

DRAFT

REQUEST FOR PROPOSALS (RFP) 9-1698

VANPOOL SERVICE PROVIDERS



ORANGE COUNTY TRANSPORTATION AUTHORITY

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

(714) 560-6282

Key RFP Dates

Issue Date:	November 26, 2019
Pre-Proposal Conference Date:	December 4, 2019
Question Submittal Date:	December 12, 2019
Proposal Submittal Date:	January 14, 2020

FEDERAL TRANSIT ADMINISTRATION FUNDED PROJECT

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NOTICE OF REQUEST FOR PROPOSALS

(RFP): 9-1698: “VANPOOL SERVICE PROVIDERS”

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified firms to provide subsidized commuter vanpool services and Measure M2 Project V Station Van Program services on behalf of the Authority.

Although the Authority has not established a contract-specific Disadvantaged Business Enterprise (DBE) goal for this procurement, all bidders are encouraged to take all reasonable steps to obtain DBE participation and ensure that DBEs can fairly compete for and perform on all Authority's DOT-assisted contracts and subcontracts as set forth in Part 26, Title 49 CFR.

Proposals must be received in the Authority's office at or before 2:00 p.m. on January 14, 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: Carla Shaffer, Sr. 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: Carla Shaffer, Sr. 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 9-1698, firms and subconsultants must be registered on CAMM NET with 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	Vanpool Services
Rental & Lease	Vehicle Rental or Leasing

A pre-proposal conference will be held on December 4, 2019, at 2:30 p.m. at the Authority's Administrative Office, 550 South Main Street, Orange, California, in Conference Room 09. All prospective Offerors are encouraged to attend the pre-proposal conference.

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held on December 4, 2019, at 2:30 p.m. the Authority's Administrative Office, 550 South Main Street, Orange, California, in Conference Room 09. All prospective Offerors are encouraged to attend the pre-proposal conference.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

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:

Carla Shaffer, Sr. Contract Administrator
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560. 5884, Fax: 714.560.5792
Email: cshaffer@octa.net

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

proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 2:00 p.m., on December 12, 2019.
- 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: cshaffer@octa.net

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than December 19, 2019. 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 Carla Shaffer, Sr. 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 the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Professional Services
Rental & Lease

Commodity:

Vanpool Services
Vehicle Rental or Leasing

Inquiries received after 2:00 p.m. on December 12, 2019, 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 January 14, 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: Carla Shaffer, Sr. Contract Administrator**

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

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
P.O. Box 14184
Orange, California 92863-1584
Attention: Carla Shaffer, Sr. Contract Administrator**

3. Identification of Proposals

Offeror shall submit an **original and 5 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 or 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 postpone proposal openings for its own convenience.
- d. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

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

J. PROTEST PROCEDURES

The Authority has on file a set of written protest procedures applicable to this solicitation that may be obtained by contacting the Contract Administrator

responsible for this procurement. Any protests filed by an Offeror in connection with this RFP must be submitted in accordance with the Authority's written procedures.

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be on a firm-fixed subsidy basis, for a four-year term 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.

M. CODE OF CONDUCT

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

N. DEBARMENT & SUSPENSION

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

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

the district, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

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

O. DISADVANTAGED BUSINESS ENTERPRISE

In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," the Authority has established a 0 percent (0%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

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

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Carla Shaffer, Sr. 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 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

- a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in

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

Offeror to:

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

b. Proposed Staffing and Project Organization

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

Offeror to:

- (1) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the firm.
- (2) Furnish brief resumes (not more than two [2] pages each) for the proposed Project Manager and other key personnel that includes education, experience, and applicable professional credentials.
- (3) Indicate adequacy of labor resources utilizing a table projecting the labor-hour 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. The work plan should include information on how vehicle/equipment will be maintained.
- (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 associated with start-up effective July 1, 2020, including acquisition of required vehicles, in terms of elapsed weeks from the project commencement date.

- (4) Identify methods that Offeror will use to ensure program safety, regulatory compliance with applicable state and federal laws and regulations, as well as budget and schedule control for the project. Identify who will be responsible for each of these areas.
- (5) Describe the capability of the Offeror to provide the reports identified in the Scope of Work.
- (6) Provide a description (Make, model, etc.) of the vehicles that Offeror is proposing to utilize for the service. Please also provide a photo, drawing or diagram of the proposed vehicles in the attachment section of the proposal.
- (7) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (8) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

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

All exceptions and/or deviations will be reviewed by the Authority and will be assigned a "pass" or "fail" status. Exceptions and deviations that "pass" do not mean that the Authority has accepted the change but that it is a potential negotiable issue. Exceptions and deviations that receive a "fail" status means that the requested change is not

something that the Authority would consider a potential negotiable issue. Offerors that receive a “fail” status on their exceptions and/or deviations will be notified by the Authority and will be allowed to retract the exception and/or deviation and continue in the evaluation process. Any exceptions and/or deviation that receive a “fail” status and the Offeror cannot or does not retract the requested change may result in the firm being eliminated from further evaluation.

4. Cost and Price Proposal

As part of the cost and price proposal, the Offeror shall submit proposed Monthly Use Fee to provide the services described in Exhibit A, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the use of fees quoted in Exhibit B.

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be on a firm-fixed subsidy basis, for a four-year term to provide the vanpool services as described in Exhibit A, Scope of Work.

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. Disadvantaged Business Enterprise Program and Forms

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

- DBE Participation Commitment Form
 - Written Confirmation (required from each proposed DBE firm listed on the DBE Participation Commitment Form)
- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “DBE Participation Commitment Form”)
- Bidders List

4. Restrictions on Lobbying Form

As a recipient of federal funds, the Authority is required to certify compliance with the influencing restrictions and efforts of Offeror to influence federal

officials regarding specific procurements in excess of \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

This RFP includes, under Exhibit G, the following: a certification form entitled "Certification of Restrictions on Lobbying," the office of Management and Budget (OMB) Standard Form LLL entitled "Disclosure of Lobbying Activities," and a document entitled "Limitation on Payments to Influence Certain Federal Transactions."

The Offeror to this solicitation will be required to complete and submit to the Authority in their proposal, the certification form entitled "Certification of Restrictions on Lobbying" whether or not any lobbying efforts took place. If the Offeror did engage in lobbying activities, then OMB Standard Form LLL "Disclosure of Lobbying Activities" must also be completed and submitted to the Authority.

5. Safety Specifications

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

6. Proposal Exceptions and/or Deviation Form

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

SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

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

- 1. Qualifications of the Firm 20%**

Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 30%**

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 30%**

Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
- 4. Cost and Price 20%**

Reasonableness of the Monthly User Fee as well as the competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established February 13, 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 proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

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

C. AWARD

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

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the

Authority must receive it within three (3) business days of notification of the contract award.

EXHIBIT A: SCOPE OF WORK

Scope of Work OC Vanpool Program

I. INTRODUCTION

Orange County Transportation Authority (Authority) is seeking proposals from qualified companies to provide subsidized commuter vanpool services and Measure M2 Project V Station Van Program services. Selected vanpool providers (Contractors) will provide vehicles, insurance, maintenance, and other associated services to vanpool participants. Authority will subsidize qualified vanpools, paying the subsidy to the Contractors on a monthly basis. Contractors will in turn reduce the monthly rental charge to vanpool participants by an amount at least equal to the subsidy.

II. BACKGROUND

Authority is Orange County's multi-modal transportation agency. Authority serves Orange County through fixed-route, on-demand, and paratransit bus transit, Metrolink commuter rail, the 91 Express Lanes, highway-roadway improvements, and High Occupancy Vehicle lanes. Authority administers Measure M2, the county's half-cent sales tax. Authority also provides rideshare services that are available to employers and commuters.

To provide more comprehensive rideshare services, Authority launched the OC Vanpool Program (Program) in July 2007. The purposes of the Program are to:

- Provide an additional commuting choice for employees and employers
- Increase the number of vanpool participants commuting to worksites in Orange County
- Reduce congestion and improve air quality

Authority's goal is to achieve a net growth of 5 percent or more annually in the Program.

III. OVERVIEW

A vanpool is a group of people who travel together in a vanpool vehicle with seating capacity for seven to fifteen adults. At least 80 percent of the mileage use is for transporting participants between their residences or meeting points, and their places of employment. The vanpool is driven by a volunteer participant(s) of the commuting group. The vanpool riders determine their daily route and meet at pre-determined pick-up locations. A vanpool makes one round-trip each commuting day.

Program participants or their Employer rent vehicles and related vanpool services from Contractors. To qualify for the Program, groups must achieve 70 percent occupancy in their start-up month. Contractors work directly with participants to provide vehicles, insurance, and maintenance through a month-to-month agreement that may be terminated with thirty-days written notice from the customer.

Authority has approximately 480 vanpools currently operating in the Program. On average, these vanpools travel 77 miles a day and carry five people. A 5 percent annual

growth in the Program is planned. Authority anticipates providing subsidies, up to Authority's funding allotment for the Program, to vanpools that meet the Authority's eligibility requirements.

Authority will provide up to \$400 per month per eligible vanpool as part of the agreement with Contractors. Subsidies begin on the first day of the commute for eligible vanpools and end on the last commute day. Partial months for qualified vanpools will receive a pro-rated subsidy based on the number of days the vanpool operated in the month.

Contractors will be required to reduce the amount of each subsidized vanpool's price to participants by an amount at least equal to the amount of the subsidy. In addition, Contractors are required to advance the amount of the subsidy to participants by billing and collecting only the subsidy-reduced amount of the monthly price from the customer.

To be eligible for the Program's subsidy:

- Vanpool service must be provided by a van provider under contract with Authority.
- All vanpool participants must register in the program.
- Vanpools must meet the requirements set forth in the Guidelines and Participation Agreements.
- Vanpools must be open to the public.
- Vanpools in the Program must have destination worksites located in Orange County. The Program is also open to commuters traveling from or through Orange County to sites in San Diego County that are within 20 miles of the Orange/San Diego County line.

Authority reserves the right to reduce, increase, or eliminate the monthly subsidy at its discretion. If possible, Authority will give 30 days' notice before reducing or eliminating subsidy and will, with less than 30 days' notice, pay Contractor the subsidy for any vanpool from which Contractor has already accepted the subsidy-reduced price, provided the vanpool qualified for the full subsidy or any pro-rated portion of the subsidy, for the most current month as payment in full, except in the following cases: a bankruptcy or other emergency affecting Authority's funds or apparent fraud on the part of Contractor.

Authority will not administer use agreements or provide direct customer service. Rather, through this Scope of Work, Authority desires to establish a cooperative partnership between Authority and Contractor which results in prompt, effective, and courteous communication; respectful competition within the marketplace; and the best value to the customer.

A. Contractor will:

- Provide use agreements, vehicles, vehicle maintenance and storage, facilities, materials and supplies, insurance, customer service, customer billing and collection, and related administrative functions.
- Facilitate completion of information for new vanpools required by the Program.

Exhibit A

- Comply with all applicable state and federal laws and regulations, including driver and vehicle certification, licenses, and vehicle registration.
- Assume all vehicle responsibilities and liabilities associated with the Program.
- Submit complete and accurate data, reports, and submittals required by the Scope of Work and other such additional information as reasonably requested by Authority.
- Actively promote the Program and participate in coordination and marketing activities.
- Ensure all Contractor employees understand the Program requirements and convey them in meetings with potential employers and vanpool groups.
- Affix Authority-supplied decals containing text and graphics to each vehicle, preferably on both sides, but at a minimum on the rear of each vehicle participating in the Program.
- Participate in the Measure M2 Project V Station Van Program. Station vans are for the purpose of providing expanded service to/from a Metrolink station. Station van passengers must also be Amtrak/Metrolink passengers. All station vans must be in compliance with the Americans with Disabilities Act (ADA) requirements. Station vans must start with 70 percent occupancy and maintain a 50 percent occupancy rate in months two and beyond. The Station Van Program will operate the same as the OC Vanpool Program with noted exceptions. The station van monthly rent charge shall include the vehicle, insurance, maintenance, fuel, and washes. A Contractor-provided credit card will be issued for fuel and washes, unless the employer declines acceptance, and will be required to submit receipts for fuel and washes to Authority. Contractor will document monthly rental charges, fuel and washes separately by individual van in the monthly invoice. Monthly invoices for Project V shall be submitted separately and separate invoices shall be submitted for each company under each project.

B. Authority will:

- Provide up to \$400 a month subsidy for each vanpool that is approved by Authority, enrolled in the Program, and complies with the provisions of the Vanpool Participation Agreement and Vanpool Program Guidelines. Qualified vanpools will be eligible for the Program subsidy beginning on their first commute day and will end on the last commute day. A vanpool group must achieve 70 percent occupancy in their start-up month to qualify for the subsidy and will not be eligible until the month they achieve 70 percent occupancy. After qualifying, vanpools will remain eligible for the subsidy until they fall below 50 percent occupancy for three consecutive months. If a group loses subsidy due to three consecutive months of low ridership, the subsidy will reinstate in the month the occupancy meets or exceeds 50 percent.
- Receive and evaluate Vanpool Program Applications and Participation Agreements, accept or reject each application, authorize enrollment for approved applications, and manage Participation Agreements with participating vanpools.

- Receive and evaluate new vanpool applications and vanpool changes such as coordinator, mileage, vehicle, or price changes that are submitted by Contractor to ensure accuracy and contract compliance.
- Compile and manage a vanpool database and prepare and submit National Transit Database (NTD) reports in order to receive Section 5307 grant funds.
- Develop, produce, and provide decals to Contractor displaying wording and graphics that identify vehicles as Program participants.
- Develop and implement Program marketing and advertising campaigns and conduct employer outreach.
- Provide regional ride-matching services to identify commuters who may form vanpools and to identify participants to fill empty vanpool seats.
- Maintain a website, OCTA.net/vanpool, to provide information to commuters interested in joining an existing vanpool, starting a new vanpool, accessing their vanpool accounts, and to provide resources and information.
- Approve each station van monthly rental charge amount and any cost-related changes for each station van operated. Authority will be responsible for 100 percent of the Station Van Program costs. The Programs monthly subsidy shall not apply to the Station Van Program.

C. Vanpool Participants will:

- Designate at least one vanpool driver.
- Complete and submit Vanpool Program Application Forms and Participation Agreements directly to Authority. Update their vanpool account roster by adding and/or deleting passengers and updating their vanpool route when a change occurs.
- Fully comply with the Vanpool Program Participation Agreement and the terms and conditions set forth therein. Failure to comply may result in delay or non-payment of the subsidy and/or termination from the Program.
- Submit complete and accurate monthly reports containing information on daily passenger trips, vanpool expenses, and mileage traveled as set forth in an on-line report form provided by Authority. Failure to comply may result in delay or non-payment of the subsidy and/or termination from the Program.

IV. CONTRACTOR TASKS AND RESPONSIBILITIES

Vanpool Contractor shall perform the following tasks:

- A. **Vehicles.** Provide vehicles that seat a minimum of six adults to a maximum of fourteen adults, not including the driver. The seating capacity of vehicles that have been delivered into the Program may not be altered to add or reduce the number of seats. Inclusion of vehicles that are electric or hybrid/plug-in electric that meet the vanpool minimum and maximum seating requirements are encouraged. No vehicle provided to a Program participant shall at any time exceed five model years in age or 125,000

Exhibit A

miles. Contractor shall replace any vehicle when or before it reaches these limits. All vehicles shall comply with Federal Motor Vehicle Safety Standards (FMVSS). Contractor is responsible for vehicle auto insurance, vehicle inspections, licensing, and registration in accordance with applicable federal, state, and local laws.

B. Maintenance. Employ a comprehensive Maintenance Plan that addresses preventive maintenance and unscheduled repairs to ensure continued reliability, performance, and safety of the vehicles used in the Program. The Maintenance Plan shall:

1. Identify the goals and objectives of the maintenance program, which should include, for example, vehicle life, periodic inspection and service intervals, and emergency on-road service.
2. Describe a system of periodic inspections and preventive maintenance procedures to be performed at certain defined intervals, and, at a minimum, in conformance with applicable federal, state, and local laws and the vehicle manufacturer's recommendations.
3. It is preferred that the Contractor provide pick-up and delivery services or mobile on-site service for vehicle maintenance. As an alternative, arrange for vehicle repair service facilities that are conveniently located in the proximity of either the vanpool driver's home or work location that can be used when service is needed.
4. Maintain a vehicle-maintenance database that includes a log of all maintenance, inspections, servicing, and repairs performed on each vehicle. The log should include the dates of service, odometer readings, and descriptions of the work performed. Upon request of Authority, Contractor will provide Authority with a copy of the maintenance log within two business days.
5. Develop a set of procedures that provides vanpool drivers with reimbursement for incidental expenses or emergency repairs incurred by vanpool drivers.
6. Establish procedures for investigating and addressing maintenance safety complaints from customers within two business days of receiving a complaint.
7. Provide comprehensive vehicle delivery and pick-up services within Orange County for all start-up, replacement, and terminated vehicles.

C. Advance Subsidy. Reduce the amount of each subsidized vanpool's monthly rental charge, as shown in the then-current Contractor's Annual Not-to-Exceed Price Report Form (See Attachment A), by an amount at least equal to the amount of Authority subsidy for that vanpool. In addition, Contractor is required to advance the amount of the subsidy to participants by billing and collecting only the subsidy-reduced amount of the monthly rental charge from vanpool participants. Contractor may bill the Authority for a month's subsidy immediately upon crediting an Authority-approved vanpool group's account for the month's subsidy. Payment for subsidies will be made to Contractor after vanpool participation and expense reports are received by Authority provided the vanpool qualified for a subsidy. Reports are due the 10th day of each month for the prior month.

Exhibit A

- D. **Use Agreement.** Submit the vanpool Vehicle Condition Checklist and Use Agreement for review and approval by Authority. Participants in the Program shall be charged a monthly rent charge not to exceed the Contractor's annual pricing as described in the Annual Vanpool Vehicle Offerings and Prices set forth in Attachment A. All use agreements shall be on a month-to-month basis. Prepare and enter into a use agreement for each vanpool that sets forth the cost, insurance coverage, mileage cap and excess mileage fees.
- E. **Driver Approval.** Ensure that vanpool drivers are qualified to operate a vehicle. Contractor shall comply with applicable state and federal laws and regulations, including driver and vehicle certification, licenses, vehicle registration, and insurance certifications. Contractor shall be responsible for obtaining DMV Form DL-51 from vanpool drivers in compliance with DMV requirements. Contractor shall be responsible for maintaining a database of completed DMV Form DL-51s and for obtaining updated forms from vanpool drivers every three years in compliance with DMV requirements. Upon request of Authority, Contractor shall provide Authority with a copy of DMV Form DL-51 for Program participants within two business days.
- Any member of the vanpool group who has been approved to drive by the Contractor may elect to use the vanpool vehicle for non-commuting purposes. Personal use of the vehicle may be negotiable between the customer and Contractor and personal use mileage allowances must be documented as part of the vanpool use agreement.
- F. **Compliance with Applicable Laws and Regulations.** Comply with all state and federal laws and regulations, including but not limited to vehicle licensing, maintenance, drivers, signage, first-aid kits and fire-extinguishers.
- G. **Vehicle Use.** Provide vehicles primarily for commute trips. Personal use of the vehicle may be negotiable between the vanpool's Primary Driver and Contractor. No more than 20 percent of the miles driven on a vehicle can be for a purpose other than commuting.
- H. **Public Transportation and ADA.** Reasonably accommodate all applicants. Publicly subsidized vanpools are public transportation and are subject to legal requirements associated with public transportation including the Americans with Disabilities Act (ADA) and non-discrimination.
- I. **Rental Charge Amounts.** Charge participants in the Program a monthly rental charge not to exceed the Contractor's Annual Not-to-Exceed Price Report. Prices listed in Attachment A shall be the price before the subsidy. Once a price list is submitted to Authority, its prices will be valid for 12 months. First Contractor's Annual Not-to-Exceed Price Report will be submitted immediately upon execution of an agreement between Contractor and Authority and shall contain the same rates as set forth in the price forms under Exhibit B "Cost and Price Forms" submitted with Contractor's proposal to provide vanpool service. Actual prices may be less, but not more than the prices in any then-currently effective Contractor's Annual Not-to-Exceed Price Report except when Contractor issues a credit card to participants for fuel, car washes and toll road purchases. The actual cost for these purchases will be billed to the vanpool in addition to the rental charge. New Contractor's Annual Not-to-Exceed Price Reports shall be submitted prior to each anniversary date of the execution of the agreement between the Contractor and Authority.

- J. **Accurate, Timely Reporting.** Provide timely and accurate monthly and yearly reporting to Authority as required elsewhere in this Scope of Work.
- K. **Vanpool Customer Service and Marketing Support.** Provide personnel and resources necessary to offer timely and effective customer service and support to participants in the Program. Contractor will respond to vanpool participant customer service inquiries within one business day.

Increase the number of vehicles participating in the Program by:

1. Soliciting new customers by adding more vanpools and adding passengers to existing vanpools.
2. Reducing the number of vanpool terminations due to loss of riders

Promote the exclusive use of the OC Vanpool website and tools on OCTA.net/vanpool during vanpool formation meetings. This includes the vanpool start-up, seat-finder, reporting portal, and program related information. Contractor shall provide a copy of the Program Guidelines (Attachment B) to all new vanpool groups and at all group formation meetings. An electronic version is available at OCTA.net/vanpool/current-vanpoolers. Contractor will direct new applicants to the OCTA.net/vanpool website to complete the Program Application and initiate the email delivery of OC Vanpool Participation Agreements to each participant in the vanpool, prior to executing a lease rental agreement with the customer. Authority staff will notify Contractor when the application and agreements are complete, and Contractor will submit the new vanpool paperwork required through the vanpool website portal. Enrollment paperwork that is incomplete may result in denial, or delay of any subsidy until the information is provided.

OC Vanpool reserves the right to withhold the subsidy in its entirety for vanpool information that is inaccurate or incomplete. In the event that OC Vanpool withholds the subsidy payment due to Contractor inaccurate or delayed reporting, Contractor shall not be permitted to pass these charges back to the customer. Contractor shall assume all financial responsibility for inaccurate or late reporting as described above.

Assist Authority with marketing the Program by providing promotional materials that clearly describe Contractor's services. A copy of all marketing materials, including presentations, shall be provided to Authority for review prior to distribution by Contractor. Marketing materials that include references to Authority, OC Vanpool, or any other Authority program shall be submitted to Authority for review and approval 14 calendar days in advance of distribution.

Refrain from directly soliciting existing vanpool participants with the intention of increasing market share without contributing to the overall growth of the Program. Direct solicitation includes, but is not limited to, placing marketing materials (such as fliers and business cards) on vanpool vehicles.

Contractor shall participate in quarterly operations and marketing coordination meetings with Authority.

At Authority's request, distribute marketing or operational related materials provided by Authority that directly relate to the Program. Authority will not require Contractor to distribute any materials that mention by name any of Contractor's competitors in the vanpool business. Contractor will coordinate and participate in cross-marketing, sales, advertising and promotional events as needed or requested by Authority. Contractor

is required to notify Authority about all meetings with current and potential new employers in Orange County and invite Authority staff to attend those meetings.

- L. **Decals.** Affix a decal displaying text and graphics on all vans enrolled in the Program identifying the van as participating in the OC Vanpool Program. Decals will be designed and provided by Authority. Authority will confer with Contractor on the decal's size, material, and adhesive and will reasonably take into account Contractor's concerns that the decals do not harm the van's surface, negatively affect the van's branding, or cause excessive expense for installation. Decals are required on each van for which Authority pays a subsidy. Contractor shall be responsible for installation of decals in a timely manner and shall notify Authority when additional decals are required. If new replacement decals are provided by Authority, Contractor shall be responsible for replacing them in a timely manner. Authority will provide decals in sufficient quantity.
- M. **Submission of Applications and Related Forms.** Distribute to Program applicants, and vanpool groups in formation stages, the Program Guidelines. For each new vanpool seeking start-up approval from Authority, Contractor shall direct new driver/coordinator applicants to OCTA.net/vanpool to complete an Application Form and Participant Agreement. Upon completing an Application, the vanpool database will automatically send the passengers listed on the vanpool roster an email asking each passenger to complete a Participant Agreement. Contractor shall upload to the vanpool database the signed Vehicle Condition Check List and Lease/Rental Agreement by no later than five days after the start date of the vanpool. No other forms will be accepted for enrollment consideration in lieu of these forms. New Employer Vanpool Program Notification forms (Attachment E) must be submitted by email to vanpool@octa.net within 5 days when vanpools are being formed at a company where vanpools did not previously exist or when there is a new company contact responsible for the employer vanpool program.
- N. **Contractor Communication Forms.** Submit a "Contractor Communication Form" (Attachment C) and a Vehicle Condition Checklist within five business days of the occurrence of any of these actions:
- New Vanpool
 - Terminated Vanpool
 - Vehicle Switch
 - Driver/Coordinator Switch
 - Price Change
 - Mileage Change

Coordinator Changes: A Vehicle Condition Checklist Coordinator Change must accompany a Contractor Communication Form. If a coordinator switch is done to a vanpool after Contractor has received notice of low occupancy, Contractor must waive the thirty-day termination notice requirements and charges if ridership cannot be increased to achieve 50 percent or greater occupancy.

Route Changes: When the route changes, Contractor must provide the details of the new route to OC Vanpool within five business (or calendar) days.

Exhibit A

Terminations: Contractor will alert Authority of impending terminations within five business days of receipt of termination notice from the customer by forwarding a copy of the customer's notice of termination to Authority or by submitting by email the effective date, OC Vanpool customer ID, and reason for termination. Once the vehicle is returned, Contractor shall provide a copy of the signed Vehicle Condition Checklist along with the Contractor Communication Form.

Contractor shall notify Authority on a monthly basis, due by the 10th day of the month, of all vanpool vehicles that have been retired. The notification shall include Contractor Vehicle Number and retirement date for any vehicle used in the Program that will no longer be available for use in the Program.

- O. **Monthly Invoices and Associated Reports.** Submit monthly invoice, notices, and associated reports as set forth below. Contractor shall submit invoices and vehicle incident reports no later than the 20th day of each month for the previous month's services.

Invoices. Invoices must be in the format, although not on the specific form, shown in Attachment D in Excel files and shall include all the following information per vanpool:

1. Customer ID number for all active and terminated Vanpools
2. Van unit number
3. Driver's name
4. Monthly Price
5. Amount of subsidy applied
6. License Plate number

Vehicle incident reports. Contractor shall submit a monthly Incident Report (Attachment I & J). The following guidelines must be followed when preparing the Incident Report:

1. Declaration must be made of any major or non-major vehicle incident. Classifications are defined as follows:
 - Major: Any incident resulting in a fatality or property damage in excess of \$25,000 and/or requiring immediate medical attention away from the scene for two or more persons. Also, as noted below, Major Accidents and Incidents must be reported immediately to Authority.
 - Non-Major: Any incident that results in more than \$7,500, but less than \$25,000 in property damage and/or results in any injury that requires medical attention away from the scene of the incident.
2. Declaration must be made of any major mechanical system failures occurring during the month. Classifications are defined as follows:
 - Major: These are failures of a mechanical element of the vehicle that prevents the vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip because actual movement is limited

or because of safety concerns.

- Non-Major: These are failures of some other mechanical element of the revenue vehicle that prevents the revenue vehicle from completing a scheduled revenue trip or from starting the next scheduled revenue trip even though the vehicle is physically able to continue in revenue service. Examples of other failures include breakdowns of heating, ventilation and air conditioning (HVAC) systems and other problems not included as a major mechanical systems failure.

If no incidents occurred during the month, Reports shall be submitted stating that no incidents occurred during the period. Each Report shall include the printed name and signature of the authorized Contractor representative responsible for declarations.

Upon Authority's request, provide further information about any major or non-major incidents. Such information may include, but not be limited to, copies of accident reports from applicable law enforcement agencies and statements from vanpool participants.

Notices. Contractor shall notify Authority of any major incident as soon as possible but no later than 48 hours after the incident occurs, both by telephone and by email to Authority Project Manager. Contractor shall also provide all such reasonable information regarding any major incident as may be requested by Authority. Such notification shall not be delayed until routine monthly reports are submitted.

- P. **Marketing Reports and Vanpool Meetings.** Contractor shall submit a monthly vanpool Marketing Report (Attachment K) by the 10th of each month detailing the prior month activities. Contractor shall participate in quarterly meetings with Authority staff and provide a marketing report or presentation detailing outreach activities conducted during the quarter to obtain and form new vanpools and identify any campaigns or promotions planned for the next period.

- Q. **Annual Reports.** Provide reports to Authority annually by August 16 using Authority-provided forms (Attachments E – G). These forms are consistent with the definitions used for National Transit Database (NTD) reporting and provided in the Federal Transit Administration (FTA) publication Uniform System of Accounts.

The following information is needed to complete the annual reports and shall cover the preceding July 1 through June 30 fiscal year.

1. Contractor's Employees and Work Hours
2. Contractor's Operating Expenses
3. Sources of Funds
4. Contractor's Depreciation, Interest, Lease, and Rental Expenses
5. Contractor's Vehicle Inventory
6. Contractor's Vehicle System Failure Report

Failure to provide true and accurate data for the Annual Reports within the time requirements stated in this Section may result in the withholding of payment until the

Annual Reports are submitted in their entirety to Authority. Contractor will respond to any NTD information requests within five business days of the request.

- R. **Audit and Inspection of Records.** Provide Authority, Federal Transit Administration, or the National Transit Database Analysts (“the Parties”) such access to Contractor’s customer invoices, accounting books, records, payroll documents and facilities of the Contractor which are directly pertinent to the Agreement for vanpool services for the purposes of examining, auditing, and inspecting all accounting books, records, work data, documents, and activities related thereto. Contractor shall maintain such books, records, and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during Contractor’s performance under the Agreement and for a period of four (4) years from the date of final payment by Authority. The Parties’ right to audit books and records directly related to the Agreement shall also extend to any first-tier subcontractors identified in the Agreement. Contractor shall permit the Parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ATTACHMENTS

- A. Contractor’s Annual Not-to-Exceed Price Report
- B. Program Guidelines
- C. Contractor Communication Form
- D. Contractor’s Monthly Invoice Form
- E. New Employer Vanpool Program Notification
- F. NTD Annual Operations and Expense Report
- G. NTD Contractor’s Annual Rental Charge Paid Report
- H. NTD Revenue Vehicle Inventory
- I. Monthly Safety and Security Report
- J. Monthly Mechanical System Failure Report
- K. Vanpool Monthly Marketing Report

OCTA VANPOOL PROGRAM Contractor's Annual Not-to-Exceed Price Report (price before program subsidy)										
In the table below, provide the van type and total seats for each van you operate, or intend to operate in Orange County in 2020. Enter the monthly rental charge* for each vehicle type at each corresponding mileage interval. On a separate page, provide a description of the major features for each van type.										
Monthly Mileage Allowance	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle	Vehicle
	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats	Total Seats
500										
750										
1000										
1250										
1500										
1750										
2000										
2250										
2500										
2750										
3000										
3250										
3500										
3750										
4000										
4250										
4500										
4250										
4500										
4750										
5000										

Are personal use miles provided? ____ If yes, are those miles included or in addition to the Monthly Mileage Allowance? ____
 What is the excess mileage charge? ____

* Monthly Rental Charge is to include everything normally billed to a customer except fuel, tolls, car washes, and parking charges.



PROGRAM GUIDELINES



The Orange County Transportation Authority operates the OC Vanpool Program to provide transit choices to commuters and reduce congestion on Orange County roadways. The program offers a monthly incentive of \$400, to commuter vanpools, to offset the monthly fee charged by a van provider who is under contract with OCTA.

WHICH VANPOOL GROUPS CAN APPLY FOR THE PROGRAM?

Vanpools with worksite destinations in Orange County can apply. Vanpools that originate or go through Orange County traveling to a worksite less than 20 miles into San Diego County may also apply.

PROGRAM QUALIFICATIONS

- ☐ Have a destination (workplace) within Orange County
- ☐ Have 70% start-up occupancy
- ☐ Vanpools must be open to accept riders from nearby destinations
- ☐ Must maintain a minimum occupancy of 50%
- ☐ Service must be provided by a van provider under contract with OCTA

HOW DOES A VANPOOL GROUP APPLY FOR THE PROGRAM?

Complete and sign an OCTA Vanpool Program Application form. Submit the form to your van provider along with signed Participant Agreements from all vanpool passengers, including the driver. Your van provider will submit the application and agreements to OCTA for processing.

HOW WILL I BE NOTIFIED IF MY VANPOOL HAS BEEN ACCEPTED IN THE PROGRAM?

OCTA will notify you and your van provider in writing within 2 weeks of receiving your application.

ONCE ACCEPTED IN THE PROGRAM, HOW DO I REMAIN QUALIFIED?

- ☐ Complete monthly ridership and expense reports through the program's website database or mobile app— failure to provide the monthly reports or record accurate data will result in loss of the \$400 monthly incentive
- ☐ Maintain a minimum of 50% vehicle occupancy — vehicles with less than 50% occupancy for three consecutive months will lose the incentive until the occupancy level of 50% is regained
- ☐ Follow the Program Participation Guidelines as described herein

OCTA retains the right to deny funding for any new vanpools and to terminate the funding of any individual vanpool or the entire program if OCTA deems it to be in the best interest of the agency to do so. Regardless of the length of any contract between vanpool participants and a vanpool company, OCTA retains the right on a monthly basis to terminate the subsidy for any vanpool enrolled in the Program.

The OC Vanpool Program is compliant with the Americans with Disabilities Act (ADA) and open to the public. Accessible vehicles are available from the vanpool service provider upon request.

NOTICE OF TITLE VI PROTECTION: It is the policy of OCTA to employ its best efforts to ensure that all programs, services, and activities are implemented without discrimination. For more information on OCTA's civil rights program, and the procedures to file a complaint, please visit OCTA.net.



**OCTA VANPOOL PROGRAM
CONTRACTOR COMMUNICATION FORM**

Contractor: _____		Date Received By OCTA: Entered By: _____	
Phone: (____) ____ - ____ ext: _____	Contact: _____	Date: _____	
Current Information			
Driver's Name: _____	Vans License Plate #: _____	Customer ID: _____ Van Unit Number: _____	
Type of Transaction			
<input type="checkbox"/> New Vanpool <input type="checkbox"/> Van Change <input type="checkbox"/> Primary Driver Change <input type="checkbox"/> Vanpool Termination			
For New Vanpool			
Date of First Commute: _____	Delivery Date: _____	Van Type: _____	
Current Odometer: _____	Model Year: _____	Passenger Size: _____	
Monthly Mileage Cap: _____	Monthly Use Fee: _____		
For Van Change			
Date of Change: _____	New Van Unit No.: _____	Van's License Plate #: _____	
Van Type: _____	Model Year: _____	Passenger Size: _____	
Monthly Mileage Cap: _____	Starting Odometer: _____	Monthly Use Fee: _____	
For Vanpool Primary Driver Information Change			
<input type="checkbox"/> New Primary Driver <input type="checkbox"/> New Address Only <input type="checkbox"/> New Employer Only			
Date of Change: _____		New Driver's Name: _____	
Home Address: _____		Email: _____	
City: _____	Zip: _____		
Home Phone: (____) ____ - ____		Employer: _____	
Work Phone: (____) ____ - ____		Employer Address: _____	
		City: _____ Zip: _____	
For Vanpool Termination			
Date of Last Commute by Group: _____		Van Termination Date: _____	
Reason for Termination: _____			

Contractor's Monthly Invoice Form

Billed From:

Billed To:

OCTA
Attn: Accounts Payable
550 S. Main Street
Orange, CA 92863-1584

Invoice ID	
Contract #	
Customer #	
Invoice Date	
Payment Terms	Net 30
Amount Due	

Invoice: Month and Year

OCTA ID	VAN UNIT NUMBER	LICENSE PLATE NUMBER	LAST NAME	FIRST NAME	LEASE COST	OCTA SUBSIDY	ENTERPRISE COMMENTS	OCTA Comments
Grand Totals								

Active Vanpools: _____
New Vanpools: _____
Terminations: _____

- A) The invoice is a true, complete and correct statement of reimbursable costs and progress.
- B) The invoice is a true, complete and correct statement of reimbursable costs.
- C) The backup information included with the invoice is true, complete and correct in all material respects.
- D) All payments due and owing to subcontractors and suppliers have been made.
- E) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification.
- F) The invoice does not include any amount that CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.

Authorized Representative Signature: _____



New Employer Vanpool Program Notification

Please complete and email to vanpool@octa.net

Company Name:			
Company Address:			
Company Point of Contact Name:			
Company Point of Contact Email:			
Company Point of Contact Phone:			
Contractor AE Name:			
Contractor AE Phone:			
Contractor AE Email:			
How many Vanpools will start?			
What is the anticipated start date?			
Will the Employer subsidize (if yes, describe and include the amount)?			
If there is a subsidy, is there an end date? If yes, when?			
What problem will the Vanpools solve?			
Date:		Submitted by:	

NTD Annual Operations and Expense Report

1. Operating expenses	Vehicle Maintenance Total	General Administration Total	Total Expenses
Labor			
Salaries and wages			
Fringe benefits			
Services			
Materials and supplies			
Fuel and lubricants			
Other *			
Utilities			
Casualty and liability losses			
Taxes			
Miscellaneous expenses			
Total			

* office supplies, promotional/marketing materials, advertising expenses, etc.

2. Sources of funds	Funds Earned During Period	3. Reconciling Items	Cash Expenditures	Non-Cash Expenditures	Total Expenses for Period
Passenger fares		Interest expense			
Subsidy		Leases and rentals			
Total		Depreciation			
		Total			

4. Maximum vans		5. Maintenance performance	Number of Revenue Vehicle System Failures
Highest number of active vans in the OCTA program		Major mechanical system failures	
Number of vans available for maximum service		Other mechanical system failures	
Shaded areas should be blank.		Total	

NTD Contractor's Annual Rental Charge-Paid Report

For each month, enter the actual rental charge paid by the vanpool for each combination of Primary Driver and vehicle. For example, if a van assigned to the Primary Driver listed in Row 1 is replaced effective January 1, complete only Jul through Dec in Row 1, repeat the Primary Driver's name in Row 2 and enter the replacement van number in Row 2 and enter the monthly rental charge paid for Jan through Jun in that row. Similarly, if the Primary Driver of a vanpool changes, start a new row for the new Primary Driver. Use as many pages as necessary to report all Primary Driver-van number combinations. Attach pages as needed.

Driver-Van Number Combination			Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
	Primary Driver Last Name, First Name	Van No.												
1														
2														
3														
4														
5														
6														
7														
8														
9														
10														
11														
12														
13														

NTD Revenue Vehicle Inventory

Number of Vehicle in Total Fleet	Dedicated Fleet	Vehicle Type	Model Year	Manu- facture Code *	Model	Number Active Vehicles in Fleet	Number w/ADA Vehicle Lifts	Number w/ADA Ramps/low floor	Fuel Type Code**	Vehicle Length	Seating Capacity	Total Miles on Active Vehicles During Period	Average Lifetime Mileage per Active Vehicle
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											
		VN											

*Manufacture Code
 DTD=Dodge
 FRD=Ford
 GMC=GMC
 CMD=Chevrolet
 ZZZ=Other

**Fuel Type
 GA=Gasoline
 CN=CNG

Add additional rows as needed.

Monthly Safety & Security Report					
Contractor Name					
Report for Month of					
	Check Here if No Reportable Incidents - 1 or more Fatality - 1 or more Injury - > \$25,000 Property Damage				
	Check Here if No Incidents To Report Below				
Type of Incident		Number of Occurrences	Number of Victims Who Are:		
			Vanpool Passengers	Your Employees	Others
Robberies					
In Vanpool Vehicle					
In Contractor Office					
Larcenies					
In Vanpool Vehicle					
In Contractor Office					
Injuries					
In a Vanpool vehicle					
Fires					
In Vehicles					
Burglary					
In Contractor Office					
Vehicle Theft					
Theft of Vanpool Vehicle					
Assaults					
In Vanpool Vehicle					
In Contractor Office					
Vehicle Vandalism					
Of Contractor Vehicle					
Other					

Mechanical System Failures	
Contractor Name	
Report for Month of:	
Revenue Vehicle System Failures	Number of Failures
Major mechanical system failures	
Other mechanical system failures	
Total Revenue Vehicle System Failures	
Printed Name:	
Signature of authorized Contractor representative responsible for declarations:	

Vanpool Monthly Marketing Report

The monthly marketing report should be submitted to the OC Vanpool Manager by the 10th day of each month, outlining the meetings and activities from the previous month and forecasting for the following month to include:

- New or Existing Employer Meetings
- Mapping Meeting Review
- Van Shows/Demos
- Vanpool Formation Meetings
- Ride Fair or Other Meetings

Sample Report Format:

Type of Meeting/Event	Date	Company/Employer Name	Outcome Expected	Name(s) of Vanpool Company Staff in Attendance	Name(s) of OCTA Staff Attendance

EXHIBIT B: COST AND PRICE FORMS

RFP 9-1698
Exhibit B

All prices submitted for the following matrix must be based on a vehicle with the minimum features described in the Scope of Work, Exhibit A. Prices shall be before applicable program subsidy. Any additional features that the CONTRACTOR adds to the minimum vehicle requirements, shall not increase the Use Fee to the customer. All vehicles must adhere to the requirements stated in the Scope of Work, Exhibit A.

Year 1 : 7/1/20 - 6/30/21																
Monthly Commute Roundtrip Miles		Vehicle Class:		Vehicle Class:		Vehicle Class:		Vehicle Class:		Vehicle Class:		Vehicle Class:		Vehicle Class:		
		Make:		Make:		Make:		Make:		Make:		Make:		Make:		
		Model:		Model:		Model:		Model:		Model:		Model:		Model:		
		Model Year:		Model Year:		Model Year:		Model Year:		Model Year:		Model Year:		Model Year:		
		Seat Capacity/Type:		Seat Capacity/Type:		Seat Capacity/Type:		Seat Capacity/Type:		Seat Capacity/Type:		Seat Capacity/Type:		Seat Capacity/Type:		
		Estimated MPG:		Estimated MPG:		Estimated MPG:		Estimated MPG:		Estimated MPG:		Estimated MPG:		Estimated MPG:		
500	\$		\$		\$		\$		\$		\$		\$			
750	\$		\$		\$		\$		\$		\$		\$			
1000	\$		\$		\$		\$		\$		\$		\$			
1250	\$		\$		\$		\$		\$		\$		\$			
1500	\$		\$		\$		\$		\$		\$		\$			
1750	\$		\$		\$		\$		\$		\$		\$			
2000	\$		\$		\$		\$		\$		\$		\$			
2250	\$		\$		\$		\$		\$		\$		\$			
2500	\$		\$		\$		\$		\$		\$		\$			
2750	\$		\$		\$		\$		\$		\$		\$			
3000	\$		\$		\$		\$		\$		\$		\$			
3250	\$		\$		\$		\$		\$		\$		\$			
3500	\$		\$		\$		\$		\$		\$		\$			
3750	\$		\$		\$		\$		\$		\$		\$			
4000	\$		\$		\$		\$		\$		\$		\$			
4250	\$		\$		\$		\$		\$		\$		\$			
4500	\$		\$		\$		\$		\$		\$		\$			
4750	\$		\$		\$		\$		\$		\$		\$			
5000	\$		\$		\$		\$		\$		\$		\$			
5250	\$		\$		\$		\$		\$		\$		\$			
5500	\$		\$		\$		\$		\$		\$		\$			
6000	\$		\$		\$		\$		\$		\$		\$			
															Total Monthly Average Use Fee \$ _____	
For cost analysis purposes:																
• Provide fully-burdened Not-to-Exceed Use Fees for the above-designated categories. The awarded firm will be required to honor the Not-to-Exceed Use Fees for the first 12-months identified in Table A., as well as the annual percentage escalation rate as identified in the table below, throughout the Maximum Term of the resulting Agreement.																
• Provide the percent escalation from the total monthly average Not-to-Exceed Use Fee for each prior year.																

For cost analysis purposes:

- *Provide fully-burdened Not-to-Exceed Use Fees for the above-designated categories. The awarded firm will be required to honor the Not-to-Exceed Use Fees for the first 12-months, as well as the annual percentage escalation rate as identified in the table below, throughout the Maximum Term of the resulting Agreement.*
- **Provide the percent escalation from the total monthly average Not-to-Exceed Use Fee for each prior year.**

Year 2	Year 3	Year 4	Year 5
7/1/2020 – 6/30/21	7/1/2021 – 6/30/22	7/1/2022 – 6/30/23	7/1/2023 – 6/30/24
_____ %	_____ %	_____ %	_____ %

Option Year 6	Option Year 7	Option Year 8	Option Year 9
7/1/2024 – 6/30/25	7/1/2025 – 6/30/26	7/1/2026 – 6/30/27	7/1/2027 – 6/30/28
_____ %	_____ %	_____ %	_____ %

1. I acknowledge receipt of RFP 9-1698 and Addenda No.(s) _____
2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

SIGNATOR'S NAME AND TITLE _____

DATE SIGNED _____

EXHIBIT C: PROPOSED AGREEMENT

PROPOSED AGREEMENT NO. C-9-1698

BETWEEN

ORANGE COUNTY TRANSPORTATION AUTHORITY

AND

THIS AGREEMENT is effective as of this _____ day of _____, 2020 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), , , , (hereinafter referred to as "CONTRACTOR").

WITNESSETH:

WHEREAS, AUTHORITY requires assistance from CONTRACTOR to provide subsidized commuter vanpool services and Measure M2 Project V Station Van Program services on behalf of the Authority; and

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

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

WHEREAS, CONTRACTOR wishes to perform these services;

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

ARTICLE 1. COMPLETE AGREEMENT

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

/

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

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

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

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

D. Should the services of any key person become no longer available to CONTRACTOR, the 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 CONTRACTOR is not provided with prior notice by the departing employee. AUTHORITY shall respond to CONTRACTOR 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 commence on July 1, 2020 and upon execution by both parties shall continue in full force and effect through June 30, 2024, ("Initial Term") unless earlier terminated or extended as provided in this Agreement.

B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an additional twenty-four (24) months, commencing July 1, 2024 and continuing through June 30, 2026 ("First Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work", and at the rates set forth in Article 5, "Payment".

C. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an additional twenty-four (24) months, commencing July 1, 2026 and continuing through June 30, 2028 ("Second Option Term"), and thereupon require CONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work", and at the rates set forth in Article 5, "Payment".

D. AUTHORITY's election to extend this Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or CONTRACTOR's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period extending from July 1, 2020 through June 30, 2028, which period encompasses the Initial Term, First Option Term and Second Option Term.

ARTICLE 5. PAYMENT

A. For CONTRACTOR's full and complete performance of its obligations under this Agreement, and subject to the maximum cumulative payment obligation provisions set forth in Article 7,

1 AUTHORITY shall pay CONTRACTOR on a firm-fixed subsidy basis in accordance with the following
2 provisions.

3 B. The firm-fixed monthly subsidy to CONTRACTOR by AUTHORITY to provide services as
4 set forth in Exhibit A, Scope of Work, shall be up to Four Hundred Dollars (\$400.00) for each vanpool
5 that is approved by AUTHORITY, enrolled in the program and complies with the provisions of the
6 OC Vanpool Program Guidelines included as Attachment B to Exhibit A. The schedule shall not include
7 any CONTRACTOR expenses not approved by AUTHORITY including but not limited to reimbursement
8 for local meals.

9 C. CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding
10 to actual number of approved vanpools by CONTRACTOR. Approved vanpools shall be documented
11 in a monthly report prepared by CONTRACTOR, which shall accompany each invoice submitted by
12 CONTRACTOR. CONTRACTOR shall also furnish such other information as may be requested by
13 AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline
14 to make full subsidy payment listed in paragraph B of this Article until such time as CONTRACTOR has
15 documented to AUTHORITY's satisfaction, that CONTRACTOR has fully completed all work required
16 under the task. AUTHORITY's payment in full shall constitute AUTHORITY's final acceptance of
17 CONTRACTOR's work.

18 D. Invoices shall be submitted by CONTRACTOR on a monthly basis and shall be submitted
19 in duplicate to AUTHORITY's Accounts Payable office. CONTRACTOR may also submit invoices
20 electronically to AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. Each
21 invoice shall be accompanied by the monthly progress report specified in paragraph C of this Article.
22 AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each
23 invoice. Each invoice shall include the following information:

- 24 1. Agreement No. C-9-1698;
- 25 2. Van unit number;
- 26 3. Driver's Name;

4. Monthly Use Fee billed to vanpool driver;
5. Amount of subsidy applied;
6. The time period covered by the invoice;
7. Monthly Report;
8. Certification signed by the CONTRACTOR or his/her designated alternate that a)
The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The
backup information included with the invoice is true, complete and correct in all material respects;
c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments
will be made to subcontractors and suppliers from the proceeds of the payments covered by the
certification and; e) The invoice does not include any amount which CONTRACTOR intends to withhold
or retain from a subcontractor or supplier unless so identified on the invoice;
9. Any other information as agreed or requested by AUTHORITY to substantiate the
validity of an invoice.

ARTICLE 6. PROMPT PAYMENT CLAUSE

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

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

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

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

ARTICLE 7. MAXIMUM OBLIGATION

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

ARTICLE 8. NOTICES

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

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/

/

To CONTRACTOR:

To AUTHORITY:

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

ATTENTION:

ATTENTION:

Carla Shaffer
Sr. Contract Administrator
(714) 560-5884
cshaffer@octa.net

ARTICLE 9. INDEPENDENT CONTRACTOR

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

ARTICLE 10. INSURANCE

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

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

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

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

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

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

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

CONTRACTOR shall include on the face of the certificate of insurance the Agreement Number C-9-1698 ; and, the Contract Administrator's Name, Carla Shaffer.

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

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

ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
(1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 9-1698,
(3) CONTRACTOR's initial cost proposal dated; and (4) all other documents, if any, cited herein or incorporated by reference.

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ARTICLE 12. CHANGES

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

ARTICLE 13. DISPUTES

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

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

ARTICLE 14. TERMINATION

A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or part, by giving CONTRACTOR written notice thereof. Upon termination, AUTHORITY shall pay CONTRACTOR its allowable costs incurred to date of that portion terminated. Said termination shall be construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal

Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be given to CONTRACTOR in accordance with the provisions of the FAR referenced above and Article 8, herein. Upon receipt of said notification, CONTRACTOR agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

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

ARTICLE 15. INDEMNIFICATION

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

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or any part of this Agreement be subcontracted by CONTRACTOR, without the prior written consent of AUTHORITY. Consent by

AUTHORITY shall not be deemed to relieve CONTRACTOR of its obligations to comply fully with all terms and conditions of this Agreement.

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

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

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

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

ARTICLE 18. CONFLICT OF INTEREST

CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONTRACTOR is unable,

1 or potentially unable to render impartial assistance or advice to the AUTHORITY; CONTRACTOR's
2 objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or
3 the CONTRACTOR has an unfair competitive advantage. CONTRACTOR is obligated to fully disclose
4 to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the
5 CONTRACTOR. CONTRACTOR is obligated to fully disclose to the AUTHORITY in writing Conflict of
6 Interest issues as soon as they are known to the CONTRACTOR. All disclosures must be submitted in
7 writing to AUTHORITY pursuant to the Notice provision herein. This disclosure requirement is for the
8 entire term of this Agreement.

9 **ARTICLE 19. CODE OF CONDUCT**

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

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

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

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

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

22 **ARTICLE 22. EQUAL EMPLOYMENT OPPORTUNITY**

23 In connection with its performance under this Agreement, CONTRACTOR shall not discriminate
24 against any employee or applicant for employment because of race, religion, color, sex, age or national
25 origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that
26 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 23. CIVIL RIGHTS ASSURANCE

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

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

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

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

D. Information and Reports: CONTRACTOR shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the AUTHORITY to

1 be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any
2 information required of a CONTRACTOR is in the exclusive possession of another who fails or refuses
3 to furnish this information the CONTRACTOR shall so certify to the AUTHORITY as appropriate and
4 shall set forth what efforts it has made to obtain the information.

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

8 1. Withholding of payments to the CONTRACTOR under the Agreement until the
9 COONTRACTOR complies; and/or

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

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

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

24 H. Incorporation of Provisions: CONTRACTOR shall include the provisions of paragraphs
25 (A) through (H) in every subcontract, including procurements of materials and leases of equipment,
26 unless exempt by the Regulations, or directives issued pursuant thereto. The CONTRACTOR shall

1 take such action with respect to any subcontract or procurement as the AUTHORITY may direct as a
2 means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in
3 the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor
4 or supplier as a result of such direction, the CONTRACTOR may request the AUTHORITY to enter into
5 such litigation to protect the interests of the AUTHORITY, and, in addition, the CONTRACTOR may
6 request the United States to enter into such litigation to protect the interests of the United States.

7 **ARTICLE 24. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**
8 **CONSULTANT CONTRACTS**

9 At the time of Agreement execution, CONTRACTOR committed to utilize one or more
10 Disadvantaged Business Enterprise ("DBE") firms in the performance of this U.S. DOT-assisted
11 contract. CONTRACTOR agrees to ensure that any DBE subcontractor listed on the "DBE Participation
12 Commitment Form" (Attachment A-1), will perform work and/or supply materials pursuant to all original
13 commitments, unless otherwise directed and/or approved by AUTHORITY prior to CONTRACTOR
14 effectuating any changes to its DBE participation commitment. CONTRACTOR shall comply with all
15 the requirements set forth in Attachment "A" entitled, "DISADVANTAGED BUSINESS ENTERPRISE
16 (DBE) CONTRACT PROVISIONS FOR U.S. DOT-ASSISTED CONTRACTS," which is attached to,
17 and incorporated herein by reference to this Agreement.

18 **ARTICLE 25. PROHIBITED INTERESTS**

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

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

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

25 A. The originals of all letters, documents, reports and other products and data produced under
26 this Agreement shall be delivered to and become the property of AUTHORITY. Copies may be made

1 for CONTRACTOR 's records but shall not be furnished to others without written authorization from
2 AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein
3 shall be retained by AUTHORITY.

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

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

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

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

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

6 B. CONTRACTOR shall have sole control of the defense of any such claim or suit and all
7 negotiations for settlement thereof. CONTRACTOR shall not be obligated to indemnify AUTHORITY
8 under any settlement made without CONTRACTOR '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 CONTRACTOR 's expense. If the use or sale of said item is enjoined as a result of such suit or claim,
11 CONTRACTOR, 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 28. FINISHED AND PRELIMINARY DATA**

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

23 B. It is expressly understood that any title to preliminary technical data is not passed to
24 AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations,
25 software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the
26 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given

1 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to
2 AUTHORITY if CONTRACTOR causes AUTHORITY to exercise Article 12, and a price shall be
3 negotiated for all preliminary data.

4 **ARTICLE 29. COVENANT AGAINST CONTINGENT FEES**

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

13 **ARTICLE 30. LOBBYING**

14 CONTRACTOR who apply or bid for an award of \$100,000 or more shall file the certification
15 required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will
16 not or has not used Federal appropriated funds to pay any person or organization for influencing or
17 attempting to influence an officer or employee of any agency, a member of Congress, officer or
18 employee of Congress, or an employee of a member of Congress in connection with obtaining any
19 Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the
20 name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on
21 its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by
22 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

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

24 CONTRACTOR shall comply with all the requirements set forth in Exhibit H, titled
25 "Level 1 Health, Safety and Environmental Specifications." As used therein, "Contractor" shall mean
26 "Consultant," and "Subcontractor" shall mean "Sub-consultant."

ARTICLE 32. PRIVACY ACT

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

ARTICLE 33. INCORPORATION OF FTA TERMS

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

ARTICLE 34. FEDERAL CHANGES

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

ARTICLE 35. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

AUTHORITY and CONTRACTOR 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, CONTRACTOR, or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from the

underlying Agreement. CONTRACTOR agrees to include these requirements in all of its subcontracts.

**ARTICLE 36. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND
RELATED ACTS**

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

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

ARTICLE 37. DEBARMENT AND SUSPENSION

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

ARTICLE 38. FORCE MAJEURE

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

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1 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C- 9-1698 to be
2 executed as of the date of the last signature below.

3
4 **CONTRACTOR**

ORANGE COUNTY TRANSPORTATION AUTHORITY

5 By: _____

By: _____

Darrell E. Johnson
Chief Executive Officer

6
7 Date: _____

Date: _____

8 **APPROVED AS TO FORM:**

9 By: _____

James M. Donich
General Counsel

10 Date: _____

11 **APPROVED:**

12 By: _____

Beth McCormick
General Manager

13 Date: _____

14 **APPROVED:**

15 By: _____

Jennifer L. Bergener
Chief Operating Officer

16 Date: _____

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

I. DBE Participation

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

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

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

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

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

II. DBE Policy and Applicability

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

The project is subject to these stipulated regulations and AUTHORITY's DBE Program. To ensure that AUTHORITY achieves its overall DBE Program goals and objectives, AUTHORITY encourages the participation of DBEs as defined in 49 CFR,

Part 26, in the performance of agreements financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of AUTHORITY to:

Fulfill the spirit and intent of the DBE Program regulations published under U.S. DOT Title 49 CFR, Part 26, by ensuring that DBEs have an equitable opportunity to compete for and participate in AUTHORITY's U.S. DOT-assisted contracts and subcontracts. AUTHORITY is firmly committed to the DBE Program objectives, which are designed to:

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

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

III. **AUTHORITY's DBE Policy Implementation Directives**

Pursuant to the provisions associated with Title 49 CFR, Part 26, the Disadvantaged Business Enterprise ("DBE") Program exists to ensure participation, equitable competition, and assistance to participants in the U.S. DOT DBE program. Accordingly, based on the AUTHORITY's analysis of its past utilization data, coupled with Overall Goal Methodology findings and examination of similar Agencies' disparity studies, AUTHORITY's DBE Program is implemented utilizing both race-conscious and race-neutral means. When a contract-specific DBE goal is assigned to a project, meeting the contract-specific goal by committing to utilize DBEs, or documenting a bona fide good faith effort to do so, is a condition of award.

A. Definitions

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

1. ***"Disadvantaged Business Enterprise (DBE)"*** means a small business concern: (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. ***"Small Business Concern"*** means a small business as defined pursuant to Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
3. ***"Socially and Economically Disadvantaged Individuals"*** means any individual who is a citizens (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa";
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race";
 - iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaskan Natives, or Native Hawaiians";
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong";
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;"
 - vi. Women; and
 - vii. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- c) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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

1. The individual's social disadvantage must stem from his/her color, national

origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

2. The individual must demonstrate that he/she has personally suffered social disadvantage.
3. The individual's social disadvantage must be rooted in treatment which he/she has experienced in American society, not in other countries.
4. The individual's social disadvantage must be chronic, longstanding and substantial; not fleeting or insignificant.
5. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
6. A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.

C. "Economic Disadvantage"

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

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

The Form 103 must include the following information:

1. General Agreement Information – Including Agreement Number and Title, CONSULTANT Name and the following:
 - a) Original Agreement Amount
 - b) Running Total of Change Order Amount
 - c) Current Agreement Amount
 - d) Amount Paid to CONSULTANT during Month
 - e) Amount Paid to CONSULTANT from Inception to Date
 - f) DBE Contract Goal
 - g) Total Dollar Amount of DBE Commitment
 - h) DBE Commitment as Percentage of Current Agreement Amount
2. Listed and Proposed 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 Capacity Type, Certification Type and Certification Number.
- b) DBE Firm Contract Value Information:
Original Contract Amount, running total of change order amount, Current Contract Amount, Amount Paid to CONSULTANT or SubCONSULTANT(s) During Month and Amount Paid to CONSULTANT or SubCONSULTANT(s) to date.

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.

3. CONSULTANT Assurance of Full Compliance with Prompt Payment Provisions

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

4. CONSULTANT Payment Verification Summary

CONSULTANT is to further maintain and submit a Verification of Payment Summary inclusive of a detailed running tally of related invoices submitted by DBE(s) and non-DBE(s), including dates of invoice submission, dates accepted, and corresponding dates and amount of payment made. The Verification of Payment Summary must also include:

DBE(s) and non-DBE(s) invoice number, invoice amount, invoice date, 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 CONSULTANT'S Invoice. The report must reflect a breakout of retention withheld (including retention as specified in subcontract agreement(s) and disputed invoice retention) and retention payments made, check number and date paid to DBEs and non-DBEs.

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

Payment Summary must be signed by the applicable DBE and submitted with Form 103 to authenticate reported payments.

B. "Monthly DBE Trucking Verification" Form

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

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

C. DBE Subcontract Agreements

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

D. Semi-Annual SubCONSULTANT Paid Report Summary

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

CONSULTANT will adhere to the following submittal schedule:

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

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

Upon completion of the project, CONSULTANT must complete and submit a "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), SUBCONSULTANTS," certified correct by CONSULTANT or the CONSULTANT'S authorized representative, to facilitate reporting and capturing DBE attainments at conclusion of the project. The form must be furnished to AUTHORITY within thirty (30) days from the date of the project. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

F. Disadvantaged Business Enterprises (DBE) Certification Status Change

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

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

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

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

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

V. DBE Eligibility and Commercially Useful Function Standards

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

1. A DBE must be a small business firm defined pursuant to 13 CFR Part 121 and be certified through the California Unified Certification Program ("CUCP") at the time of bid submission. A listing of DBEs certified by the CUCP is available at the following source:

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

2. A DBE may participate as a prime CONSULTANT, SUBCONSULTANT, joint venture partner, vendor of material or supplies, or as a trucking company.
3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own work forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
4. The use of joint-checks for DBE firms must be approved by AUTHORITY prior to execution, and a joint-check agreement must accompany the request to AUTHORITY.
5. A DBE must perform a commercially useful function in accordance with 49 CFR Part 26.55 (i.e. must be responsible for the execution of a distinct element of the work, and must carry out its responsibility by actually performing, managing, and supervising the work). A DBE should perform at

least thirty percent (30%) of the total cost of its contract with its own workforce to presume it is performing a commercially useful function.

VI. DBE Crediting Provisions

- A. When a DBE is proposed to participate in the Agreement, at any tier, only the value of the work proposed to be performed by the DBE with its own work force may be counted towards DBE participation. If 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 performs the work with their own forces. Services subcontracted to a non-DBE firm may not be credited toward the CONSULTANT'S DBE attainment.
- 2. CONSULTANT is to calculate and credit participation by eligible DBE vendors of equipment, materials, and supplies toward DBE attainment as follows:
 - a) Sixty percent (60%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a regular dealer; or
 - b) One hundred percent (100%) of expenditures for equipment, materials, and supplies required under the Agreement obtained from a DBE manufacturer.
- 3. The following types of fees or commissions paid to DBE SUBCONSULTANTS, Brokers, and Packagers may be credited toward 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 Agreement;
 - b) Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves), when the licensed

- hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
- c) Fees and commissions charged for providing any insurance specifically required in the performance of the Agreement.
4. 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 equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by the DBE-owned trucks or leased trucks with DBE drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
 - f) The DBE may lease trucks without drivers from a non-DBE truck leasing company and if the DBE uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

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

5. If the CONSULTANT listed a non-certified, 1st tier SubCONSULTANT to perform work on this Agreement, 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 Agreement. If a DBE CONSULTANT performs the installation of purchased materials and supplies, they are eligible for full credit of the cost of the materials.
6. 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.

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

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

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

- A. The listed DBE SUBCONSULTANT fails or refuses to execute a written contract;
- B. The listed DBE SUBCONSULTANT fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE SUBCONSULTANT to perform its work on the subcontract results from the bad faith or discriminatory action of CONSULTANT;
- C. The listed DBE SUBCONSULTANT fails or refuses to meet CONSULTANT'S reasonable, nondiscriminatory bond requirements;
- D. The listed DBE SUBCONSULTANT becomes bankrupt, insolvent, or exhibits credit unworthiness;
- E. The listed DBE SUBCONSULTANT is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR

Parts 108, 215 and 1,200 or applicable state law;

- F. CONSULTANT has determined that the listed DBE SUBCONSULTANT is not a responsible CONSULTANT;
- G. The listed DBE SUBCONSULTANT voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- H. The listed DBE is ineligible to receive DBE credit for the type of work required;
- I. A DBE owner dies or becomes disabled with the result that the listed DBE CONSULTANT is unable to complete its work on the contract;
- J. Other documented good cause that you determine compels the termination of the DBE. Provided, that good cause does not exist if CONSULTANT seeks to terminate a DBE it relied upon to obtain the Agreement so that CONSULTANT can self-perform the work for which the DBE CONSULTANT was engaged or so that CONSULTANT can substitute another DBE or non-DBE CONSULTANT after Agreement award.

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

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

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

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

Should CONSULTANT elect to submit a good faith effort documentation in lieu of proposing additional DBE participation, AUTHORITY will review the documentation and provide a written determination to CONSULTANT stating whether or not good faith efforts have been adequately demonstrated.

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

VIII. Additional DBE SUBCONSULTANTS

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

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 specific value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

IX. DBE "Frauds" and "Fronts"

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

X. Dispute Resolution

All contracts in excess of five-hundred thousand dollars (\$500,000) shall contain provisions or conditions which will allow for dispute resolution remedies in instances where CONSULTANTS violate or breach DBE Program requirements, inclusive but

not limited to, prompt payment and provide for such sanctions and penalties as may be appropriate.

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

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

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

I. INFORMAL MEETINGS:

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

II. Mediation

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

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

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

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

XI. 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. Failure by CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement, or such other remedy as AUTHORITY deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and/or
4. Disqualifying CONSULTANT from future bidding/proposing as non-responsible.

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

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 AUTHORITY to reconsider AUTHORITY's DBE determination.

Failure to respond within the ten (10) working day period will constitute a waiver of CONSULTANT'S right to appeal. If CONSULTANT files an appeal, AUTHORITY, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

If after review of CONSULTANT'S appeal, AUTHORITY decides to uphold the decision to impose DBE administrative remedies on CONSULTANT, the written determination must state the specific remedy(ies) to be imposed.

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of the Agreement and is subject to administrative remedies including withholding at a minimum of two percent (2%) of the invoice amount due per month for every month that the identified non-compliance

matter(s) is not remedied. Upon satisfactory compliance, AUTHORITY will release all withholdings.

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

EXHIBIT D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

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

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- | | | |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes _____ | No _____ |

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

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

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Tim Shaw, Chairman
Steve Jones, Vice Chairman
Lisa A. Bartlett, Director
Doug Chaffee, Director
Laurie Davies, Director
Barbara Delgleize, Director
Andrew Do, Director
Michael Hennessey, Director
Gene Hernandez, Director
Jose F. Moreno, Director
Joseph Muller, Director
Mark A. Murphy, Director
Richard Murphy, Director
Miguel Pulido, Director
Michelle Steel, Director
Donald P. Wagner, Director
Greg Winterbottom, Director

EXHIBIT E: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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

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

Name

Signature

Title

Date

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

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS

1.0 DBE Goal

Although no DBE Goal has been established for this contract, proposers are encouraged to afford DBEs every opportunity to compete for and participate on this U.S. DOT-assisted contract.

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

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

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

4.2 “DBE Information - Good Faith Efforts” (Exhibit F-2)

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

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

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

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

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

4.3 “Bidders List” (Exhibit F-3)

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

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

**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 2nd business day after the Authority's proposal due date, or as otherwise specified in the solicitation. Proposer should submit the following information even if the "DBE Participation Commitment Form" indicates that the proposer has met the DBE goal. This will protect the proposer's eligibility for award of the contract if Authority determines that the proposer failed to meet the goal for various reasons, e.g., a DBE firm was not certified at proposal submission, or the proposer made a mathematical error.

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

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

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

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

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 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 offeror) of

_____ that:
(Firm name)

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

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

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

Executed this _____ day of _____, 20____

By _____
(Signature of authorized official)

(Title of authorized official)

DISCLOSURE OF LOBBYING ACTIVITIES

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

Approved by
OMB
003480045

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material changes For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI)	b. Individuals Performing Services (including address if different from No 10a) (last name, first name, MI):	
(attach Continuation Sheet(s) SF - LLL - A if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other specify: _____	
12. Forum of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify nature: _____ value: _____		
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: (attach Continuation Sheet(s) SF-LLL-A if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
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.	Signature: _____ Print name: _____ Title: _____ Telephone No: _____ Date: _____	
Federal Use Only		Authorized for Local Reproduction Standard Form - LLL

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

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS**PART I – GENERAL****1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor or its subcontractors may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during 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 applied for the safeguard of public and employees.

1.2 REGULATORY

- 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.

1.3 INCIDENT NOTIFICATION AND INVESTIGATION

A. The Authority shall be promptly notified of any of the following types of incidents including but not limited to:

1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
3. Incidents impacting the environment, i.e. spills or releases on Authority projects or property.
4. Outside Agency Inspections; agencies such as Cal/OSHA, DTSC, SCAQMD, State Water Resources Control Board, FTA, CPUC, EPA, USACE and similar agencies.

B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of

the public that arise from the performance of Authority contract work. An immediate verbal notice followed by an initial written incident investigation report shall be submitted to the Authority's Project Manager within 24 hours of the incident.

- C. A final written incident investigative report shall be submitted within seven (7) calendar days and include the following information. The Current Status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of task planning documentation, copy of the Physician's first report of injury and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.

1.4 DESIGNATED HEALTH AND SAFETY REPRESENTATIVE

- A. Upon contract award, the contractor within 10 business days shall designate an on-site health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
- B. 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 (Cal/OSHA) and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.

1.5 PERSONAL PROTECTIVE EQUIPMENT

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

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. OCTA Yard Safety Rules

END OF SECTION

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: 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 Bidder 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, Bidders 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). Bidders 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.

Bidder: _____

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: