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**Information Sheet**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**IMPORTANT NOTICE**

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

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

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:

- |   |           |          |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor  | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant   | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime<br>to represent the Prime in this RFP | Yes _____ | No _____ |

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

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**

**Steve Jones, Chairman**  
**Andrew Do, Vice Chairman**  
**Lisa A. Bartlett, Director**  
**Doug Chaffee, Director**  
**Laurie Davies, Director**  
**Barbara Delgleize, Director**  
**Michael Hennessey, Director**  
**Gene Hernandez, Director**  
**Joseph Muller, Director**  
**Mark A. Murphy, Director**  
**Richard Murphy, Director**  
**Miguel Pulido, Director**  
**Tim Shaw, Director**  
**Harry S. Sidhu, Director**  
**Michelle Steel, Director**  
**Donald P. Wagner, Director**  
**Greg Winterbottom, Director**

**EXHIBIT D: 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.

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

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

## 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 **14%**.

### 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

#### **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
<b>DBE Participation Commitment Form</b>	Required at time of proposal
<b>Written Confirmation (for each DBE firm listed on the DBE Participation Commitment Form)</b>	Required at time of proposal
<b>DBE Information – Good Faith Efforts</b>	Required no later than 4:00 p.m. on the 2 <sup>nd</sup> business day after the proposal due date
<b>Bidders List</b>	Required no later than 4:00 p.m. on the 2 <sup>nd</sup> business day after the proposal due date

**4.1 “DBE Participation Commitment Form” (Exhibit E-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 E-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 E-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.





## 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

**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 2<sup>nd</sup> 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:

- 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 respond, 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:


- 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:							<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.

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

### EXHIBIT 10-O2 CONSULTANT CONTRACT DBE COMMITMENT

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

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

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

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



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**INSTRUCTIONS – CONSULTANT CONTRACT DBE COMMITMENT**

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**CONSULTANT SECTION**

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

**LOCAL AGENCY SECTION**

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

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

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

CEM-2402F (REV 02/2008)

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

Copy Distribution-Caltrans contracts:

**Original** - District Construction

**Copy**- Business Enterprise Program

**Copy**- Contractor

**Copy** Resident Engineer

Copy Distribution-Local Agency contracts:

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

**Copy**- District Local Assistance Engineer

**Copy**- Local Agency file

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**July 1, 2012    LPP 09-02**

MONTHLY DBE SUBCONTRACTOR COMMITMENT AND ATTAINMENT REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)													
Reporting Period (month): _____, 20____													
Contract Number:		Form 103 Report No.:				Report prepared by:							
Contract Award Date:		Original Contract Award Amount:				Title:							
Prime Name:		Prime Current Contract Value:			[B]	Report reviewed by:							
		% of Project Complete:				Signature:							
Address:		[D] divided by [B]				Title:							
		Total Paid to Prime this Month:											
		Total Paid to Prime to Date			[D]								
Telephone No.:		Total Paid to DBEs this Month:				Prime's Current DBE Attainment (A/B):							
		Total Paid to DBEs to Date:			[A]								(Total Dollars Paid to DBEs divided by Prime Current Contract Value)
Contract DBE Goal (Prime Commitment at Award):		Date of Last Progress Payment				Prime's Current DBE Commitment (C/B):							
													(Total DBE Current Eligible Subcontract Value divided by Prime Current Contract Value)
Original Project Goal													

  

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

Name:								DBE:			DBE:				
Address:															
City, State, Zip Code:								\$ -			\$ -				
Telephone Number:															
TYPE: Subcontractor ___ Broker ___			\$ -	\$ -	\$ -	\$ -	\$ -	NON DBE:	\$ -	\$ -	NON DBE:	\$ -	0%	#DIV/0!	
Supplier: Regular Dealer ___ or Manufacturer ___															
CERTIFICATION(s): ( ) SB ( ) DBE ( ) DVBE ( ) M															
Verification of Payment Attached: YES NO								\$ -			\$ -				
Anticipated Commencement of Work Date:															
[C]															
DBE Total(s):			\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	0%	#DIV/0!	
COMMENTS/ISSUES:															
* Eligible amount claimed is based on applicable crediting provisions, DBE Current contract value (excluding amounts subcontracted to lower-tiers) multiplied by capacity of work performed by listed DBE (CUF).															
Authorized Binding Name:															
Authorized Binding Title:															
Authorized Binding Signature:															
If necessary, this form can be duplicated and/or modified; however, it must contain all requested data fields.															
DBE Monthly Form 103															

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



**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**REQUEST FOR DBE SUBCONTRACTOR/SUPPLIER SUBSTITUTION**

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

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



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

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

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

Contract Representative Signature	Title
Business Phone Number	Date

<b>CONCURRENCE BY ORIGINALLY PROPOSED DBE FIRM:</b>	
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <b>Signature</b>	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <b>Title</b>
<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <b>Print Name</b>	<div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <b>Date</b>

<b>AUTHORITY APPROVAL:</b>
Date Request Received: _____
Date Letter Sent to Original DBE Subcontractor: _____
Authority's Approval of Request for Substitution? <input type="checkbox"/> Yes <input type="checkbox"/> No

If no, please state reason:

\_\_\_\_\_

\_\_\_\_\_

Reviewed by: _____ Date: _____
--------------------------------

**EXHIBIT G: RESTRICTIONS ON LOBBYING**

**CERTIFICATION**  
**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN**  
**FEDERAL TRANSACTIONS**

A. DEFINITIONS

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

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

- c. A special Government employee, as defined in Section 202, Title 18, United States Code.
  - d. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix section 3.
- 7. Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
  - 8. Reasonable compensation, as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
  - 9. Reasonable payment, as used in this clause means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
  - 10. Recipient, as used in this clause, includes the CONSULTANT and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
  - 11. Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
  - 12. State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State regional or interstate entity having governmental duties and powers.

**B. PROHIBITIONS**

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires consultant to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
  - a. Agency and legislative liaison by own employees.
    - (1) The prohibition on the use of appropriated funds, in subparagraph C.1. of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
    - (2) For purposes of paragraph C.3.a.(1) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
    - (3) The following agency and legislative liaison activities are permitted any time where they are not related to a specific solicitation for any covered Federal action:

Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities.

Technical discussions and other activities regarding the application of adaptation of the person's products or services for an agency's use.

- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

- (5) Only those services expressly authorized by paragraph C.3.a.(1) of this clause are permitted under this clause.

b. Professional and technical services

- (1) The prohibition on the use of appropriated funds, in subparagraph C.1. of this clause, does not apply in the case of:

A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as condition for receiving that Federal action.

Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal, or application or that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include contractors and trade associations.

- (2) For purposes of paragraph C.3.a.(1) of this clause, professional and technical services shall be limited to advise and analysis directly applying any professional or technical discipline. For

example, drafting of a legal document accompanying a bid or proposal is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (4) Only those services expressly authorized by paragraph C.3.a.(1) and (2) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

c. Disclosure

- (1) The consultant who requests or receives from an agency a Federal contract shall file with that agency a disclosure form OMB standard form LLL, Disclosure of Lobbying Activities, (Attachment to the bid package) if such person has made or had agreed to made any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B.1. of this clause, if paid for with appropriated funds.

- (2) The consultant shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph II.A. of this clause. An event that materially affects the accuracy of the information reported includes:

A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- (3) The consultant shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime consultant. The prime consultant shall submit all disclosures to the District at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding consultant.

d. Agreement

The consultant agrees not to make any payment prohibited by this clause.

e. Penalties

- (1) Any person who makes an expenditure prohibited under paragraph a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.



- (2) Consultants may rely without liability on the representation made by their subcontractors in the certification and disclosure forms.

f. Cost Allowability:

Nothing in this clause is to be interpreted to make allowable or reasonable any costs, which will otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provisions.

**CERTIFICATION OF  
RESTRICTIONS ON LOBBYING**

I, \_\_\_\_\_, hereby certify on behalf (name of 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

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

Approved by  
OMB  
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.
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**DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET**

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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**EXHIBIT H: SAFETY SPECIFICATIONS**

**MODIFIED LEVEL 1 & 2 HEALTH, SAFETY AND ENVIRONMENTAL  
SPECIFICATIONS FOR AGREEMENT C-0-2335**

**PART I – GENERAL**

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

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Authority Project Manager shall be responsible to ensure a safety orientation is conducted of known potential hazards and emergency procedures for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to commencement of the project.
- E. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- F. California Code of Regulations (CCR) Title 8 Standards are minimum requirements; each Contractor is encouraged to exceed minimum requirements. When the Contractor's safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of public and workers.
- G. INJURY AND ILLNESS PREVENTION PLAN
  - A. Injury/Illness Prevention Program  
The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier

contractors, suppliers, and vendors. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

**B. Substance Abuse Prevention Program**

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

**C. Heat Illness Prevention Program**

Contractor shall comply with CCR Title 8, Section, Section 3395, Heat Illness Prevention. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

**D. Hazard Communication Program**

Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of SDS for all applicable chemical products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

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

**E. Storm Water Pollution Prevention Plan**

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

**1.2 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.
4. Incidents (i.e., injury, theft, fire, near miss, property damage, etc.) occurring to contractors, vendors, visitors, or members of the public that arise from the performance of Authority contract work.
5. Investigations or site visit by a regulatory agency (i.e., Cal-OSHA, DTSC, EPA, SCAQMD, OC Health Care Agency, etc.)



- A. Notification shall be made to Authority Project Manager. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- B. A final written incident investigative report shall be submitted as soon as possible and within seven (7) calendar days at the latest. The report shall include the following information. The Current Status of anyone injured, investigation photos of the incident area, photos of the existing conditions and area around the injury/incident scene, detailed description of what happened, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and Management's evaluation of effectiveness, a copy of the task planning documentation, copy of training records (employee, equipment operator, etc.) a copy of the Physician's first report of injury, a copy of Cal/OSHA 300 log of work related injuries and illnesses, a copy of the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.
- B. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident investigation and 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 or as determined by the Authority Project Manager. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager and the HSEC Department Manager. The serious incident presentation shall include, but not be limited to; action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using the root cause analysis flow chart method, tap-root method, or the fishbone method), evaluation of applicable policies/procedures effectiveness, task communication effectiveness, key management and supervisor oversight, a written detailed recovery plan that identifies corrective actions to prevent a similar incident, and proposed actions to enhance safety culture 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.

### 1.3 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 or class 3 (i.e., 50 MPH or greater) safety reflective vests, and appropriate footwear.
- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

## **PART II – SPECIFIC REQUIREMENTS – FIELD ACTIVITIES**

### Level 2 Safety Specification Requirements for Survey and Field Activity Tasks

### 2.0 DESIGNATED SAFETY REPRESENTATIVE

- A. Before beginning on-site activities, the Contractor shall designate an On-site HSE Representative. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated schedule and budget impacts.
- B. The Contractor shall provide the Authority's Project Manager a resume outlining the qualifications, or job experience of Contractor's On-Site HSE Representative assigned to the project. The Contractor's On-Site HSE Representative for all Authority projects is subject to acceptance by the Authority Project Manager and the HSEC Department Manager. All contact information of the On-Site HSE Representative (name, phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager.
- C. The Contractor's Site HSE Representative shall have a certification from the Board of Certified Safety Professionals (BCSP) (i.e., Safety Trained Supervisor Construction (STSC), Construction Health and Safety Technician (CHST) etc.), and five (5) years of experience of enforcing HSE compliance on similar projects. The Authority reserves the right to allow for an exception of these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and the HSEC Department Manager.

- D. A Competent Individual means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

## **2.1 JOB HAZARD ANALYSIS**

- A. A Job Hazard Analysis (JHA) shall be prepared for the field activities scheduled and signed/dated by the Contractor's project manager and the Contractor's HSE Representative and all employees of the work crew prior to beginning scheduled task.

## **2.2 SITE HSE ORIENTATION**

- A. The Contractor shall conduct and document a project site safety orientation for all Contractor's staff personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, hard hat requirements, eye protection, ANSI class 2 or 3 reflective vests, designated smoking, eating, and parking areas, cell phone policy, and applicable barricade requirements.
- B. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

## **2.3 TRAINING DOCUMENTATION**

- A. To ensure that each employee is qualified to perform their assigned work, when applicable to scope work, Contractor shall verify training documentation (i.e., CCR Title 8 Standards required training as applicable) is in place, prior to and during contract scope, and make available to the Authority, upon request, within 72 hours.

## **PART IV - REFERENCES**

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

**END**

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

**CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES**

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

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

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

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

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

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

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

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

**Certification of Final Indirect Costs:**

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

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

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

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

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

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

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

**Certification of Financial Management System:**

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

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

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

**Certification of Direct Costs:**

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

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

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

**Subconsultants (if applicable)**

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

**Prime Consultants (if applicable)**

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

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

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

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

Consultant Certifying (Print Name and Title):

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

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

Consultant Contact Information:

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

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

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

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

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

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



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

**PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

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

Offeror: \_\_\_\_\_

RFP No.: \_\_\_\_\_ RFP Title: \_\_\_\_\_

Deviation or Exception No. : \_\_\_\_\_

Check one:

- Scope of Work (Technical) \_\_\_\_\_
- Proposed Agreement (Contractual) \_\_\_\_\_

Reference Section/Exhibit: \_\_\_\_\_ Page/Article No. \_\_\_\_\_

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:

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

## **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.

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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: \_\_\_\_\_