

DRAFT REQUEST FOR PROPOSALS (RFP) 2-2643

**CONSTRUCTION MANAGEMENT SERVICES
FOR TRANSIT SECURITY AND OPERATIONS
CENTER**



**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 14, 2022
Pre-Proposal Conference Date:	November 22, 2022
Question Submittal Date:	November 29, 2022
Proposal Submittal Date:	December 19, 2022
Interview Date:	February 1, 2023

**SURFACE TRANSPORTATION BLOCK GRANT FUNDS
FEDERAL HIGHWAY ADMINISTRATION AND FEDERAL TRANSIT
ADMINISTRATION FUNDED PROJECT**

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November 14, 2022

NOTICE OF REQUEST FOR PROPOSALS

(RFP): 2-2643: "CONSTRUCTION MANAGEMENT SERVICES FOR TRANSIT SECURITY AND OPERATIONS CENTER"

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified firms to provide construction management services for Transit Security and Operations Center.

Please note that by submitting a Proposal, Offeror certifies that it is not subject to any Ukraine/Russia-related economic sanctions imposed by the State of California or the United States Government including, but not limited to, Presidential Executive Order Nos. 13660, 13661, 13662, 13685, and 14065. Any individual or entity that is the subject of any Ukraine/Russia-related economic sanction is not eligible to submit a Proposal. In submitting a Proposal, all Offerors agree to comply with all economic sanctions imposed by the State or U.S. Government.

The Authority has set a **14%** Disadvantaged Business Enterprise (DBE) participation goal for this project.

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

Offerors are advised that the Consultant's cost proposals and supporting documents for the project contract are subject to audit or review by the California Department of Transportation (Caltrans) or the Federal Highway Administration (FHWA). Consultant's cost proposal is subject to a Financial Document Review (FDR) of the indirect cost rate (ICR) by the Caltrans Independent Office of Audits and Investigations (IOAI). IOAI will review the ICR financial documents to either accept or adjust the ICR prior to contract execution. The cost proposal shall be adjusted by the Consultant and approved by the Authority's Contract Administrator to conform to the IOAI recommendations. The Consultant agrees that the accepted/adjusted ICRs identified in the IOAI review shall be incorporated into Consultant's final cost

proposal by this reference. Refusal by the Consultant to incorporate the IOAI or audit recommendations will be considered a breach of the Agreement terms and cause for termination of the Agreement.

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

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

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

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

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

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

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

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 2-2643, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction Management Services
Professional Consulting	Inspection Services
	Construction Consulting
	Consultant Services - General
Professional Services	Environmental Consulting
	Engineering - Environmental
	Inspection - Testing & Analysis
	Land Surveying

A pre-proposal conference will be held via teleconference on November 22, 2022, at 10:00 a.m.. Prospective Offerors may join or call-in using the following credentials:

- [Click here to join the meeting](#)
- Or Call-in Number: +1 916-550-9867
- Conference ID: [683 544 529#](#)

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established **February 1, 2023**, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held via teleconference on November 22, 2022, at 10:00 a.m.. Prospective Offerors may join or call-in using the following credentials:

- [Click here to join the meeting](#)
- Or Call-in Number: +1 916-550-9867
- Conference ID: 683 544 529#

An on-site/in-person conference will not be held. A copy of the presentation slides and pre-proposal conference registration sheet(s) will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to attend the pre-proposal conference.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

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

D. AUTHORITY CONTACT

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

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

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no Offeror, subcontractor, lobbyist or agent hired by the Offeror 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 Offeror, subcontractor, lobbyist or agent hired by the Offeror that engages in such prohibited communications may result in disqualification of the Offeror 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 received via e-mail at mle1@octa.net no later than 5:00 p.m., on November 29, 2022.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions RFP 2-2643" in the subject line of the e-mail. The Authority is not responsible for failure to respond to a request that has not been labeled as such.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than December 6, 2022. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via email.

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

<u>Category:</u>	<u>Commodity:</u>
Construction	Construction Management Services
Professional Consulting	Inspection Services
Professional Services	Construction Consulting
	Consultant Services - General
	Environmental Consulting
	Engineering - Environmental
	Inspection - Testing & Analysis
	Land Surveying

Inquiries received after 5:00 p.m. on November 29, 2022, 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 December 19, 2022.

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

2. Address

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

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

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

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

Note: The Authority utilizes a third-party delivery service therefore, Offerors should anticipate a 48-hour delay in delivery of proposals mailed to the P.O. Box listed above. Proposals are considered received once time-stamped at the Authority's physical address.

3. Identification of Proposals

Offeror shall submit one (1) original hard copy 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 as follows:

(RFP 2-2643 and "Construction Management Services for Transit Security and Operations Center).

In addition to the above, Offerors shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a CD, DVD, or flash drive.

4. Acceptance of Proposals

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

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

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

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be with fully burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A.

L. CONFLICT OF INTEREST

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

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

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

M. PREVAILING WAGES

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

It is required that all mechanics and laborers employed or working at the site be paid not less than the basic hourly rates of pay and fringe benefits as shown in the current minimum wage schedules. The Offeror to whom a contract for the work is awarded by the Authority shall comply with the provision of the California Labor Code, including, without limitation, the obligation to pay the general prevailing rates of wages in the locality in which the work is to be performed in accordance with, without limitation, Sections 1773.1, 1774, 1775 and 1776 of the California Labor Code governing employment of apprentices.

Copies of the prevailing rates of per diem wages are on file at the Authority's principal office at 550 S. Main Street, Orange, CA 92868 and are available to any interested party on request.

N. CODE OF CONDUCT

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

O. DISADVANTAGED BUSINESS ENTERPRISE

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

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

- Consultant Proposal DBE Commitment Form (10-O1)
- DBE Letter of Acknowledgement and Commitment required from each proposed DBE firm listed on the "Consultant Proposal DBE Commitment Form (10-O1))."

- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “Consultant Proposal DBE Commitment Form (10-O1)).”
- Bidders List

P. PRIME AND LOWER TIER DEBARMENT

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

Q. CERTIFICATION OF CONTRACT CERTIFICATION OF INDIRECT COSTS AND FINANCIAL MANAGEMENT SYSTEM

Offerors and all their subconsultants will be required to submit, after award of contract, entitled “Certification of Indirect Costs and Financial Management System”, a copy of which is attached to this RFP. As part of this certification, the prime and all subconsultants must show their financial system’s ability to segregate cost elements.

R. OWNERSHIP OF RECORDS/PUBLIC RECORDS ACT

All proposals and documents submitted in response to this RFP shall become the property of the Authority and a matter of public record pursuant to the California Public Records Act, Government Code sections 6250 et seq. (the "Act"). Offerors should familiarize themselves with the provisions of the Act requiring disclosure of public information. Offerors are discouraged from marking their proposal documents as "confidential" or "proprietary."

If a Proposal does include "confidential" or "proprietary" markings and the Authority receives a request pursuant to the Act, the Authority will endeavor (but cannot guarantee) to notify the Offeror of such a request. In order to protect any information submitted within a Proposal, the Offeror must pursue, at its sole cost and expense, any and all appropriate legal action necessary to maintain the confidentiality of such information. The Authority generally does not consider pricing information, subcontractor lists, or key personnel, including resumes, as being exempt from disclosure under the Act. In no event shall the Authority or any of its officers, directors, employees, agents, representatives, or consultants be liable to a Offeror for the disclosure of any materials or information submitted in response to the RFP or by failing to notify a Offeror of a request seeking its Proposal. The Authority reserves the right to make an independent decision to disclose records and material.

Notwithstanding the above, all information regarding proposal responses will be held as confidential until such time as the evaluation has been completed; an award has been made by the Board of Directors or Authority Staff, as appropriate; and the contract has been fully negotiated.

S. Prohibition

The following restrictions apply to this procurement:

The prime consultant firm, including all subconsultants (at any tier) awarded this contract to perform construction management services for the Transit Security and Operations Center will be ineligible to participate (at any tier) in the contract for construction services for the Transit Security and Operations Center.

The firm, including all subcontractors (at any tier), regardless of the level of service provided by said subcontractor(s), awarded the project management and construction management services contract for Transit Facilities Projects, may not submit a proposal to this procurement.

Furthermore, Offeror(s) are advised that the evaluation of the team composition with regards to the conflicts of interest will be done on a case-by-case basis.

SECTION II: PROPOSAL CONTENT

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

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

2. Letter of Transmittal

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

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

3. Technical Proposal

a. Qualifications, Related Experience and References of Offeror

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

Offeror to:

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

b. Proposed Staffing and Project Organization

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

Offeror to:

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

c. Work Plan

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

Offeror to:

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

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

d. Exceptions/Deviations

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

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

4. Cost and Price Proposal

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

5. Appendices

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

B. FORMS

1. Campaign Contribution Disclosure Form

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

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

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

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

2. Status of Past and Present Contracts Form

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

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

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

3. Certification of Restrictions on Lobbying

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

4. Disclosure of Lobbying Activities

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

5. Safety Specifications

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

6. Disadvantaged Business Enterprise Solicitation Provisions – DBE Participation Listing Forms

Offerors must complete the following forms:

- Consultant Proposal DBE Commitment Form (10-O1)
- DBE Letter of Acknowledgement and Commitment required from each proposed DBE firm listed on the Consultant Proposal DBE Commitment Form.

- DBE Information – Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the “Consultant Proposal DBE Commitment Form).”
- Bidders List

7. Certification of Indirect Costs and Financial Management System

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

8. Proposal Exceptions and/or Deviations Form

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

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

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established **February 1, 2023**, 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, the evaluation committee will score the proposals to develop a competitive range. Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

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

C. AWARD

The Authority's Board of Directors will consider the selection of the firm(s) recommended by the Board Committee.

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.

Offeror acknowledges that the Authority's Board of Directors reserves the right to award this contract in its sole and absolute discretion to any Offeror to this RFP regardless of the evaluation committee's recommendation or recommendation of a Board Committee.

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

OCTA
TRANSIT SECURITY AND OPERATIONS CENTER
(TSOC)

**RFP 2-2643
CONSTRUCTION MANAGEMENT SERVICES
SCOPE OF WORK**

SCOPE OF WORK

A. PROJECT BACKGROUND:

The Orange County Transportation Authority (Authority or OCTA) is proposing to construct a new Transit Security and Operations Center (TSOC), hereinafter referred as the Project. The proposed TSOC is planned to include a two-story facility that is approximately 30,000 square feet, a roof-mounted microwave tower, renewable electricity generating system, electric vehicle charging stations, and dedicated parking for employees, patrol vehicles, and visitors. The design for TSOC complies with the Essential Services Buildings Seismic Safety Act (ESBSSA).

The Project site is approximately 3 acres and is located at 1512-20 West Lincoln Avenue, the intersection of Lincoln Avenue and Manchester Avenue in the City of Anaheim, adjacent to Interstate 5 (I-5)/Lincoln Avenue.

OCTA is seeking proposals from construction management consulting firms to provide construction management services for the Project. The selected firm (CONSULTANT) shall have expertise and experience in construction management of all aspects of similar transit security and operations facilities. CONSULTANT shall be familiar and experienced with all requirements of projects funded by Federal Transit Administration (FTA) grant fund, state of California grant funds, and other local transportation funds.

Project Overview

The TSOC will be a “purpose” designed facility for all OCTA operations. It will specifically address the needs and requirements of all OCTA’s operations with the goal of supporting job duties, efficiency, functionality, communication, and operations. Within this new facility, the following OCTA functions will be housed:

- Emergency Operations Center (EOC)
- Central Communications (Dispatch)
- Field Operations (Transit)
- Information Systems / Information Technologies
- Security and Emergency Preparedness
- Transit Police

Federal Requirements

The Project is expected to use federal funding through FTA grant funds. As such, all work, including work under the Project construction contract and work, are subject to federal requirements as may be updated during the Project. Relevant federal requirements are generally identified in FTA circulars and guidance and are available at <http://www.fta.dot.gov/>. The CONSULTANT shall be responsible for compliance with federal requirements during Project implementation. Should federal requirements change during

Project implementation, the Consultant shall discuss scope ramifications with OCTA before proceeding further.

State and Local Requirements

Work shall conform to the governing standards and current requirements of state and local agencies such as OCTA, City of Anaheim, Division of State Architect (DSA), Caltrans, and all other agencies having jurisdiction (AHJ) over the Project. In addition, work shall conform to the guidance and best practices of transportation organizations such as the American Public Transit Association (APTA), American Association of State Highway and Transportation Officials (AASHTO), the National Association of City Transportation Officials (NACTO), and Office of State Fire Marshalls. Other conformance documents/requirements shall include California Title 24, Building Codes, Fire Protection Codes, Occupational Safety and Health (OSHA) requirements, the Manual on Uniform Traffic Control Devices (MUTCD), OCTA Standards for Contract Documents including General Provisions, Special Provisions, and Technical Specifications, and the OCTA Right of Way Manual, and all other applicable codes and regulations. Should state and local requirements change during Project implementation, the Consultant shall discuss scope ramifications with OCTA before proceeding further.

Limitation On Governmental Decisions

Nothing contained in this scope of work permits CONSULTANT's personnel to authorize or direct any actions, votes, appoint any person, obligate, or commit AUTHORITY to any course of action or enter into any contractual agreement on behalf of AUTHORITY. In addition, CONSULTANT's personnel shall not provide information, an opinion, or a recommendation for the purpose of affecting a decision without significant intervening substantive review by AUTHORITY personnel, counsel, and management.

B. AGREEMENT DEFINITIONS:

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

1. 'OCTA' or 'AUTHORITY' shall be the ORANGE COUNTY TRANSPORTATION AUTHORITY.
2. 'Project Manager' shall mean the Chief Executive Officer of OCTA acting either directly or through properly authorized agents or representatives acting within the scope of particular duties entrusted to them.
3. 'City' shall mean the City of Anaheim.
4. 'Project' or 'TSOC' shall mean all of the components included in the project plans and specifications and other construction contract documents.
5. 'CONSULTANT' shall mean the firm responsible for the scope of work included in this Agreement.
6. 'Design Consultant' shall mean, the Architectural/Engineering firm responsible for the design of the Project.

7. "Contractor" as used in this Scope of Work means the person or persons, firm, partnership, corporation, or combination thereof, private or municipal who have entered into construction contract with OCTA, to construct the Project.
8. 'Construction Contract' shall mean the agreement between OCTA and Contractor to construct the Project.
9. 'Construction Contract Documents' shall mean all project plans, specifications, and all other construction documents in the Agreement between OCTA and Contractor.
10. 'Agency Having Jurisdiction' (AHJ) shall mean the local City and agencies having jurisdiction over the project.

C. SCOPE OF WORK

1. General Descriptions and Requirements

CONSULTANT shall function as an agent of OCTA by providing construction management as required to effectively manage the Project construction and administer the construction contract in accordance with the requirements established within the Agreement and OCTA construction management procedures. Under general direction of the Project Manager, the CONSULTANT shall provide staff and technical expertise for construction management services, soils and materials testing, quality assurance surveying, safety oversight, environmental monitoring, building commissioning, inspection services, and all other construction management services for the construction of TSOC as required in this scope of work. The general responsibilities of the CONSULTANT are:

- a. Perform pre-construction services to support elements of the Project, including constructability review and recommendations, assisting OCTA in bid process, response to bidders' questions, Invitation for Bid (IFB) and addenda preparation support, performing bid analysis, and all other tasks as required.
- b. Perform project inspection, ensure that materials and workmanship are in conformance with the construction contract documents and all applicable codes and regulations.
- c. Monitor the progress of the work to ensure the Project is completed within the allotted construction contract time and within budget. The CONSULTANT shall ensure that the project schedule is prepared and monitored throughout the duration of the Project.
- d. Maintain accurate project records of all construction activities and cost. The CONSULTANT shall prepare, implement, and maintain document control procedures throughout the duration of the Project.
- e. Provide soils and materials testing services and all field inspection services required per Construction Contract Documents. The CONSULTANT shall prepare and implement a material testing plan for the Project that conforms to the requirements of the Construction Contract Documents, AHJ, and OCTA.
- f. Perform quality assurance survey as required for the Project.

- g. Ensure that the environmental mitigation measure included in the Project environmental documents are implemented and maintained for the duration of the Project. Provide assistance to OCTA in environmental monitoring, compliance and reporting activities, including but not limited to, providing field and reporting support for quarterly FTA reports.
- h. Ensure that erosion control measures are implemented and maintained in accordance with the Storm Water Pollution Prevention Plan (SWPPP).
- i. Ensure compliance with all applicable local, state, and federal safety laws.
- j. Provide safety oversight, ensure that a construction safety plan is prepared, implemented, and maintained for the duration of the Project.
- k. Coordinate communications between Contractor and all other Project participants, process, collect and maintain Project communications and records.
- l. Implement the procedures set forth in the AUTHORITY's Facilities Engineering Construction Management Procedures, the latest version.
- m. Perform all other tasks as required and related in this Scope of Work.

CONSULTANT staff shall work with the OCTA's Facilities Engineering group within the Rail and Facilities Engineering Department in managing the construction of Project. Specific tasks are described in Section 2.0 below.

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

Project Schedule:

Construction of TSOC project is expected to be completed over a period of approximately twenty-four (24) months starting from Notice to Proceed date of the Construction Contract. CONSULTANT is expected to be involved with the Project earlier for constructability review.

The current project schedule will be as follows:

Construction Management Services

Construction Management Services Project Advertisement:	November 2022
Construction Management Services Contract Award:	July 2023
Construction Management Services NTP:	August 2023

Project Design and Construction

100% Design	March 2023
Construction Project Advertisement:	April 2023
Construction Start:	February 2024
Construction completion:	January 2026
Construction Closeout Finish:	June 2026

Level of Supports:

The anticipated level of support required from the CONSULTANT under this Agreement scope of work are as below. The level of support staff and duration of assignments will be re-evaluated periodically and determined by OCTA to assure that the appropriate level of support is maintained as required for the Project. CONSULTANT's personnel shall be available within two (2) weeks from written request by OCTA.

- One (1) fulltime Construction Manager/Resident Engineer (CM/RE).
- One (1) full time Assistance Resident Engineer (Assistant RE)
- Three (3) field inspectors with disciplines based on project needs.
- One (1) full time Health, Safety and Environmental (HSE) Representative.
- Soils & Materials Testing Personnel – based on project needs.
- Surveying crew – based on project needs.
- On-call Specialists – based on project needs.
- One (1) fulltime Administration/Document Controls personnel.

OCTA will provide access to project design documents and an OCTA email address to each of CONSULTANT's staff working on the Project. Any special equipment or supplies including vehicles for transportation, laptop computers, cellular phones, and other mobile devices required for CONSULTANT's staff to perform duties in this Scope of Work shall be provided by the CONSULTANT.

CONSULTANT shall provide and maintain its own field office, utilities, furniture, all necessary instruments, tools, equipment and computer software/programs, safety equipment to its personnel to perform duties in this Scope of Work accurately, efficiently, and safely. Field office shall be in a close proximity within two miles of the Project site, approximately 1,000 square feet in size at rental cost not more than \$2 per square foot per month. CONSULTANT's personnel shall be paid for the work time spent only at either Project construction site or in CONSULTANT's field office.

Any expense for new CONSULTANT's staff not listed within the Exhibit entitled "Schedule I – Direct Labor Rates", whether at the prime or sub-consultant level, will not be paid, unless prior written approval has been received from OCTA, and the employee's name, function, their respective payroll records are submitted no later than fourteen (14) days from the performance of the work. Overtime shall not be reimbursed without OCTA's prior written approval and only as required by prevailing wage laws.

Any expense for other direct costs (ODCs) not listed within Exhibit entitled "Schedule II – Other Direct Costs", whether at the prime or sub-consultant level, will not be paid unless submitted and accepted in accordance with the terms of the Agreement.

Communication:

All written and electronic communications between the Contractor and AUTHORITY and between the Contractor and Design Consultant related to the Project shall flow through the CONSULTANT. As the AUTHORITY's agent, the CONSULTANT shall manage the Contractor's communications and submissions directed to the AUTHORITY and Design Consultant, review and forward the submissions, inquiries and requests to the appropriate party for a response, receive the reply, evaluate the reply for completeness, respond to the Contractor, and endeavor to ensure that the Contractor's submissions, inquiries and requests are responded to in a timely manner. CONSULTANT shall create, maintain, file and store all Project correspondence, records and documents in accordance with the AUTHORITY's Document Control System. No direct communication between Contractor and Design Consultant shall be allowed during the Project duration.

- CONSULTANT shall include OCTA Project Manager and designated OCTA team members in project-related communications. All project-related communications shall be via platform listed below, unless otherwise directed by OCTA. No external SharePoint platform will be used for the Project.
- Telephones, cellphones
- Microsoft Outlook emails
- Microsoft Teams
- Other SharePoint (Microsoft OneDrive or Microsoft Teams), at OCTA's discretion.

OCTA will provide CONSULTANT with the following:

- Approved studies, reports, Construction Contract Documents including plans, specifications, general and special conditions of Project, environmental documents and all other project related documents, manuals, standard forms, policies and procedures to be followed by CONSULTANT's personnel in the performance of the work. Project documents are confidential and shall be used for the purpose of Project only. Dissemination of these documents outside of the Project is strictly prohibited.

2. Specific Scope of Services

2.1 TASK 1 - Construction Management

CONSULTANT shall provide a qualified construction management team consisting of a Construction Manager/Resident Engineer (CM/RE) and an Assistant RE, and other personnel as required herein this Scope of Work.

CONSULTANT shall perform project construction management related functions including but not limited to, construction oversight, technical assistance, agency coordination and public outreach, soils and materials testing services, field inspections, structural observations, quality assurance surveying, Health, Safety and Environmental (HSE) inspections, on-call services required for construction of TSOC, project closeout,

and all other project construction management related work. CONSULTANT shall take responsibility for the quality, efficient and timely completion of all project work. CONSULTANT will be subject to periodic quality audits as determined by OCTA.

2.1.1 Construction Management Plan

Within three (3) weeks from the Agreement Notice to Proceed (NTP), CONSULTANT shall prepare, submit to OCTA for review and acceptance a construction management plan (CMP). CONSULTANT shall implement the accepted CMP during the Project duration.

Prior to preparation of the CMP, CONSULTANT shall conduct a constructability review of the Construction Contract Documents, including plans, specifications, and other project documentations. CONSULTANT shall meet with the Design Consultant and OCTA to discuss any constructability issues and obtain any necessary design clarifications.

CMP shall demonstrate CONSULTANT's understanding of the Project and all requirements. CMP shall outline CONSULTANT's plans and strategies to manage the construction of the Project to complete the work within budget and schedule in compliance with Construction Contract Documents and all City and AHJ's requirements.

At a minimum, CMP shall demonstrate CONSULTANT's understanding of the following potential issues:

- Public and site safety and security
- Coordination timeline with City, AHJ, and adjacent property's owners
- Site operating hours
- General construction methodology and programs
- Project constructability
- Noise and vibration controls
- Air, dust, stormwater, drainage/sediment controls.
- Site waste management
- Traffic management including access routes to and from the site
- Site specific details which require detailed assessments.
- Project document controls.

CONSULTANT shall allow OCTA a minimum of two (2) weeks to review and comments on the CMP. CONSULTANT shall address all comments, revise, and resubmit the CMP within one (1) week upon receipt of OCTA's review comments.

2.1.2 Construction Management/Oversight and Technical Assistance:

CONSULTANT shall provide construction management services acting as OCTA's Construction Manager. CONSULTANT shall communicate and coordinate closely with OCTA Project Manager in all project-related matters.

CONSULTANT shall be knowledgeable of and comply with, all applicable local, state, and/or federal regulations, cooperate and consult with OCTA officials during the course of the Agreement, and perform other duties as may be required to assure that the construction is being performed in general accordance with construction contract documents. CONSULTANT shall be thoroughly familiar with City and AHJ's requirements for the Project.

CONSULTANT's personnel shall be thoroughly familiar with the project plans, specifications, and other construction documents. CONSULTANT's CM/RE and Assistant RE shall involve in constructability review at the 100% design phase and shall assist OCTA during the bid phase. CONSULTANT shall have meeting with Design Consultant to get any design clarifications as needed before start of Project construction.

CONSULTANT shall be responsible for all construction management services for the Project as specified herein below:

- a. Ensure that the Contractor's work meets all requirements under the terms of the agreement between the Contractor and AUTHORITY. Inspect and monitor the Work for defects, deficiencies, and deviations from Construction Contract Documents. Notify OCTA promptly of any Contractor's work defect, deficiencies, and deviations and provide recommendations to OCTA. Subject to review and approval by OCTA, reject work which does not conform the Construction Contract Documents. Monitor the corrections of the defects, deficiencies, and deviations until corrected and accepted by OCTA.
- b. Ensure Contractor has obtained all required permits and that the work is performed and inspected in compliance with City and AHJ requirements.
- c. Assist OCTA in inspecting and verifying the Contractor's compliance with the safety provisions and the accident and injury prevention provisions of the Construction Contract Documents.
- d. Provide technical assistance helping to resolve issues and problems and advise OCTA on any necessary design changes required for the Project due to unforeseen field conditions, for project budget/schedule saving. Technical assistance shall be in the fields of architectural, civil, mechanical, electrical, plumbing, and other technical aspects of Project. The technical assistance will also be in the form of reviews and audits of work done by others.
- e. Assist OCTA in planning and monitoring construction activities, reviewing construction phasing and staging, monitoring, evaluating Contractor's performance and work quality.

- f. Monitor the Contractor's traffic control measures and practices and work to cause any deficiencies to be remedied promptly by the Contractor. Monitor Contractor's pedestrian circulation, access, and safety/security plan that construction activities impact sidewalks. CONSULTANT shall work closely with OCTA's Outreach Department for community communications to minimize unanticipated disruptions to the public.
- g. Along with coordination with the field inspectors, prepare, verify, and maintain a daily log of reports of observed construction progress, containing a record of weather, Contractor's work on the site, number of workers, work accomplished, inspections and tests conducted, problems encountered, delays, other similar relevant data, documenting any significant issues in writing with photographs. Make the daily log and reports available to OCTA.
- h. Be knowledgeable about and keep track of all submittals required by Construction Contract Documents. CONSULTANT shall provide general review of all submittals received from Contractor prior to forwarding to the Design Consultant for review and acceptance. Ensure Design Consultant's review resolution is as "Rejected. Resubmit", "Revise and Resubmit", or "No Exception Taken", as applicable. Review resolution as "Conforms with Corrections as Noted", "Approved as Noted", or likewise is not acceptable. Coordinate with Design Consultant to ensure all submittals are processed in a timely manner, as specified in the Construction Contract Documents. Maintain a log of all submittals received. CONSULTANT, in compliance with the Construction Contract Documents, shall be able to review and accept submittals that do not require technical assistance from Design Consultant, in order to provide responses to Contractor in a timely manner to avoid delay in Project.
- i. Provide a general review of all Request for Information (RFI) from Contractor, thoroughly understand the RFIs prior to forwarding the RFIs to Design Consultant for response. Identify any frivolous RFI and return it back to Contractor. CONSULTANT shall work closely with the Design Consultant to properly respond to the RFI in a timely manner. CONSULTANT shall also provide recommendations and responses to RFIs that do not need consulting with the Design Consultant. Maintain a log of all RFIs received.
- j. Monitor and manage the initiation, preparation, justification for Contract Change Order (CCO). Review, evaluate, and negotiate Change Order Requests (COR) from Contractor, provide recommendations to OCTA. Initiate CCO as required for construction of Project in the manner that benefits the Project. Conduct negotiations with Contractor and advise OCTA of the acceptability of the Contractor's proposed adjustment to the Contract Time and/or Contract Amount for CCOs. CONSULTANT shall coordinate with OCTA and Design Consultant to prepare appropriate CCO documents including revised/additional drawings/sketches, exhibits, detailed engineer's independent cost estimates (ICE), memoranda. CONSULTANT shall provide ICE as required and requested by OCTA in order to timely process the CCO's to avoid delay in construction. Inform and coordinate with OCTA for scope, schedule and cost impacts and any coordination issues with City and AHJ. Complete and process CCO packages in compliance to OCTA contract change order procedures. Keep track costs for labor, equipment, and materials for Force Account CCOs; review Contractor's Force Account CCO invoices.

- k. Monitor and aggressively manage the initiation, preparation, review and justification for Project cost reduction proposals submitted by the Contractor, Design Consultant, OCTA, or other Project participants to affect the most desirable benefit to the Project. CONSULTANT shall recommend to OCTA cost reduction ideas judged by the CONSULTANT to be advantageous, or necessary, review all estimates prepared by the Design Consultant and, if appropriate, suggest revisions, prepare independent cost reduction cost estimates, as necessary, evaluate Contractor's cost reduction proposals and express a written opinion about the proposed adjustment to the Contract Sum or Contract Time. Conduct negotiations with the Contractor and advise OCTA of the acceptability of the Contractor's proposed adjustment to the Contract Sum or Contract Time for cost reduction CCOs. Prepare and submit for OCTA's approval the CCO documents and supporting data.
- l. Collect, review certified payroll records, assist OCTA with labor compliance, including performing field interviews with Contractor's on-site personnel at least once a month and preparing field interview reports.
- m. Review the Contractor's maintained as-built drawings on-site, not less than monthly, to reflect changes and field conditions. Verify Contractor is accurately locating all underground utilities on the as-built drawings.
- n. Mark and record all changes made during construction on CONSULTANT's redlined plans and specifications, and other Construction Contract Documents. Maintain all these records in OCTA SharePoint.
- o. Provide supports, tracking, analysis to OCTA in resolving and negotiating Contractor's claims. Provide recommendations to OCTA for claim resolution. CONSULTANT will maintain a log of all pending issues or claims to include the approximate cost impact, recommendations and implement procedures for reducing the likelihood of disputes and claims.
- p. At the end of each month, prepare and submit to OCTA monthly progress reports describing in detail the construction activities performed during the month, issues resolved, outstanding issues, pending and executed change orders, any other potential obstacles that would impede the progress of the work, and job progress within the allocated construction schedule. Information contained in the report shall include, but not be limited to:
 - Project summary, status, including major work activities, quality, and percentages of completion.
 - Status of all Submittals, RFI's, CCOs, and Claims in process, including copies of tracking logs, project safety and environmental incidents (to include, but not limited to employee injuries/illnesses, environmental issues, observer non-conformities/violations, vehicle accidents, property damage, etc.). Include representative photographs of the work noted in the report.
 - Identification of any performance problems of the Contractor and risks to the Project.
 - Description of the Contractor's work activities planned to be performed next month.

- Project budget status and estimate of probable cost. Include earned-value S-curve.
 - A description of any Contractor's new notices of claim.
 - Project schedule status – compare actual progress to objectives, including a summary-level bar-chart showing previous update targets and current schedule update, percent complete per contract value and time.
- q. Contractor will provide and maintain EarthCam system live streaming, time-lapse imaging construction cameras to record and display real-time video of construction activities at the Project site. CONSULTANT shall coordinate with Contractor and OCTA Information Technology department to ensure OCTA project management team and CONSULTANT's construction management team having access to recorded and real-time videos.
- r. Provide daily construction photos and maintain records of all these photos on OCTA Share Point (Microsoft OneDrive) for the entire duration of Project.
- s. Coordinate, provide, and present construction status and project information to OCTA management and staff, other agencies, stakeholders and public relations consultants. Evaluate the completion of the Contractor's work, review project closeout documents and as-built documents.
- t. All services required herein shall be performed in accordance with the Construction Contract Document, the latest City, AHJ, and other applicable regulations, policies, procedures, manuals and standards. All City and AHJ codes, regulations, requirements, policies, procedures, manuals, and standards documents shall be made available for OCTA by CONSULTANT upon request.

2.1.3 Project Controls

CONSULTANT shall provide a project control specialist to:

- Assist in planning, scheduling, and controlling project work. Keep track project schedule, budgets, monitor Design Consultant, Contractor, City and AHJ efforts in support of project construction.
- Review and provide comments to all schedules of all types submitted by the Contractor in accordance with the Construction Contract Documents requirements, conduct analyses and assessments of those schedules, and provide written review comments ensure project completion within the scheduled timeframes.
- Provide time impact analysis, provide advice and opinions to OCTA regarding the Contractor's schedules, schedule updates, progress of the construction work, and project expenditure/budget

2.1.4 Project Administration/Document Controls

CONSULTANT shall provide a project administration and document controls specialist who is responsible for project administration and document controls.

- a. Project Administration:

- Prepare monthly Contractor's progress pay estimates for OCTA's review and approval. Obtain and review Contractor's monthly invoices and progress reports. Process monthly progress payments in accordance with OCTA payment procedures.
- Review invoices from the City, AHJ, and other project stakeholders for accuracy and compliance with agreements between OCTA and stakeholders.
- With each Contractor's, vendors, or other service providers' progress payment request or invoice, the CM/RE shall certify in writing that:

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

- Obtain and review weekly certified payrolls (CPR) submitted by Contractor for compliance with prevailing wage rates. This project is considered a federal contract with regard to labor compliance. CONSULTANT shall compare labor and hours worked as indicated on the CPR with construction labor records prepared and maintained by CONSULTANT's construction management team. Notify Contractor of any discrepancies between wages paid and the prevailing wages. Verify supplemental checks for back wages are issued, if required.
- Receive and review bonds and certificates of insurance from Contractor, vendors, and other service providers for compliance with their contracts and forward them to OCTA. Notwithstanding the review of certificates of insurance by CM, Contractor, vendors, and other service providers shall remain solely liable for providing insurance in accordance with the provisions of their Contracts. On behalf of OCTA, CONSULTANT shall notify Contractor, vendors, and other service providers of the expiration of insurance or increases in bond values due to change order additions. CM shall not recommend progress payments unless insurance and bonds are in full force and effect.
- Coordinate with OCTA to verify Contractor's Disadvantaged Business Enterprise (DBE) compliance.
- Prepare and distribute to Contractor a "Weekly Statement of Calendar Days" report every Monday for the previous reported week. Report format will be furnished by OCTA.

b. Document Controls:

- Provide all Project document controls services. All project-related documentation shall be stored and maintained in OCTA SharePoint (Microsoft OneDrive). Keep accurate records of Construction Contract Documents, plans, specifications, addenda, change orders and other modifications, RFIs, shop drawings, product

data, samples, submittals, purchases, materials, equipment, applicable handbooks, maintenance and operations manuals and instruction, correspondence, reports, and other project related documents. Administer the flow of documents and communications between OCTA staff, Design Consultant, Contractor, City, AHJ, and all other project stakeholders. Maintain Project files of all documents. Assist OCTA to respond to public record requests.

2.1.5 Monthly Invoicing and Progress Reports

CONSULTANT shall be paid monthly at time and expense. By the last day of each month, submit monthly invoicing, include a list of personnel and hours spent during the month. Include a monthly progress report, status of Project, projected status in the next month, and any outstanding issues.

Provide payroll records upon OCTA's requests to verify CONSULTANT's staff hours spent for the reported months.

2.1.6 Project Coordination and Meetings

CONSULTANT shall coordinate, schedule, attend, and administer project meetings. Meetings, other than field meetings, may be in-person or virtual on Microsoft Teams at OCTA's solely discretion. Prepare and distribute meeting agenda a minimum of three (3) business days prior to each meeting. Prepare and distribute meeting minutes within three (3) business days after each meeting. CONSULTANT shall expect the meetings below at a minimum during the entire duration of Project:

- Preconstruction meetings after Notice to Proceed of the Construction Contract between OCTA and Contractor.
- Field and office meetings with the Contractor on a regular basis, not less than weekly, for purposes of communication, coordination, discussion, and resolution of problems and/or negotiation of CCOs.
- Weekly meetings, minimum one (1) hour each meeting with OCTA and Contractor.
- Monthly status update meetings with OCTA, minimum one (1) hour each meeting. CONSULTANT shall present monthly progress reports and all construction issues and potential solutions to OCTA.
- Quarterly update meetings with OCTA and other stakeholders, two (2) hours each meeting. CONSULTANT shall make a Microsoft PowerPoint presentation for Project updates. No monthly state update meetings are required for the months that quarter update meetings are conducted.
- Any other project technical and coordination meetings as required for the Project.

2.2 TASK 2 – Coordination with Agency and other project stakeholders:

CONSULTANT shall assist in coordinating Project with City, AHJ, including but not limited to, FTA, California Department of Transportation (Caltrans), Department of State Architects (DSA), South Coast Air Quality Control Management District (AQMD), and the adjacent property owners. Coordinate the Project construction activities with these

agencies and project stakeholders to ensure agency concerns are properly addressed. Keep a record/history of all coordination and communications.

2.3 TASK 3 - Construction Field Inspections and Observations

CONSULTANT shall perform daily field inspections during construction of the Project, witness and document all field testing and all inspections by AHJ. For each workday starting from Construction Contract Notice to Proceed date, including the workdays with no construction activities, CONSULTANT shall prepare and submit a daily report to OCTA. Daily reports shall include information of construction work, start and end time, weather conditions, labor, materials, equipment, construction activities, HSE issues, any incidents, and remediations/solutions provided, description of work completed and inspected, and planned activities for next workdays, details of any issues and resolutions discussed. Daily reports shall also include photos taken aligned with construction activities performed during the reported day, a sign-in/sign-out list of all visitors and Contractor's personnel including its subcontractors' staff, and a telephone log of all pertinent of all telephone calls made or received indicating the parties called and purpose/nature of the calls. CONSULTANT's field inspectors shall also coordinate and work closely with quality assurance survey crew to verify all staking required for construction of Project.

CONSULTANT shall provide structural observations for construction work as required. Structural representative shall perform inspections required in this scope of work to assure compliance with construction plans, specifications, and special provisions on all phases of structural construction including all structural supporting elements, foundations, walls, falsework, shoring, and drainage structures. Provide a separate report for each structural observation. Identify any structural issues and any resolutions discussed and provided.

Daily inspection reports and structural observation reports shall be signed and dated by Contractor, field inspector or structural representative, and CM prior to being submitted to OCTA via email and uploaded to OCTA SharePoint on the following date of the date reported.

2.4 TASK 4 - Soils and Materials Testing and Inspection Services:

CONSULTANT shall provide all labor, materials, equipment, and facilities to perform soils and materials testing and inspection services, as required by the AUTHORITY, during the construction. The services may include, but not be limited to, performing required testing of asphalt concrete, Portland cement concrete, grout, mortar, reinforcing steel, and structural steel. In addition, special deputy inspection services for welding, high strength bolts, fireproofing, reinforcing steel, masonry, and concrete placement.

All testing shall be performed in accordance with the California Test Methods as specified in Caltrans "Manual of Testing" and shall meet the latest requirements of ASTM and other regulatory requirements.

CONSULTANT may be required to submit the test results on the same day or the following day (within 24 hours) of the day the samples are taken. CONSULTANT may be required to send the test results to local agencies having jurisdiction over the Project.

Special Deputy Inspector shall submit a field inspection report to CONSULTANT Construction Manager, of the work inspected or tested at the end of workday.

All testing laboratories shall be within 30 miles from the Project site and shall provide test results in a timely manner as required for Project construction.

The laboratories shall maintain an inventory of testing equipment listing the manufacturer, model, serial number, calibration, and tolerance.

The laboratories shall maintain a laboratory procedure manual describing the methods used for recording, processing, and reporting data, the sources of reference material, standards, and test methods. The manual will be made available to the AUTHORITY upon request.

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

CONSULTANT shall certify all work (compaction of foundation base, base, sub-base, asphalt concrete, concrete, reinforcing steel, structural steel welding, etc.) conducted, inspected, and tested under the supervision of its staff, and if required by the local jurisdiction (City of Anaheim and/or County of Orange).

2.5 TASK 5 - Quality Assurance Surveying

CONSULTANT shall perform control points, benchmarks, and other quality assurance surveying as required for the Project. CONSULTANT shall review and comment on Contractor's survey data.

The number of CONSULTANT surveying personnel required for the Project is expected to fluctuate based on the needs of the Project. CONSULTANT shall provide all labor, equipment, and materials required to perform quality assurance surveying services, as well as office engineering and field calculations to support the construction of the Project as needed.

Specific surveying requests will be initiated by the RE, utilizing a survey request form in a mutually agreed upon format. Once the request has been issued, CONSULTANT shall begin work and proceed diligently until all required tasks have been satisfactorily completed. Other special check surveys, quantity measurements, and investigative surveys may be required, as ordered by the RE and authorized by the AUTHORITY.

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

CONSULTANT may be requested to assist OCTA to review and verify real property/surveying documentations such as legal descriptions, plat maps, etc....

A report of surveying work and results shall be submitted to OCTA within three (3) business days after surveying work being performed. Include all field notes and data as appendices to the reports.

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

- 2.5.1. Construction Contract Documents. CONSULTANT shall perform quality assurance surveying that is required by AUTHORITY and as described in the Construction Contract between the AUTHORITY and the Contractor. Other surveying and engineering calculations shall be performed as needed to administer and manage the Project. Coordinate with field inspectors to verify project staking by Contractor.
- 2.5.2. Survey Calculations and Adjustments. Survey calculations and adjustments shall be performed with established and computed coordinates based on the California Coordinate System. Cross-Section Data Collection shall be performed by conventional and terrain line interpolation survey methods. Survey Data Formatting will include formatting topography, cross-section, and other survey data into computerized formats compatible with the computerized survey and design systems. Preparing and maintaining survey documents will include compiling any survey field notes, maps, drawing, and other survey documents. Monitoring for settlement shall be performed if required. GPS equipment shall be made available for use if required by AUTHORITY.
- 2.5.3. Existing Right of Way and Easements. CONSULTANT may be requested to verify existing right of way and easements from Authority's record information and existing monumentation. Right of Way related monumentation shall be renewed and restored, if necessary, in accordance with the Land Surveyor's Act. Corner records and records of surveys shall be prepared and filed in accordance with the Land Surveyors' Act. Perpetuating Existing Monumentation - Includes restoring, renewing, referencing, and resetting existing boundary-related monumentation, staking areas where construction disturbs the existing right of way and preparing and filing required maps and records.
- 2.5.4. New Right of Way and Easements. CONSULTANT may be requested to establish new right of way and easements from plans, right of way maps, utility drawings, and other AUTHORITY'S record information and existing monumentation. Right of Way Surveys - Includes research, locating and monumenting right of way and easement lines, staking right of way and easement fences and preparing and filing required maps and records. Final Monumentation - Includes the setting of centerline points of control upon completion of construction. Special Design-Data Surveys, including drainage, utility, and those required for special field studies.
- 2.5.5. Control Survey. Horizontal and vertical controls, including project control surveys and aerial mapping control surveys. Also includes the restoring, renewing, referencing, relocating, and resetting existing control monumentation.
- 2.5.6. Topographic Surveys. By ground survey methods only.
- 2.5.7. As-built Drawing Survey Support. Provide electronic record information to support the development of project as-built drawings.
- 2.5.8. Survey Monument Markings. Monuments established by the CONSULTANT shall be marked by CONSULTANT with furnished disks, plugs, or tags acceptable to AUTHORITY and the municipality having jurisdiction over the improvements. In addition, the CONSULTANT shall identify CONSULTANT-established monuments by tagging or stamping the monuments with the license or registration number of the CONSULTANT's surveyor who is in "reasonable charge" of the work.
- 2.5.9. All surveys shall be performed in accordance with the current industry standards, the Professional Land Surveyors Act, and in accordance with the directions of the AUTHORITY.

- 2.5.10. Surveys performed by CONSULTANT shall conform to the requirements of the Land Surveyors' Act. In accordance with the Act, "responsible charge" for the work shall reside with a Licensed Land Surveyor or a pre-January 1, 1982, Registered Civil Engineer, in the state of California.
- 2.5.11. Unless otherwise specified, control surveys shall conform to latest SCRRA or City Standards.
- 2.5.12. Additional standards for specific surveying work might be included in a special survey request by the AUTHORITY. Such standards supplement the standards specified herein. If such additional standards conflict with the standards specified herein, the survey request standard shall govern over the standards herein.

2.6 TASK 6 - Health, Safety, and Environmental Compliance:

CONSULTANT shall provide a fulltime qualified on-site HSE officer to perform daily inspection when construction activities are commenced.

CONSULTANT's HSE officer shall fully understand OCTA Level 3 HSE Specifications requirements. After Notice to Proceed of the construction contract, HSE officer shall assist OCTA to review HSE submittals from Contractor. During construction activities, HSE officer shall be on-site to monitor and inspect Contractor's daily work performance in compliance with OCTA Level 3 HSE specifications, the accepted HSE submittals, and all other safety requirements. Notify and report to OCTA any and all HSE violations, reportable and/or recordable injuries and incidents, and any damages to OCTA property. Word closely with Contractor's HSE representative to resolve and document any HSE issues at the site to ensure compliance, effective and safe project constructions.

CONSULTANT's personnel shall comply with all HSE requirements while performing work at the job site as well as in CONSULTANT's field office.

2.7 TASK 7 - Special Services

2.7.1. Environmental Monitoring Services

CONSULTANT shall fully understand the Project environmental documents and requirements. CONSULTANT shall perform environmental monitoring services to support the construction of the Project and in conformance with the requirements of the Environmental Mitigation and Monitoring Program. Tasks and assignments to be performed by CONSULTANT personnel will generally include, but are not limited to, the following:

- a. Biological Monitoring – Implement Measure BR-1 of the Mitigation Monitoring and Reporting Program
- b. Architectural/Historical Monitoring – Implement Measures CR-2, and N-1 of the Mitigation Monitoring and Reporting Program. Conduct preconstruction and post construction surveys of existing structure adjacent to the construction site. Areas of special concern include:
 - Analysis of potential vibration impacts
 - Temporary construction fencing

- On-going recommendation of “adaptive management” techniques during construction
 - Monitoring for damage due to vibration and other construction activities and mitigation measures for any damage that occurs.
- c. Archaeological/Paleontological Monitoring – Implement Measure CR-3 of the Mitigation Monitoring and Reporting Program. Conduct a preconstruction meeting and monitor progress of excavation work for potential archaeological or paleontological resources in compliance with the project environmental documents. The monitoring should continue until grading and excavation are complete, or until the monitoring archaeologist, based on field observations, is satisfied that there is not likelihood of encountering intact archaeological deposits. Conduct investigations if significant resources are discovered, develop mitigation plans and file reports as required. Prepare and submit reports to documents the methods and results of the investigations.
- d. Storm Water Pollution Prevention Plan (SWPPP) – CONSULTANT shall review and comment on Contractor’s SWPP submittal. Monitor and ensure that appropriate SWPPP measures are implemented and maintained throughout the duration of the Project. Daily SWPPP inspection and reports are required. Before-rain and post rain inspections and reports are required for each rain event during the entire construction duration of Project. Assist OCTA in completing any necessary SMART Storm Water Program database documentation and submittals.

2.7.2. Building Commissioning

CONSULTANT shall review and thoroughly understand the Design Consultant’s building commissioning plan.

In cooperation with the OCTA and participation by the City’s, AHJ, and/or maintenance personnel, observe and advise the AUTHORITY of the Contractor’s checkout of utilities, operational systems and equipment for readiness and assist in their proof testing, commissioning and turn-over to OCTA. Oversee and manage the commissioning process to insure a complete operating facility based on the building commissioning plans and standard practices, upon Substantial Completion.

2.7.3. Utility Locating Services:

As required by OCTA, CONSULTANT shall provide independent third-party utility locating services for the Project.

2.8 **TASK 8 – Project Closeout**

CONSULTANT shall perform Project closeout in compliance with the Construction Contract Documents.

2.8.1 Preliminary and Final Punch Lists:

CONSULTANT shall conduct inspections of the Project site to determine dates of substantial completion. Coordinate with project stakeholders to conduct preliminary and final punch list walks in compliance with Construction Contract Documents.

Coordinate with Design Consultant to prepare preliminary and final punch lists to the Contractor. Monitor and ensure Contractor addressing all punch list items in compliance

with Construction Contract Documents and Design Consultant's comments and recommendations.

Obtain all required final documents specified in the Construction Contract Documents including, but not limited to:

- Any delinquent certified payrolls
- Final Labor Summary and Final Labor Certificate
- Contractor's survey notes and Record Drawings
- Operating and Maintenance Manuals
- Copy of final inspection (permit sign-off cards) from appropriate City's building department and Certificate of Occupancy
- Warranty certificates
- Stop Notice Releases

CONSULTANT shall review written guarantees and related documents assembled by Contractor and shall recommend to Project Manager the issuance of the final certificate for payment.

2.8.2 As-built Documents and Project Records

CONSULTANT shall keep and maintain a redlined (as-built) project plans and specifications documenting all changes during construction. At project closeout phase, CONSULTANT shall review Contractor's redlined as-built plans and specifications submittal in comparison with CONSULTANT's as-built plans and specifications prior to sending Contractor's submittals to the Design Consultant.

After receiving record documents from Design Consultant, CONSULTANT shall verify all record documents and record these documents to OCTA project records.

CONSULTANT shall obtain all other project closeout documents, O&M manuals and all closeout deliverables as required in Construction Contract Documents. Coordinate with Design Consultant to review and accept project closeout documents.

2.8.3 Notice of Completion:

CONSULTANT shall recommend OCTA on Notice of Completion (NOC) date, prepare a NOC document and record the NOC with the County of Orange at the end of the Project.

2.8.4 Project Acceptance and Turn-over:

CONSULTANT shall collect, prepare, and submit to OCTA all Project documentation, electronic files, brochures, material records, final as-built plans from Contractor, warranties, operations and maintenance manuals, final punch-list, and all other closeout documents to turn-over the Project to OCTA.

3. **CONSULTANT'S PERSONNEL QUALIFICATIONS:**

Within one (1) week of execution of this Agreement, CONSULTANT shall submit to OCTA for review and acceptance detailed resumes of all proposed personnel for the work in this Scope of Work. CM/RE and Assistant RE shall be approved in writing prior to start of constructability review of the Project. All other CONSULTANT's personnel shall be approved in writing by OCTA at least two weeks prior to start of construction.

If the accepted personnel must be absent from the Project work for a period of time, CONSULTANT shall provide temporary personnel with equal or higher qualifications to perform the work until the accepted personnel returns to the Project. Temporary personnel's qualifications shall be approved by OCTA at least two weeks in advance.

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

If, at any time, the level of performance is below expectations, OCTA shall have the right to request removal of any CONSULTANT's personnel. OCTA may request another qualified personnel be assigned to the Project as needed.

CONSULTANT's personnel qualifications/requirements shall be as below:

3.1. Construction Manager/Resident Engineer

CONSULTANT shall provide a fulltime Construction Manager (CM) who shall also act as the Project Resident Engineer (RE) for the duration of the Project. CM/RE shall, on behalf of the OCTA within the limits authorized in writing by the OCTA, manage and perform all construction management tasks required in this Scope of Work. As minimum qualifications, CM/RE shall:

- a. Have a minimum five (5) years of experience as Construction Manager and/or Resident Engineer on similar FTA funded transit projects, with knowledge of FTA regulatory and funding requirements, FTA procedures and requirements on a specific project basis, including assisting in coordination of projects with FTA, or other equivalent experience, as determined by OCTA.
- b. Have thorough knowledge of construction practices, and the ability to read and interpret plans and specifications, construction schedules, and all other construction related documents.
- c. Be able to work independently and to make effective decisions concerning field problems and work in progress.
- d. Be proficient in the use of Microsoft computer application programs Word, Excel, and Teams, and other Microsoft Suite application programs.

- e. Possession of a current OSHA 10 Hour Certification.
- f. Be currently licensed Civil Engineer in the State of California.

CM/RE is a key personnel who shall not be removed or replaced without advance written approval from OCTA.

3.2. Assistant Resident Engineer

CONSULTANT shall provide a fulltime Assistant Resident Engineer (Assistant RE) for the duration of the Project to assist CM/RE and perform construction management work in this Scope of Work. As minimum qualifications, Assistant RE shall:

- a. Have a minimum three (3) years of experience as Civil Engineer and Assistant RE managing construction of similar construction projects, or other equivalent experience, as determined by OCTA.
- b. Be able to work independently and under minimal directions from RE and OCTA, and be able to perform all construction management duties.
- c. Have thorough knowledge of construction practices, and the ability to read and interpret plans, specifications, and construction schedules.
- d. Be able to make effective decisions concerning field problems and work in progress.
- e. Be proficient in the use of Microsoft computer application programs Word, Excel, and Teams, and other Microsoft Suite application programs.
- f. Possession of a current OSHA 10 Hour Certification.
- g. Preferably, be currently licensed Civil Engineer in the State of California.

Assistant RE is a key personnel who shall not be removed or replaced without advance written approval from OCTA.

3.3. Field Inspectors:

CONSULTANT shall provide field inspectors as required during construction of Project. Field inspectors are needed during the construction depending on the needs of Project and at OCTA's sole discretion, however, a minimum of one inspector shall be on the field full-time during construction activities. As minimum qualifications, field inspectors shall:

- a. Have a minimum of four (4) years construction experience on similar projects or other relevant experience.
- b. Have knowledge in the disciplines the field inspector will inspect, knowledge of construction practices, physical characteristics and properties of roadway, railroad, structures, drainage and utility systems construction materials, and the approved methods and equipment used in making physical tests of construction materials.

- c. Have thorough knowledge of construction practices, and the ability to read and interpret plans, specifications, and construction schedules.
- d. Be able to work independently and perform duties in the construction field and office.
- e. Be able to effectively make minor decisions concerning work in progress and solving field and office problems.
- f. Be proficient in the use of Microsoft computer application programs Word, Excel, and Teams, and other Microsoft Suite application programs.

3.4. Structural Representative

CONSULTANT shall provide a structural representative based on the needs of Project during construction. As minimum qualifications, structural representative shall:

- a. Have a minimum of five (5) years construction experience on similar projects or other relevant experience
- b. Have thorough knowledge in structural design and construction practices of similar projects, ability to read and interpret plans, specifications, and construction schedules.
- c. Be able to effectively make minor decisions concerning work in progress and solving field and office problems.
- d. Be currently licensed Civil Engineer and/or licensed Structural Engineer in the State of California.
- e. Be proficient in the use of Microsoft computer application programs Word, Excel, and Teams, and other Microsoft Suite application programs.

3.5. Health, Safety, and Environmental (HSE) Officer

CONSULTANT shall provide a fulltime on-site HSE Representative/Inspector with minimum qualifications below:

- a. A minimum of seven (7) years of heavy construction experience in administering safety programs on heavy construction job sites, the last two of which have been administering HSE programs on construction project sites, the last two year of which have been administering HSE in the construction/scope discipline for which Contractor is contracting with OCTA.
- b. Possess of a current certification of Certified Safety Professional (CSP) or Certified Construction Health and Safety Technician (CHST), with current standing from the Board of Certified Safety Professionals (BCSP); or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH); or an equal professional HSE Certificate of standing from the National Examination Board in Occupational Safety and Health (NEBOSH).
- c. Possession of current OSHA 10-hour and 30-hour current certifications.

d. Experience in developing and implementing construction safety plans.

HSE officer is a key personnel who shall not be removed or replaced without advance written approval from OCTA.

3.6. Soils and Materials Testing Personnel:

CONSULTANT shall provide qualified personnel to perform soils and materials testing required for the Project with a minimum of three (3) years of experience working on similar projects. Soils and materials testing personnel shall be certified in the specific field for which they are engaged in and must have a good knowledge of current construction practices. (Certifications should be valid in Orange County and in the city where project is under construction). Submit certification to OCTA at least three (3) business days prior to performing the work.

3.7. Surveyors:

CONSULTANT shall provide a survey party based on the needs of Project and OCTA's requests with minimum qualifications below:

2.3.7.1. Party Chief:

a. Licensing requirements.

- A licensed Land Surveyor in the State of California; or
- A pre-January 1, 1982, Registered Civil Engineer in the State of California; or
- An experienced surveyor who serves as chief under the direction or supervision of a person who is a licensed Land Surveyor or pre-January 1, 1982 Registered Civil Engineer in the state of California. This direction or supervision shall be provided in a manner and with a span of control and immediacy that enables the supervisor to be in "responsible charge" of the work as defined in Chapter 15 of the Business and Professions Code (the Land Surveyors Act) and Title 16, Chapter 5, of the California Administrative Code (regulations adopted by the Board of Registration for Professional Engineers and Land Surveyors).

b. Five (5) years survey experience on similar construction projects, or other relevant experience.

c. Thorough knowledge of construction survey practices and the ability to read and interpret plans and specifications.

f. Ability to make effective decisions concerning field problems and work in progress.

g. Familiarity with typical coordinate geometry computer programs.

2.3.7.2. Survey Assistant(s):

a. One (1) year survey experience on similar construction projects.

b. Fundamental knowledge of construction survey practices and the ability to read and interpret plans and specifications.

- c. Ability to assist field and office party chiefs in all required surveying work.
- d. One survey party member must have the ability to assume temporary leadership of the survey party in the absence of the party chief.
- e. Trained in the appropriate safety areas for the job decisions each individual is required to make.

3.8. Special Services:

CONSULTANT shall provide the specialists listed below based on project needs and at OCTA's requests with the following minimum qualifications and responsibilities:

3.8.1. Biological Monitoring Specialist (Biologist):

- a. Ten (10) years biological management experience on similar construction projects, or other equivalent experience, as determined by AUTHORITY.
- b. Responsible for overseeing compliance with protective measures for the biological resources during vegetation clearing and work activities within and adjacent to areas of native habitat and/or jurisdictional areas.
- c. Familiar with the local habitats, plants, and wildlife.
- d. Maintain communications with the Contractor to ensure that issues relating to biological resources are appropriately and lawfully managed.
- e. Review final plans, designate areas that need temporary fencing (e.g., environmentally sensitive area [ESA] fencing), and monitor construction.
- f. Monitor activities within construction areas during critical times such as vegetation removal, the implementation of Best Management Practices (BMPs), and installation of fencing to protect native species, and ensure that all permit conditions, conservation measures and general avoidance and minimization measures for the Project are properly constructed and followed.
- g. Proficient in the use of Microsoft computer application programs Word, Excel, and Teams.

3.8.2. Archeological Specialist:

- a. Ten (10) years archaeological monitoring experience on similar construction projects, or other equivalent experience, as determined by AUTHORITY.
- b. The Project Archaeologist shall meet the Secretary of the Interior's Professional Qualifications Standards.
- c. The Project Archaeologist and archaeological monitors will be subject to the approval of the lead agency.
- d. Prior to the start of monitoring, the Project Archaeologist shall prepare a Cultural Resources Construction Monitoring Plan and a Cultural Resources Discovery Plan which includes Archaeological monitor qualification requirements, detailed approaches to archaeological monitoring of various project elements, and the procedures to follow in the event that unanticipated archaeological resources or human remains are discovered. In the event an unanticipated discovery of archaeological resources occurs during construction, the archaeological monitor will halt all construction within a 50-foot radius of the find until the Project Archaeologist can assess the significance of the find.

- e. Proficient in the use of Microsoft computer application programs Word , Excel, and Teams.
- f. The supervising archaeologists for project monitoring must be certified by the County of Orange and can be found on their website at:
<http://ocplanning.net/civicax/filebank/blobdload.aspx?blobid=36449>.

3.8.3. Paleontological Specialist:

- a. Ten (10) years paleontological experience on similar construction projects, or other equivalent experience, as determined by AUTHORITY.
- b. The Project paleontologist shall be present during any excavation into undisturbed sensitive sediments that are determined to be conducive to fossil preservation. If unanticipated fossils are unearthed during construction, work should be halted in that area until the qualified paleontologist can assess the significance of the find. If the resource is considered potentially significant, the qualified paleontologist will work with the lead agency to follow standard industry practice for recovery, identification, and interpretation.
- c. The qualified paleontologist shall work with the Contractor to establish a minimum 50 feet buffer away from the find so work can commence outside of the buffer. Work within the 50-foot buffer may commence after the paleontologist evaluates the significance of the find.
- d. Proficient in the use of computer application programs Microsoft Word, Excel, and Teams.
- e. The supervising paleontologists for project monitoring must be certified by the County of Orange and can be found on their website at:
<http://ocplanning.net/civicax/filebank/blobdload.aspx?blobid=36448>

3.8.4. SWPPP Specialist:

- a. Certified by California Stormwater Quality Association (CASQA) as a Qualified Developer (QSD).
- b. Five (5) years of experience working on similar construction projects or other equivalent experience, as determined by OCTA.
- c. Proficient in the use of computer application programs Word and Excel.

3.8.5. Building Commissioning Specialist:

- a. Five (5) years of experience in building commissioning with a minimum of three (3) years of experience in building commissioning for similar projects.
- b. Ability to review, comment on the Contractor's building commissioning plan, witness, monitor, document, and report building commissioning process to ensure the building are operating properly and per project documents.
- c. Proficient in the use of Microsoft computer application programs Word, Excel, and Teams .

3.9. Project Administrator/Documents Control Specialist

CONSULTANT shall provide a fulltime Project Administrator/Documents Control Specialist who meets the minimum qualifications below:

- a. Five (5) years of experience plus a minimum of 1 year document control experience on similar construction projects, or other equivalent experience, as determined by OCTA.
- b. Knowledge and experience in the use of computer application programs Microsoft Word, Excel, Teams, and other Microsoft Suite applications,
- c. Experience with project documentation requirements and document filing practices on public works construction projects, and experience in using electronic document management systems, for access to, and retention of project documents of all types with document management software such as Primavera Contract Manager, Expedition, Meridian Prolog Manager, e-Builder, or other similar document control systems.
- d. Experience in managing and processing submittals, request for information, change request, change directives, change orders, payment applications, deficiency notices, and other typical duties of an office engineer-document controller.
- e. Experience with web-based systems for the storage and retrieval of shared documents and drawings.
- f. Experience with Certified Payrolls system and requirements, and ability to review and comment on CONTRACTOR's CPRs.
- g. Experience in responding to public records requests.
- h. Ability to work independently and meet deadlines.

4. CONSTRUCTION MANAGEMENT DELIVERABLES:

Deliverables to be prepared, submitted to OCTA, and maintained in OCTA project shared point (Microsoft OneDrive) by the CONSULTANT shall include, but not be limited to:

- a. Monthly CONSULTANT progress reports prepared by the CM/RE.
- b. Monthly Project Status Reports prepared by RE.
- c. Approved Construction Contract progress payment and quantity documents delivered to OCTA no later than five (5) working days after the specified payment cut-off date or five (5) working days after the date that all information is provided by the Contractor, whichever is later.
- d. Approved final payment quantity documents delivered to OCTA no later than five (5) working days after acceptance of the completed construction project by OCTA or five (5) working days after the date that all information is provided by the Contractor, whichever is later.
- e. All meeting agenda and minutes of the project meetings including action item list.
- f. Change order documentations and recommendations as required.

- g. Weekly statement of Calendar Days reports.
- h. Daily Inspection Reports.
- i. All other inspection/observation/monitoring reports.
- j. Log of Submittals and all approved submittals.
- k. Log of RFIs and all responded RFIs.
- l. Contractor's Certified Pay Rolls.
- m. Contractor's Project Baseline, Monthly Updated Schedules, and two-week look-ahead Schedules.
- n. Correspondence Log.
- o. Preliminary and Final Punch Lists.
- p. All Project Closeout Documents required in construction agreement between OCTA and Contractor.
- q. All other documents required and as results of work perform under this Scope of Work.

END OF SCOPE OF WORK

EXHIBIT B: PROPOSED AGREEMENT

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B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT'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 CONSULTANT'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. CONSULTANT shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the services set forth in Exhibit A, entitled "Scope of Work," attached to and, by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AUTHORITY.

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

<u>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 CONSULTANT, 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 CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval

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

5 **ARTICLE 4. TERM OF AGREEMENT**

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

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

11 **ARTICLE 5. ALLOWABLE COSTS AND PAYMENT**

12 A. For CONSULTANT's full and complete performance of its obligations under this Agreement
13 and subject to the maximum cumulative payment obligation provision set forth in Article 7 "Maximum
14 Obligation" AUTHORITY shall pay CONSULTANT on a specified rates of compensation basis in
15 accordance with the following provisions.

16 B. CONSULTANT shall not commence performance of work or services until this Agreement
17 has been approved by AUTHORITY and notification to proceed has been issued by AUTHORITY. No
18 payment will be made prior to approval of any work, or for any work performed prior to approval of this
19 Agreement.

20 C. The method of payment for the following items shall be at the rate specified for each item, as
21 described in this Article. The specified rate shall include full compensation to the CONSULTANT for the
22 item as described, including but not limited to, any repairs, maintenance, or insurance, and no further
23 compensation will be allowed therefore.

24 D. The specified rate to be paid for field vehicle expense for CONSULTANT's field personnel
25 shall be \$1,100/month/vehicle, and shall include all vehicle expenses such as fuel, insurance, operation
26 and maintenance, and safety equipment. This rate shall be for a fully equipped vehicle, with radio and

1 flashing yellow light (if needed), as specified in Exhibit B of this Agreement. The specified rates to be paid
2 for other field equipment, if needed, shall be paid at cost, as listed in Exhibit B of this Agreement.

3 E. The method of payment for this Agreement will be on a specified rates basis which includes,
4 in addition to equipment rental costs (not including vehicles as provided above), labor costs, employee
5 benefits, prevailing wages, equipment-rental costs, travel, overhead and other direct costs incurred by
6 the CONSULTANT in performance of the work. These rates are not adjustable for the performance
7 period set forth in this Agreement. The overhead rate established for this Agreement is extended through
8 the term of this specific Agreement. The CONSULTANT will not be reimbursed for actual costs that
9 exceed the contract's maximum obligation which includes estimated wage rates, employee benefits,
10 travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional
11 reimbursement is provided for, by contract amendment. In no event, will the CONSULTANT be
12 reimbursed for overhead costs that exceed AUTHORITY approved overhead rate set forth in Exhibit B.
13 In the event the AUTHORITY determines that changed work from that specified in Exhibit A, Scope of
14 Work, is required; the actual costs reimbursed by AUTHORITY may be adjusted by Agreement
15 amendment to accommodate the changed work. The maximum total cost of this Agreement shall not be
16 exceeded unless authorized by Agreement amendment.

17 F. For each full hour of labor satisfactorily performed by CONSULTANT's personnel under this
18 Agreement, AUTHORITY shall pay CONSULTANT at the hourly labor rates specified in Exhibit B, entitled
19 "Schedule of Fees," which is attached to and by this reference, incorporated in and made a part of this
20 Agreement. These rates shall remain fixed for the term of this Agreement. Furthermore, AUTHORITY
21 shall reimburse CONSULTANT, at cost with supporting documentation provided, for the actual costs of
22 the estimated expenses shown in Exhibit B, which are directly incurred by its personnel in the
23 performance of work under this Agreement. The AUTHORITY will not reimburse CONSULTANT for local
24 meals except for those authorized for traveling personnel in the attached Exhibit B.

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1 G. For classifications added to the Exhibit B, "Classification Labor Rates" Schedule through
2 Amendments, raw billing ranges must be based on current year's actual salaries, and the corresponding
3 fully burdened ranges must be provided by CONSULTANT.

4 H. CONSULTANT agrees that billing for personnel under the Exhibit B, "Classification Labor
5 Rates" Schedule is to be used on a temporary basis, limited to a maximum period of six (6) continuous
6 months for each personnel working under the "Classification Labor Rates" Schedule. Personnel working
7 or proposed to work on a continuous basis for a period of more than six (6) continuous months are not
8 considered temporary and must be added as named personnel with a specific hourly billing rate.

9 I. CONSULTANT agrees that all personnel billing under the labor schedules in Exhibit B, are
10 subject to the annual escalation rate allowable under this Agreement. This is the maximum escalation
11 rate that AUTHORITY will reimburse CONSULTANT for named personnel and classifications.

12 J. CONSULTANT agrees that personnel proposed to work and bill under any of the labor
13 schedules in Exhibit B must be approved in writing by the AUTHORITY Project Manager prior to start of
14 work.

15 K. For personnel subject to prevailing wage rates as described in the California Labor Code, all
16 salary increases, which are the direct result of changes in the prevailing wage rates are reimbursable.

17 L. Reimbursement for transportation and subsistence costs shall not exceed the rates specified
18 in Exhibit B, without prior approval from AUTHORITY's Program Manager.

19 M. As partial security against CONSULTANT's failure to satisfactorily fulfill all its obligations
20 under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice
21 submitted for payment by CONSULTANT, and shall make prompt and regular incremental acceptances
22 of portions/milestones, as determined by AUTHORITY, of the Agreement work, and pay retainage to
23 CONSULTANT based on these acceptances. The CONSULTANT, or subconsultant, shall return all
24 monies withheld in retention from a subconsultant within thirty (30) calendar days after receiving payment
25 for work satisfactorily completed and accepted including incremental acceptances of portions/milestones
26 /

1 of the Agreement work by the AUTHORITY. CONSULTANT shall invoice AUTHORITY for the release of
2 the retention in accordance with this Article.

3 N. Final acceptance shall occur only when AUTHORITY makes the final release of the retention
4 described in Paragraph N.

5 O. All retained funds shall be released by AUTHORITY and shall be paid to CONSULTANT
6 within sixty (60) calendar days of payment of final invoice, unless AUTHORITY elects to audit
7 CONSULTANT's records in accordance with Article 17 entitled "Audit and Inspection of Records", of this
8 Agreement. If AUTHORITY elects to audit, retained funds shall be paid to CONSULTANT within thirty
9 (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such
10 audit. During the term of the Agreement, at its sole discretion, AUTHORITY reserves the right to release
11 all or a portion of the retained amount based on CONSULTANT's satisfactory completion of certain
12 portions/milestones. CONSULTANT shall invoice AUTHORITY for the release of the retention in
13 accordance with this Article.

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

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1 Q. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to
2 the specified labor rates and actual other direct costs expended by CONSULTANT. Work completed
3 shall be documented in a monthly progress report prepared by CONSULTANT, which shall accompany
4 each invoice submitted by CONSULTANT.

5 R. The CONSULTANT will be paid, less any retention amount withheld, as promptly as fiscal
6 procedures will permit upon receipt by the AUTHORITY's Accounts Payable office of itemized invoices
7 in duplicate. Invoices shall be submitted no later than 30 days after the performance of the work for which
8 the CONSULTANT is billing. Invoices shall detail the work performed on each task as applicable. Invoices
9 shall comply with the approved Price Proposal and shall reference this Agreement number and project
10 title. Final invoice must contain the final cost and all credits due the AUTHORITY including any equipment
11 purchased under the provisions of Article 46 Consultant Purchased Equipment of this Agreement. The
12 final invoice should be submitted to the AUTHORITY within 60-calendar days after completion of the
13 CONSULTANT's work.

14 S. CONSULTANT shall also furnish such other information as may be requested by
15 AUTHORITY to substantiate the validity of an invoice, including a current payroll register and/or an offer
16 of employment for personnel performing work under the classifications which are subject to pay ranges
17 listed in Exhibit B, "Classifications Labor Rates" Schedule, in order to receive reimbursement for hours
18 worked. Reimbursement for labor hours incurred by personnel designated by a classification, shall be
19 made after AUTHORITY's review of the actual personnel's pay register, and verification that the actual
20 pay falls within the specified range for that classification. If an actual pay rate exceeds the maximum of
21 the range, CONSULTANT will be reimbursed at the maximum of the range. At its sole discretion,
22 AUTHORITY may decline to make full payment for any work until such time as CONSULTANT has
23 documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all work required.
24 AUTHORITY's payment in full for any work completed shall not constitute AUTHORITY's final acceptance
25 of CONSULTANT's work under such task.
26

1 T. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in
2 duplicate to AUTHORITY's Accounts Payable office or may be emailed to VendorInvoices@octa.net.
3 Each invoice shall be accompanied by the monthly progress report specified in paragraph N of this Article.
4 Invoices shall be submitted no later than 30-calendar days after the performance of work for which
5 CONSULTANT is billing. AUTHORITY shall remit payment, less retention amount, within thirty (30)
6 calendar days of the receipt and approval of each invoice. Each invoice shall include the following
7 information:

- 8 1. Agreement No. C-2-2643;
- 9 2. Specific work for which payment is being requested;
- 10 3. The time period covered by the invoice;
- 11 4. Labor performed during the billing period (staff name, hours charged, hourly billing
12 rate, current charges and cumulative charges, and pay registers for staff using classifications);
- 13 5. Itemized expenses including supporting documentation incurred during the billing
14 period;
- 15 6. Total monthly invoice (including project to-date cumulative invoice amount); and
16 retention amount withheld by AUTHORITY for the time period covered by the invoice;
- 17 7. Monthly Progress Report;
- 18 8. Weekly certified payroll for personnel subject to prevailing wage requirements;
- 19 9. Certificate signed by the CONSULTANT or his/her designated alternate that a)
20 The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup
21 information included with the invoice is true, complete and correct in all material respects; c) All payments
22 due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to
23 subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The
24 invoice does not include any amount which CONSULTANT intends to withhold or retain from a
25 subcontractor or supplier unless so identified on the invoice.

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1 10. Any other information as agreed or otherwise requested by AUTHORITY to
2 substantiate the validity of an invoice.

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

6 **ARTICLE 6. PROMPT PAYMENT CLAUSE**

7 A. AUTHORITY has adopted a prompt payment provision on all U.S. DOT-assisted contracts to
8 facilitate timely payment to all subconsultants in accordance with regulatory mandates. The provisions
9 of this Article apply to both DBE and non-DBE subconsultants. Pursuant to Title 49 of the Code of Federal
10 Regulations (CFR) Part 26.29:

11 B. "CONSULTANT or subconsultant agrees to pay each subconsultant under this Agreement for
12 satisfactory performance of its Agreement no later than fifteen (15) days from the receipt of each progress
13 payment CONSULTANT receives from AUTHORITY on account of the work performed by the
14 subconsultant. CONSULTANT agrees further to return retainage payments to each subconsultant within
15 fifteen (15) days after receiving payment for work satisfactorily completed and accepted including
16 incremental acceptances of portions of the Agreement work by AUTHORITY. Any delay or postponement
17 of payment from the above referenced time frame may take place only for good cause and with
18 AUTHORITY's prior written approval." CONSULTANT shall incorporate this clause verbatim, set forth
19 above, in all subcontract, broker, vendor, supplier, purchase order or other source agreements issued to
20 both DBE and non-DBE firms. In the event that there is a dispute over all or any portion of the amount
21 due on a progress payment from CONSULTANT or subconsultant to a subconsultant, CONSULTANT or
22 subconsultant may withhold no more than 150 percent of the disputed amount.

23 C. Any violation of these provisions shall subject the violating CONSULTANT to the penalties,
24 sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions
25 Code and Section 3321 of the California Civil Code. This requirement shall not be construed to limit or
26 impair any contractual, administrative or judicial remedies otherwise available to CONSULTANT or

subconsultant in the event of a dispute involving late payment or nonpayment by CONSULTANT;
deficient subcontract performance or noncompliance by a subconsultant.

D. Failure to comply with these provisions without prior written approval from AUTHORITY will constitute noncompliance, which shall result in the application of appropriate administrative sanctions to the licensee, including, but not limited to, a penalty payable to the subconsultant, 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 CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including obligation for CONSULTANT's profit) shall be _____ Dollars (\$____.00) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement.

ARTICLE 8. NOTICES

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

To CONSULTANT:		To AUTHORITY:	
		Orange County Transportation Authority	
		550 South Main Street	
		P.O. Box 14184	
		Orange, CA 92863-1584	
ATTENTION:	Title:	ATTENTION:	Michael Le Title: Senior Contract Administrator
Phone:		Phone:(714) 560-5314	
Email:		Email: mle1@octa.net	

	<p>CC: Nhatran Do</p> <p>Project Manager</p> <p>Tel: (714) 560-5831</p> <p>Email: ndo@octa.net</p>
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ARTICLE 9. INDEPENDENT CONTRACTOR

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

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

ARTICLE 10. INSURANCE

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

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

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

1 3. Workers' Compensation with limits as required by the State of California including a
2 Waiver of Subrogation in favor of AUTHORITY, its officers, directors and employees; and

3 4. Employers' Liability with minimum limits of \$1,000,000 per accident, \$1,000,000 policy
4 limit-disease, and \$1,000,000 policy limit employee-disease.

5 B. Proof of such coverage, in the form of a certificate of insurance and an insurance policy
6 blanket additional insured endorsement, designating the AUTHORITY, its officers, directors and
7 employees as additional insureds on general liability and automobile liability, as required by Agreement.
8 Proof of insurance coverage must be received by AUTHORITY within ten (10) calendar days from the
9 effective date of the Agreement and prior to commencement of any work. Such insurance shall be
10 primary and non-contributive to any insurance or self-insurance maintained by the AUTHORITY.
11 Furthermore, AUTHORITY reserves the right to request certified copies or review all related insurance
12 policies, in response to a related loss.

13 C. CONSULTANT shall include on the face of the certificate of insurance the Agreement Number
14 C-2-2643 and, the Contract Administrator's Name, Michael Le.

15 D. CONSULTANT shall also include in each subcontract, the stipulation that subconsultants shall
16 maintain insurance coverage in the amounts required of CONSULTANT as provided in the Agreement.
17 Subconsultants will be required to include AUTHORITY as additional insureds on the Commercial
18 General Liability, and Auto Liability insurance policies.

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

21 **ARTICLE 11. ORDER OF PRECEDENCE**

22 To the extent there are any conflicts or inconsistency arising between any provisions or
23 documents incorporated in this Agreement, the order of precedence for conflict resolution in
24 descending order shall be as follows: (1) the provisions of this Agreement, including all exhibits; (2) the
25 provisions of RFP 2-2643, (3) CONSULTANT's technical proposal dated _____, CONSULTANT's initial
26 /

1 cost proposal dated _____, and final cost proposal dated _____ ; and (4) all other documents, if any,
2 cited herein or incorporated by reference.

3 **ARTICLE 12. CHANGES**

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

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

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

17 **ARTICLE 13. DISPUTES**

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

24 B. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with
25 the performance of this Agreement and in accordance with the decision of AUTHORITY's Director,
26 CAMM. Nothing in this Agreement, however, shall be construed as making final the decision of any

1 AUTHORITY official or representative on a question of law, which questions shall be settled in
2 accordance with the laws of the State of California.

3 **ARTICLE 14. TERMINATION**

4 A. AUTHORITY reserves the right to terminate this Agreement upon thirty (30) calendar days
5 written notice to CONSULTANT of intent to terminate, with effective date of termination and the reasons
6 for termination stated in the notice, in accordance with the provisions of the FAR referenced above and
7 Article 8 "Notices", herein. Upon receipt of said notification, CONSULTANT agrees to comply with all
8 applicable provisions of the FAR pertaining to termination for convenience.

9 B. Upon termination, AUTHORITY shall be entitled to all work, including but not limited to,
10 reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed
11 to that date, whether completed or not.

12 C. AUTHORITY may temporarily suspend this Agreement, at no additional cost to AUTHORITY,
13 provided that CONSULTANT is given written notice of temporary suspension. If AUTHORITY gives such
14 notice of temporary suspension, CONSULTANT shall immediately suspend its activities under this
15 Agreement. A temporary suspension may be issued concurrent with the notice of termination.

16 D. AUTHORITY may terminate this Agreement with CONSULTANT should CONSULTANT fail
17 to perform the covenants herein contained at the time and in the manner herein provided. In the event of
18 such termination, AUTHORITY may proceed with the work in any manner deemed proper by
19 AUTHORITY. If AUTHORITY terminates this Agreement with CONSULTANT, AUTHORITY shall pay
20 CONSULTANT the sum due to CONSULTANT under this Agreement prior to termination, unless the cost
21 of completion to AUTHORITY exceeds the funds remaining in the Agreement, in which case the overage
22 shall be deducted from any sum due CONSULTANT under this Agreement and the balance, if any, shall
23 be paid to CONSULTANT upon demand. Said termination shall be construed in accordance with the
24 provisions of the Code of Federal Regulations (CFR), Title 48, Chapter 1, Part 49, of the Federal
25 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to termination
26 for convenience.

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

10 **ARTICLE 15. INDEMNIFICATION**

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

18 B. "Notwithstanding the foregoing, to the extent that CONSULTANT'S duty to indemnify arises
19 out of a claim to which Civil Code section 2782.8 would apply, CONSULTANT shall indemnify and defend
20 the Indemnitees to the maximum extent permitted by Civil Code section 2782.8."

21 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

22 A. Nothing contained in this Agreement or otherwise, shall create any contractual relation
23 between AUTHORITY and any subconsultant(s), and no subcontract shall relieve CONSULTANT of its
24 responsibilities and obligations hereunder. CONSULTANT agrees to be as fully responsible to
25 AUTHORITY for the acts and omissions of its subconsultant(s) and of persons either directly or indirectly
26 employed by any of them as it is for the acts and omissions of persons directly employed by

CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from AUTHORITY's obligation to make payments to the CONSULTANT.

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

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

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

E. All subcontracts entered into as a result of this Agreement, shall contain all of the provisions stipulated in this entire Agreement to be applicable to subconsultants unless otherwise noted.

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

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

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

ARTICLE 17. AUDIT AND INSPECTION OF RECORDS

A. CONSULTANT and any subconsultant shall permit AUTHORITY, the State, and the FHWA if federal participating funds are used in this Agreement, to review and inspect the project activities and files at all reasonable times during the performance period of this Agreement.

B. For the purpose of determining compliance with the Public Contract Code 10115, et seq. and Title 21, California Code of Regulations, Chapter 21, Section 2500 et seq., when applicable and other matters connected with the performance of the contract pursuant to Government Code 8546.7; CONSULTANT, subconsultants, and AUTHORITY shall maintain and make available for inspection all books, documents, papers, accounting records, Independent certified public accountant (CPA) Audited Cost Rate workpapers, and other evidence pertaining to the performance of the Agreement, including but not limited to, the costs of administering the Agreement. All parties, including the CONSULTANT and Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Agreement period and for four (4) years from the date of final payment under the Agreement. AUTHORITY, or other agents of AUTHORITY, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, payroll documents, facilities and documents of CONSULTANT, subconsultants, and the CONSULTANT's Independent (CPA), that are pertinent to the Agreement for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

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

D. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors performing work identified in Article 16 "Assignments and

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Subcontracts” of this Agreement, and such language must be included in CONSULTANT’s agreements with its subcontractors.

ARTICLE 18. AUDIT REVIEW PROCEDURES

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

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

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

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

E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by The California Department of Transportation’s Independent office of Audit and Investigation (IOAI). IOAI, at

1 its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal
2 shall be adjusted by the CONSULTANT and approved by the AUTHORITY's Contract Administrator to
3 conform to the Work Paper Review recommendations included in the management letter or audit
4 recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work
5 Paper Review recommendations included in the management letter or audit recommendations included
6 in the audit report will be considered a breach of the Agreement terms and cause for termination of the
7 Agreement and disallowance of prior reimbursed costs.

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

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

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

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

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

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

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

ARTICLE 19. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

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

B. CONSULTANT also agrees to comply with Federal procedures in accordance with CFR, Title 2, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

C. Any costs for which payment has been made to CONSULTANT that are determined by subsequent audit to be unallowable under CFR Title 48, Part 31 or CFR Title 2, Part 200, are subject to repayment by CONSULTANT to AUTHORITY.

D. When a CONSULTANT or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

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ARTICLE 20. CONFLICT OF INTEREST

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

ARTICLE 21. CODE OF CONDUCT

CONSULTANT agrees 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. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 22. PROHIBITION ON PROVIDING ADVOCACY SERVICES

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

ARTICLE 23. FEDERAL, STATE AND LOCAL LAWS

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

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ARTICLE 24. EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 25. NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

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

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

B. During the performance of this Agreement, CONSULTANT and its subconsultants shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. CONSULTANT and subconsultants shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

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1 C. CONSULTANT and subconsultants shall comply with the provisions of the Fair Employment
2 and Housing Act (Government Code Section 12990 et seq.), the applicable regulations promulgated there
3 under (Title 2 of the California Code of Regulations (CCR) Section 11000 et seq.), the provisions of
4 Government Code Sections 11135-11139.5, and the regulations or standards adopted by AUTHORITY
5 to implement such article. The applicable regulations of the Fair Employment and Housing Commission
6 implementing Government Code Section 12990 (a-f), set forth in 2 CCR Section 8100-8504, are
7 incorporated into this Agreement by reference and made a part hereof as if set forth in full.

8 D. CONSULTANT shall permit access by representatives of the Department of Fair Employment
9 and Housing (Department) and the AUTHORITY upon reasonable notice at any time during the normal
10 business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records,
11 accounts, and all other sources of information and its facilities as said Department or AUTHORITY shall
12 require to ascertain compliance with this clause.

13 E. CONSULTANT and its subconsultants shall give written notice of their obligations under this
14 clause to labor organizations with which they have a collective bargaining or other Agreement.

15 F. CONSULTANT shall include the nondiscrimination and compliance provisions of this clause
16 in all subcontracts to perform work under this Agreement.

17 G. CONSULTANT, with regard to the work performed under this Agreement, shall act in
18 accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.). Title VI provides
19 that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which
20 no person in the United States shall, on the basis of race, color, national origin, religion, sex, age,
21 disability, be excluded from participation in, denied benefits of or subject to discrimination under any
22 program or activity by the recipients of federal assistance or their assignees and successors in interest.

23 H. CONSULTANT shall comply with regulations relative to nondiscrimination in federally-
24 assisted programs of the U.S. Department of Transportation (49 CFR Part 21 – Effectuation of Title VI of
25 the 1964 Civil Rights Act). Specifically, CONSULTANT shall not participate either directly or indirectly in
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the discrimination prohibited by 49 CFR Section 21.5, including employment practices and the selection and retention of subconsultants.

I. CONSULTANT, subrecipient, or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering the AUTHORITY components of the DBE Program Plan, CONSULTANT, subrecipient, or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

ARTICLE 26. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED CONSULTANT CONTRACTS

A. AUTHORITY or CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONSULTANT shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the 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 the 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 the CONSULTANT from future proposing as non-responsible.

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

B. In conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," AUTHORITY has

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1 established a fourteen (14%) percent Disadvantaged Business Enterprise (DBE) participation goal for the
2 services required in this Agreement.

3 C. At the time of contract execution, the CONSULTANT committed to utilize one or more
4 Disadvantaged Business Enterprise (DBE) Firms in the performance of this DOT-assisted contract.
5 CONSULTANT agrees to enter into agreements with the DBE subconsultants listed on Attachment
6 "Consultant Contract DBE Commitment Caltrans Exhibit 10-O2" and ensure they perform work and/or
7 supply materials in accordance with original commitments. No changes to CONSULTANT's DBE
8 commitment shall be made until proper review and approval by AUTHORITY is rendered in writing.

9 D. CONSULTANT must take appropriate actions to ensure that it will satisfy good faith efforts to
10 attain the DBE goal and/or the DBE commitment made at award (whichever is higher), when change
11 orders or other modifications alter the dollar amount of the Agreement or the distribution of work.
12 CONSULTANT must apply and report its DBE goal commitment against the total current Agreement
13 value, including any change orders and/or amendments.

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

17 F. CONSULTANT shall comply with all the requirements set forth in Attachment A titled,
18 "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS FOR U.S. DOT-
19 ASSISTED CONTRACTS", which is attached to and, by this reference, incorporated in and made a part
20 of this Agreement.

21 **ARTICLE 27. PROHIBITED INTERESTS**

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

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

ARTICLE 28. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY, and CONSULTANT shall have no property right therein whatsoever. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Immediately upon termination, AUTHORITY shall be entitled to, and CONSULTANT shall deliver to AUTHORITY, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by CONSULTANT in performing this Agreement which is not CONSULTANT's privileged information, as defined by law, or CONSULTANT's personnel information, along with all other property belonging exclusively to City which is in CONSULTANT's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by AUTHORITY.

B. Additionally, it is agreed that such deliverables shall be deemed works made for hire. CONSULTANT acknowledges and agrees that the work (and all rights therein, including without limitation, copyright) belongs to and shall be the sole and exclusive property of AUTHORITY without restriction or limitation upon its use or dissemination by AUTHORITY.

C. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance for this project, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any

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1 professional publication, magazine, trade paper, newspaper, seminar or other medium without the
2 express written consent of AUTHORITY.

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

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

11 F. AUTHORITY may permit copyrighting reports or other agreement products. If copyrights are
12 permitted, the Agreement shall provide that the FHWA shall have the royalty-free nonexclusive and
13 irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for
14 government purposes.

15 **ARTICLE 29. PATENT AND COPYRIGHT INFRINGEMENT**

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

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

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

ARTICLE 30. FINISHED AND PRELIMINARY DATA

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

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

ARTICLE 31. STATE PREVAILING WAGES

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

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

C. CONSULTANT warrants that all mechanics, laborers, journeypersons, workpersons, craftspersons or apprentices employed by CONSULTANT or subconsultant at any tier for any work hereunder, shall be paid unconditionally and not less often than once a week and without any subsequent deduction or rebate on any account (except such payroll deductions as are permitted or required by federal, state or local law, regulation or ordinance), the full amounts due at the time of payment, computed at a wage rate and per diem rate not less than the aggregate of the highest of the two basic hourly rates and rates of payments, contributions or costs for any fringe benefits contained in the current general prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial Relations of the State of California, (as set forth in the Labor Code, commencing at Section 1770 et. seq.), or as established by the Secretary of Labor (as set forth in the Davis-Bacon Act, 40 U.S.C. 267a, et. seq.), regardless of any contractual relationship which may be alleged to exist between CONSULTANT or subconsultant and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on file at AUTHORITY's offices and will be made available to CONSULTANT upon request. CONSULTANT shall post a copy thereof at each job site at which work hereunder is performed.

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

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

6 **ARTICLE 32. DESIGN WITHIN FUNDING LIMITATIONS**

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

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

ARTICLE 33. FUNDING REQUIREMENTS

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

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

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

D. AUTHORITY has the option to terminate the Agreement pursuant to Article 14 Termination, or by mutual agreement to amend the Agreement to reflect any reduction of funds.

ARTICLE 34. REQUIREMENTS FOR REGISTRATION OF DESIGNERS

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

ARTICLE 35. COVENANT AGAINST CONTINGENT FEES

CONSULTANT warrants, by execution of this Agreement that no person or selling agency has been employed, or retained, to solicit or secure this Agreement upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of

1 securing business. For breach or violation of this warranty, AUTHORITY has the right to annul this
2 Agreement without liability; pay only for the value of the work actually performed, or in its discretion to
3 deduct from the contract price or consideration, or otherwise recover the full amount of such
4 commission, percentage, brokerage, or contingent fee.

5 **ARTICLE 36. LOBBYING**

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

15 **ARTICLE 37. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL**
16 **FUNDS FOR LOBBYING**

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

18 1. No state, federal or local agency appropriated funds have been paid, or will be paid
19 by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or
20 employee of any local, State or Federal agency; a Member of the State Legislature or United States
21 Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the
22 Legislature or Congress, in connection with the awarding or making of this Agreement, or with the
23 extension, continuation, renewal, amendment, or modification of this Agreement.

24 2. If any funds other than Federal appropriated funds have been paid, or will be paid to
25 any person for influencing or attempting to influence an officer or employee of any agency, a Member of
26 Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection

1 with this Agreement, CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure Form to
2 Report Lobbying", in accordance with its instructions.

3 B. This certification is a material representation of fact upon which reliance was placed when this
4 transaction was made or entered into. Submission of this certification is a prerequisite for making or
5 entering into this transaction imposed by U.S. Code Title 31 Section 1352,. Any person who fails to file
6 the required certification shall be subject to a civil penalty of not less than ten thousand (\$10,000) dollars
7 and not more than one hundred thousand (\$100,000) Dollars for each such failure.

8 C. CONSULTANT also agrees by signing this document that he or she shall require that the
9 language of this certification be included in all lower-tier subcontracts, which exceed one hundred
10 thousand (\$100,000) dollars, and that all such sub recipients shall certify and disclose accordingly.

11 **ARTICLE 38. HEALTH AND SAFETY REQUIREMENTS**

12 CONSULTANT shall comply with all the requirements set forth in Exhibit G, titled "Level 3
13 SAFETY SPECIFICATIONS." As used therein, "Contractor" shall mean "Consultant," and "Subcontractor"
14 shall mean "Sub-consultant."

15 **ARTICLE 39. CONTRACTOR PURCHASED EQUIPMENT**

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

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

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

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

9 **ARTICLE 40. PRIVACY ACT**

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

17 **ARTICLE 41. INCORPORATION OF FEDERAL TERMS**

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

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ARTICLE 42. FEDERAL CHANGES

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

ARTICLE 43. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

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

B. CONSULTANT agrees to include these requirements in all of its subcontracts.

ARTICLE 44. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. CONSULTANT 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, CONSULTANT 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. CONSULTANT 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 CONSULTANT to the extent the Federal Government deems appropriate.

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

7 C. CONSULTANT agrees to include this requirement in all of its subcontracts.

8 **ARTICLE 45. RECYCLED PRODUCTS**

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

13 B. CONSULTANT agrees to include this requirement in all of its subcontracts.

14 **ARTICLE 46. ENERGY CONSERVATION REQUIREMENTS**

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

18 **ARTICLE 47. CLEAN AIR**

19 A. CONSULTANT shall comply with all applicable standards, orders or regulations issued
20 pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. CONSULTANT shall report each
21 violation to AUTHORITY, who will in turn, report each violation as required to assure notification to FTA
22 and the appropriate EPA Regional Office.

23 B. CONSULTANT agrees to include this requirement in all of its subcontracts.

24 **ARTICLE 48. CLEAN WATER REQUIREMENTS**

25 A. CONSULTANT shall comply with all applicable standards, orders or regulations issued
26 pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. CONSULTANT

1 shall report each violation to AUTHORITY and understands and agrees that the AUTHORITY who will in
2 turn, report each violation as required to assure notification to FTA and appropriate EPA Regional Office.

3 B. CONSULTANT agrees to include this requirement in all of its subcontracts.

4 **ARTICLE 49. FLY AMERICA REQUIREMENT**

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

15 **ARTICLE 50. SEISMIC SAFETY REQUIREMENTS**

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

22 **ARTICLE 51. DEBARMENT AND SUSPENSION CERTIFICATION**

23 A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of
24 perjury under the laws of the State of California, that CONSULTANT or any person associated therewith
25 in the capacity of owner, partner, director, officer or manager:

26 /

1 1. Is not currently under suspension, debarment, voluntary exclusion, or determination
2 of ineligibility by any federal agency;

3 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by
4 any federal agency within the past three (3) years;

5 3. Does not have a proposed debarment pending; and

6 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court
7 of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

8 B. Any exceptions to this certification must be disclosed in writing to the AUTHORITY.
9 Exceptions will not necessarily result in denial of recommendation for award, but will be considered in
10 determining CONSULTANT responsibility. Disclosures must indicate to whom exceptions apply, initiating
11 agency, and the dates of agency action.

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

14 **ARTICLE 52. CONFIDENTIALITY OF DATA**

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

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

22 C. CONSULTANT shall not comment publicly to the press or any other media regarding the
23 Agreement or LOCAL AGENCY's actions on the same, except to LOCAL AGENCY's staff,
24 CONSULTANT's own personnel involved in the performance of this Agreement, at public hearings, or in
25 response to questions from a Legislative committee.

26 /

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

4 **ARTICLE 53. REABTES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

5 CONSULTANT warrants that this Agreement was not obtained or secured through rebates,
6 kickbacks or other unlawful consideration, either promised or paid to any AUTHORITY employee. For
7 breach or violation of this warranty, AUTHORITY shall have the right in its discretion, to terminate the
8 Agreement without liability, to pay only for the value of the work actually performed, or to deduct from the
9 Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful
10 consideration.

11 **ARTICLE 54. NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

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

17 **ARTICLE 55. EVALUATION OF CONSULTANT**

18 CONSULTANT's performance will be evaluated by AUTHORITY. A copy of the evaluation will be
19 sent to CONSULTANT for comments. The evaluation together with any comments shall be retained as
20 part of the Agreement record.

21 **ARTICLE 56. TITLE VI ASSURANCES**

22 The U.S. Department of Transportation Order No. 1050.2A requires all federal-aid Department of
23 Transportation contracts between AUTHORITY and CONSULTANT to contain Appendices A and E of
24 the Title VI Assurances. Appendices B, C, and D are to be included in contracts, if applicable. During the
25 performance of this Agreement, CONSULTANT shall comply with the Title VI Assurances set forth in
26 Appendices A through E, herein. Any references to "consultant" or "contractor" in this Article shall also

mean "CONSULTANT" as defined under this Agreement. CONSULTANT shall include these Title VI Assurances in all subcontracts to perform work under this Agreement.

APPENDIX A

A. During the performance of this Agreement, the contractor, for itself, its assignees and successors in interest (hereinafter collectively referred to as CONSULTANT) agrees as follows:

1. Compliance with Regulations: CONSULTANT shall comply with the regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation, 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.

2. Nondiscrimination: CONSULTANT, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. CONSULTANT 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.

3. Solicitations of Sub-agreements, Including Procurement of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by CONSULTANT for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by CONSULTANT of the CONSULTANT'S obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports: CONSULTANT 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 recipient or FHWA to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of CONSULTANT is in the exclusive possession of another who fails or refuses to furnish this

1 information, CONSULTANT shall so certify to the recipient or FHWA as appropriate, and shall set forth
2 what efforts CONSULTANT has made to obtain the information.

3 5. Sanctions for Noncompliance: In the event of CONSULTANT's noncompliance with the
4 nondiscrimination provisions of this agreement, the recipient shall impose such agreement sanctions as
5 it or the FHWA may determine to be appropriate, including but not limited to:

6 a) withholding of payments to CONSULTANT under the Agreement within a reasonable
7 period of time, not to exceed 90 days; and/or

8 b) cancellation, termination or suspension of the Agreement, in whole or in part.

9 6. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (1)
10 through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless
11 exempt by the Regulations, or directives issued pursuant thereto.

12 B. CONSULTANT shall take such action with respect to any sub-agreement or procurement
13 as the recipient or FHWA may direct as a means of enforcing such provisions including sanctions for
14 noncompliance, provided, however, that, in the event CONSULTANT becomes involved in, or is
15 threatened with, litigation with a sub-applicant or supplier as a result of such direction, CONSULTANT
16 may request the recipient enter into such litigation to protect the interests of the State, and, in addition,
17 CONSULTANT may request the United States to enter into such litigation to protect the interests of the
18 United States.

19 APPENDIX E

20 During the performance of this contract, the CONSULTANT, for itself, its assignees, and successors in
21 interest (hereinafter referred to as the "CONSULTANT") agrees to comply with the following
22 nondiscrimination statutes and authorities, including, but not limited to:

23 Pertinent Non-Discrimination Authorities:

24 • Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), prohibits
25 discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

26 • The Uniform Relocation Assistance and Real Property of Acquisition Policies Act of 1970, (42

1 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired
2 because of Federal or Federal-aid programs and projects);

3 • Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), prohibits discrimination on the basis
4 of sex;

5 • Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits
6 discrimination on the basis of disability); and 49 CFR Part 27;

7 • The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), prohibits
8 discrimination on the basis of age);

9 • Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended,
10 (prohibits discrimination based on race, creed, color, national origin, or sex);

11 • The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and
12 applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section
13 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to
14 include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors,
15 whether such programs or activities are Federally funded or not);

16 • Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis
17 of disability in the operation of public entities, public and private transportation systems, places of public
18 accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by
19 Department of Transportation regulations 49 C.F.R. parts 37 and 38;

20 • The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits
21 discrimination on the basis of race, color, national origin, and sex);

22 • Executive Order 12898, Federal Actions to Address Environmental Justice in Minority
23 Populations and Low-Income Populations, which ensures discrimination against minority populations by
24 discouraging programs, policies, and activities with disproportionately high and adverse human health or
25 environmental effects on minority and low-income populations;

26 • Executive Order 13166, Improving Access to Services for Persons with Limited English

Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

ARTICLE 57. PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

A. Definitions. As used in this Article:

1. “Backhaul” means intermediate links between the core network, or backbone network, and the smallsubnetworks at the edge of the network (e.g., connecting cell phones/towers to the core telephone network). Backhaul can be wireless (e.g., microwave) or wired (e.g., fiber optic, coaxial cable, Ethernet).

2. “Covered foreign country” means The People's Republic of China.

3. “Covered telecommunications equipment or services” means:

- a) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

- b) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

- c) Telecommunications or video surveillance services provided by such entities or using such equipment; or

- d) Telecommunications or video surveillance equipment or services

produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

4. "Critical technology" means:

- a) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under 22 C.F.R. subchapter M of chapter I;
- b) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under 15 C.F.R. subchapter C of chapter VII, and controlled
 - 1. Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or
 - 2. For reasons relating to regional stability or surreptitious listening;
- c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by 10 C.F.R. Part 810 (relating to assistance to foreign atomic energy activities);
- d) Nuclear facilities, equipment, and material covered by 10 C.F.R. Part 110 (relating to export and import of nuclear equipment and material);
- e) Select agents and toxins covered by 7 CFR Part 331, 9 C.F.R. Part 121, or 42 C.F.R. Part 73; or
- f) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. §4817).

5. "Interconnection arrangements" means arrangements governing the physical

connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (e.g., connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

6. "Reasonable inquiry" means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

7. "Roaming" means cellular communications services (e.g., voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

8. "Substantial or essential component" means any component necessary for the proper function or performance of a piece of equipment, system, or service.

B. Prohibition

1. Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency, on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. CONSULTANT is prohibited from providing to AUTHORITY or the Federal Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR §4.2104.

2. Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of a federal executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses

any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (C) of this Article applies or the covered telecommunication equipment or services are covered by a waiver described in FAR section 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a federally-funded contract.

C. Exceptions. This Article does not prohibit CONSULTANT from providing:

1. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
2. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

D. Reporting Requirement

1. In the event CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during Agreement performance, or CONSULTANT is notified of such by a subcontractor at any tier or by any other source, CONSULTANT shall report the information in paragraph (d)(2) of this Article to the Chief Executive Officer of AUTHORITY, or designee, unless elsewhere in this Agreement are established procedures for reporting the information; in the case of the Department of Defense, CONSULTANT shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, CONSULTANT shall report to the Chief Executive Officer of AUTHORITY, or designee, for the indefinite delivery contract and the Chief Executive Officer of AUTHORITY, or designee, for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

2. CONSULTANT shall report the following information pursuant to paragraph (D)(1) of this Article:

- a) Within one (1) business day from the date of such identification or

notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- b) Within ten (10) business days of submitting the information in paragraph (D)(2)(i) of this Article: any further available information about mitigation actions undertaken or recommended. In addition, CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. CONSULTANT shall insert the substance of this Article, including this paragraph (E) and excluding paragraph (B)(2), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial products or commercial services.

ARTICLE 58. NOTICE TO AUTHORITY AND FTA OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS

CONSULTANT shall report to AUTHORITY and FTA any current or prospective legal matter that may affect the Federal Government, including a major dispute, default, breach, litigation, or naming the Federal Government as a party to litigation, or a legal disagreement in any forum for any reason. Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interest in the federal award, any underlying agreements, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements. In addition, CONSULTANT shall promptly notify AUTHORITY, FTA, and the U.S. DOT Inspector General of any knowledge of potential fraud, waste,

1 or abuse occurring on the Project. This includes knowledge that any person or entity, including
2 CONSULTANT, has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729,
3 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as
4 fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar
5 misconduct involving federal assistance. "Knowledge," as used in this Article, includes, but is not limited
6 to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other
7 investigative agency; a criminal indictment or civil complaint; or probable cause that could support a
8 criminal indictment, or any other credible information in the possession of the CONSULTANT.
9 CONSULTANT agrees to include these requirements in all subcontracts at any tier.

10 **ARTICLE 59. LIMITATION ON GOVERNMENTAL DECISIONS**

11 CONSULTANT shall not make, participate in making, or use its position to influence any
12 governmental decisions as defined by the Political Reform Act, Government Code section 81000 et seq.,
13 and the implementing regulations in Title 2 of the California Code of Regulations section 18110 et seq.
14 CONSULTANT's personnel performing services under this Agreement shall not authorize or direct any
15 actions, votes, appoint any person, obligate, or commit AUTHORITY to any course of action or enter into
16 any contractual agreement on behalf of AUTHORITY. In addition, CONSULTANT's personnel shall not
17 provide information, an opinion, or a recommendation for the purpose of affecting a decision without
18 significant intervening substantive review by AUTHORITY personnel, counsel, and management.

19 **ARTICLE 60. PROHIBITION**

20 A. The prime consultant firm, including all subconsultants (at any tier) awarded this contract to
21 perform construction management services for the Transit Security and Operations Center will be
22 ineligible to participate (at any tier) in the contract for construction services for the Transit Security and
23 Operations Center.

24 B. The firm, including all subcontractors (at any tier), regardless of the level of service provided
25 by said subcontractor(s), awarded the project management and construction management services
26 contract for Transit Facilities Projects, may not submit a proposal to this procurement.

ARTICLE 61. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-2-2643 to be executed as of the date of the last signature below.

CONSULTANT

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

By: _____

Darrell E. Johnson
Chief Executive Officer

APPROVED AS TO FORM:

By: _____

James M. Donich
General Counsel

APPROVED:

By: _____

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

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.

CONSULTANT must complete and submit, within the specified timelines, the required DBE documentation in Section IV. of this Attachment, through the AUTHORITY's electronic reporting system (ECAT). CONSULTANT's submitted "DBE Participation Commitment Form," executed subcontracts and/or purchase orders, as well as on-going DBE documentation will be utilized to monitor CONSULTANT's DBE commitment. Unless otherwise directed and/or approved in writing 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 Recipient's 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)

CONSULTANT must complete and submit within the specified timelines, the following DBE and Non-DBE documentation, electronically through the submission process detailed below:

Form/Electronic Submittal	Frequency of Submission	Process for Submission:
Monthly DBE Attainment and Subconsultant Prompt Payment Verification Report	Monthly by the 10 th of each month	Enter data and submit via ECAT to AUTHORITY
DBE Subcontract Agreements	Within ten (10) days of prime contract award, or with Request to Add for DBE firms added post-award	Upload Subcontract to Subconsultant profile and submit via ECAT to AUTHORITY
Request to Add Subconsultant	As needed (see instructions below)	Enter data and submit via ECAT to AUTHORITY
DBE Commitment Change Request(s)	As needed (see instructions below)	Enter data and submit via ECAT to AUTHORITY
On-Going Good Faith Efforts (GFE) Post-Award	As needed (see instructions below)	Upload GFE attachment and submit via ECAT to AUTHORITY
Final Report-Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subconsultants	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY
Disadvantaged Business Enterprises (DBE) Certification Status Change	Within thirty (30) days from the date of project completion.	Enter data and submit via ECAT to AUTHORITY

A penalty of ten dollars (\$10) per day, per Form/Electronic submittal will be implemented for late submission of any of the above.

A. Monthly DBE Attainment and Subconsultant Prompt Payment Verification Data Submission

This submission serves to ensure CONSULTANT's 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 submission further serves to monitor prompt payment to both DBE and non-DBE firms, and collect DBE utilization data as required under 49 CFR, Part 26.

CONSULTANT is required to enter data directly into ECAT and submit by the 10th of each month until completion of the Agreement. CONSULTANT's first submission is due following the first month of Agreement activity. Even if no DBE participation will be reported within a period, CONSULTANT must complete and submit Monthly by the required timelines.

If there is not a DBE goal and no DBE commitment has been made by CONSULTANT, CONSULTANT is required to enter data directly into ECAT and submit by bi-annually on April 10th and October 10th of each year. Additionally, upon completion of the contract, a final report must be submitted and marked final.

Data required for submission includes the amount(s) received by CONSULTANT from AUTHORITY and the amount(s) paid to lower-tier subconsultants during the Month. CONSULTANT to submit pertinent payment details for any firm (DBE and Non-DBE) to whom they have reported a payment within the reporting period. 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.

Pertinent payment details include:

- Invoice Number
- Invoice Amount
- Payment Amount
- Invoice Date
- Check Number
- Date of Payment
- Corresponding Prime Invoice (associated to subconsultants' invoice)
- Retention
- Disputed or Withheld invoice amounts

If DBE trucking credit is being claimed, CONSULTANT must electronically report through ECAT the amount paid to DBE trucking companies and their lower-tier firms (including owner operators for the leasing of trucks). Pertinent payment details required for submission will include 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 paid during that month. 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.

Firms will receive a notification from ECAT when a payment is reported to them and will be

required to log-in to ECAT to verify the payment information provided by CONSULTANT. A reported payment to a lower-tier DBE firm will not be credited towards the DBE goal until the DBE firm has validated the payment through ECAT. All payments reported by CONSULTANT must be validated by affected firm, prior to the 10th of each month following the reporting period.

Electronic submission of the Monthly DBE Commitment and Attainment Summary and Subconsultant Prompt Pay Verification Data includes a certification under penalty of perjury of the prompt payment assurance statement of compliance, 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.

B. DBE Subcontract Agreements

CONSULTANT must electronically submit to AUTHORITY via ECAT, 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.

C. Additional DBE Firms

In the event CONSULTANT identifies additional DBE subconsultants not previously identified by CONSULTANT for DBE participation under the Agreement, CONSULTANT must notify AUTHORITY by filling out and submitting a "Request to Add," through ECAT. This will enable AUTHORITY to verify the firm's eligibility, capacity, CUF and scope of work. Proposed firms will not 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). This supporting documentation is a required upload by ECAT when submitting a Request to Add.

D. DBE Commitment Change Request(s), DBE Substitution, Termination and Increasing or Decreasing Commitment Values

CONSULTANT shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the CONSULTANT obtains AUTHORITY's written consent. CONSULTANT shall not terminate, decrease or substitute a listed DBE for convenience and perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, another DBE firm or obtain materials from other sources without prior written authorization from AUTHORITY. CONSULTANT shall not be entitled to any payment for work or materials unless it is performed or supplied by the listed DBE on the DBE Participation Commitment form, unless the DBE is terminated in accordance with this section and is approved by AUTHORITY. This includes partial terminations.

CONSULTANT shall provide written notification to AUTHORITY in a timely manner of any changes to its anticipated DBE participation. This notice should be provided prior to the commencement of that portion of the work.

AUTHORITY shall only provide written consent to a request to use other forces or sources of materials if CONSULTANT has good cause to terminate or decrease its DBE commitment to a DBE firm. For the purposes of this section good cause includes any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on the requirements of the project.
2. Listed DBE firm 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.
3. Listed DBE firm fails or refuses to meet the CONSULTANT's reasonable, nondiscriminatory bond requirements.
4. Listed DBE becomes bankrupt or insolvent or exhibits credit unworthiness.
5. Listed DBE firm is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
6. AUTHORITY has determined that the listed DBE firm is not a responsible firm.
7. Listed DBE firm voluntarily withdraws from the project and provides written notice of its withdrawal.
8. Listed DBE is ineligible to receive credit for the type of work required.
9. Listed DBE owner dies or becomes disabled resulting in the inability of the DBE to perform the work on the Contract.
10. Other documented good cause that the Authority determines compels the termination (inclusive of decreases to commitment values and substitutions) of a DBE firm.

To submit a request to substitute, decrease or terminate a DBE subconsultant commitment, CONSULTANT is required to submit a DBE Commitment Change Request through ECAT. The DBE Commitment Change Request includes options to increase, decrease, substitute or terminate a DBE commitment.

If decrease, substitute or terminate is selected, CONSULTANT must give notice in writing to the DBE, with a copy to AUTHORITY, of its intent to decrease, substitute and/or terminate, and provide justification, allowing the DBE five (5) days to respond to CONSULTANT of the reasons, if any, why it objects to the proposed termination of its contract and why AUTHORITY should not approve CONSULTANT's request. The following documentation will be required by ECAT when submitting the DBE Commitment Change Request.

1. One or more of the good cause justifications listed above.
2. Notices from CONSULTANT to the DBE regarding the request.

3. Responses from the DBEs to CONSULTANT regarding the request.
4. Any documentation necessary to validate the good cause justification.
5. Proof of DBE certification of proposed firm (if requesting to substitute).
6. Written confirmation of work and amount signed by proposed firm (if requesting to substitute).

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 within the appropriate NAICS categories 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 in writing. This includes partial terminations.

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 determination through ECAT 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 by AUTHORITY.

E. On-Going Good Faith Efforts Post-Award

During the term of the Agreement, CONSULTANT shall continue to make a Good Faith Effort (GFE) to ensure that DBEs have an opportunity to successfully perform in the Agreement, and that the CONSULTANT meets the DBE contract goal. These efforts shall include, but shall not be limited to, the following:

- a. Negotiating in good faith to attempt to finalize and execute a subconsultant agreement with the DBEs committed to;
- b. Continuing to provide assistance to DBE firms in obtaining bonding, lines of credit, etc.
- c. Notifying a DBE in writing of any potential problem and attempting to resolve the problem prior to formally requesting AUTHORITY approval to substitute the DBE.
- d. Paying all firms (DBEs and non-DBEs) in a timely manner, as listed in the Agreement specifications;
- e. Alerting AUTHORITY in a timely manner of any problems anticipated in attaining the DBE participation committed to in the proposal;

- f. If a DBE substitution is necessary, making a Good Faith Effort to replace the DBE with another DBE, subject to the approval of AUTHORITY.

Should CONSULTANT's DBE commitment fall below the DBE contract goal, submittal of good faith effort documentation will be required on a monthly basis until the goal has been met through executed DBE contract agreements. Documentation should include but is not limited to:

- a. Conducting market research to identify and solicit DBE firms that have the capability to perform the work on the Agreement. All reasonable and available means should be utilized. . This may include attendance at matchmaking meetings and events, advertising, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired and which are located in the area or surrounding areas of the project.
- b. CONSULTANT should solicit this interest as early in the process as practicable to allow the DBEs to respond to the solicitation and submit a timely proposal. CONSULTANT should determine with certainty if the DBEs are interested by taking appropriate steps to follow up on initial solicitations.
- c. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out Agreement work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when CONSULTANT might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance.
- d. Effectively using the services of available minority/women community organizations; minority/women consultant groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

F. Final Report-Utilization of Disadvantaged Business Enterprises

Upon completion of the project, CONSULTANT must electronically designate their last Monthly DBE Attainment and Subconsultant Prompt Payment Verification Report as final and submit to the Authority utilizing ECAT within thirty (30) days from the date of project completion. The amount of ten-thousand dollars (\$10,000) will be withheld from payment until a satisfactory form is submitted.

G. Disadvantaged Business Enterprises 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 and last date of work on

the project while still certified. Within ten (10) days of receipt of decertification documentation, CONSULTANT must electronically furnish the written documentation to AUTHORITY via ECAT. Upon completion of the project, "Disadvantaged Business Enterprises Certification Status Change" must be signed and certified correct by the CONSULTANT indicating each DBE's existing certification status utilizing ECAT.

If there are no changes, CONSULTANT indicates "No Changes." The signed and certified form must be furnished to AUTHORITY within thirty (30) days from the date of project completion.

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 in accordance with Article 21 entitled "Access to Records and Reports", of this Agreement. 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 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.

V. DBE Eligibility and Commercially Useful Function Standards

A DBE must be certified at the time of 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 proposal submission. A listing of DBEs certified by the CUCP is available the link to the CUCP web site, which can be accessed at:
<https://ucp.dot.ca.gov/licenseForm.htm>
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. 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.
5. 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 "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; by email at hotline@oig.dot.gov, or by mail to the following: DOT Inspector General, 1200 New Jersey Ave SE, West Bldg 7th Floor, Washington, DC 20590.

VIII. 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.

IX. 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 subconsultant, 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 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 will 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 C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

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

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

- | | | |
|---|-----------|----------|
| <input type="radio"/> The Prime Contractor | Yes _____ | No _____ |
| <input type="radio"/> Subconsultant | Yes _____ | No _____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
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

Mark A. Murphy, Chairman

Gene Hernandez, Vice Chairman

Lisa A. Bartlett, Director

Doug Chaffee, Director

Barbara Delgleize, Director

Andrew Do, Director

Katrina Foley, Director

Brian Goodell, Director

Patrick Harper, Director

Michael Hennessey, Director

Steve Jones, Director

Fred Jung, Director

Joseph Muller, Director

Tam Nguyen, Director

Vicente Sarmiento, Director

Donald P. Wagner, Director

EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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 E: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
REQUIREMENTS AND FORMS

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

1.0 DBE Goal

To assist offerors in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs are ready, willing and able to compete for subcontracting opportunities on this project. The DBE Goal for this contract is **14%**.

2.0 DBE Policy and Applicability

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

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

- 2.7** Provide training and other assistance through our resource partners to address capital, bonding and insurance needs.
- 2.8** Assist in the development of DBE firms that can compete successfully in the marketplace outside the DBE Program; and
- 2.9** Establish and provide opportunities for DBEs by providing flexibility in the implementation of the Authority's DBE Program.

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

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

Race-Neutral/Race-Conscious DBE Program Measures

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

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

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

3.0 **Definitions**

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

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

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

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

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

3.8.1 Social Disadvantage

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

3.8.2 Economic Disadvantage

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

4.0 DBE Proposal Submission Requirements

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

- Consultant Proposal DBE Commitment Form (10-O1) - Exhibit E-1

To be a responsible and responsive offeror, the offeror must submit a DBE Letter of Acknowledgement and Commitment for each DBE firm listed on the DBE Participation Commitment Form to the Authority at time of Proposal.

Offeror 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:

- Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the DBE Participation Commitment Form) - Exhibit E-2
- DBE Information - Good Faith Efforts (if sufficient participation to meet the DBE goal has not been proposed on the Consultant Proposal DBE Commitment Form) -Exhibit E-3
- Bidders List - Exhibit E-4

Required Forms	Submission
Consultant Proposal DBE Commitment Form (10-O1)	Required at time of proposal
DBE Letter of Acknowledgement and Commitment (required from each proposed DBE firm listed on the Consultant Proposal DBE Commitment Form)	Required no later than 4:00 p.m. on the 2 nd business day after the proposal due date
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 “Consultant Proposal DBE Commitment Form – Caltrans Form 10-O1” (Exhibit E-1) required at time of Proposal. The Offeror is to provide the following information for each DBE that will participate in the contract:

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 Valid DBE Certification ID to confirm eligibility status through the CUCP, in conformance with 49 CFR Part 26;
- 4.1.3 A description of the work that each DBE will perform or provide;
- 4.1.4 The percentage of the work to be performed or provided by the DBE;
- 4.1.5 The percentage of the work eligible to be credited for each DBE towards the DBE goal (should not include lower-tier participation and should account for the type of work to be performed);

- 4.1.6 The offeror shall also submit, for each DBE to perform under this Agreement, a **DBE Letter of Acknowledgement and Commitment (Exhibit E-2)** signed and dated from each DBE listed, acknowledging that the DBE is participating in the contract for the specified dollar value(s) and scope of work listed on the Consultant Proposal DBE Commitment Form (10-O1). The DBE Letter of Acknowledgement and Commitment and the amount(s) and scope reflected on the Consultant Proposal DBE Commitment Form (10-O1) must match identically.

Letter(s) of Acknowledgement and Commitment must be submitted to the Authority no later than 4:00 p.m. on the 2nd business day after the proposal due date.

4.2 “DBE Information - Good Faith Efforts” (Exhibit E-3)

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

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

If the offeror has met the DBE goal based on the participation of DBEs listed on the offeror’s “Consultant Proposal DBE Commitment Form 10-O1”, it is at the offeror’s discretion (i.e. this is not mandatory) to submit “DBE Information – Good Faith Efforts,” form. However, the submission of good faith efforts documentation can protect the offeror’s eligibility for award of the contract if the Authority determines that the offeror failed to meet the goal for various reasons (e.g. a DBE firm was not certified at proposal submission or the offeror made a mathematical error). Submittal of only the “DBE Information – Good Faith Efforts,” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made; therefore, the offeror is encouraged to attach additional information and supporting documents as necessary.

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

For further guidance, refer to instructions on Exhibit E-3 “DBE Information – Good Faith Efforts,” form and the United States Department of Transportation’s (“U.S. DOT”) DBE Program, Appendix A of Title 49 CFR Part 26 - “Guidance Concerning Good Faith Efforts,” and the DBE Section of the Authority’s Pre-Proposal Power Point.

4.3 “Bidders List” (Exhibit E-4)

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

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

EXHIBIT 10-O1 CONSULTANT PROPOSAL DBE COMMITMENT

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

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

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

INSTRUCTIONS – CONSULTANT PROPOSAL DBE COMMITMENT

CONSULTANT SECTION

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

LOCAL AGENCY SECTION

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

DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT

1. RFP NO.: _____

2. Project Name/Description: _____

3. Offeror: _____

4. DBE Commitment Information

(A) Description of work to be performed by DBE firm (include bid item number on the DBE Participation Commitment Form as applicable):

(B) Dollar value of this work \$ _____

5. DBE ACKNOWLEDGMENT*

I acknowledge that my firm has been listed by the Offeror named above, and is committed, to perform the scope and portion of work (A and B) stated above.

DBE Firm's Name: _____

Name: _____

Signature: _____

Title: _____

Telephone: _____

*If the offeror does not receive award of the prime contract, any and all representations in this letter of Acknowledgment and Commitment shall be null and void.

This form may be used to fulfill the DBE Participation Commitment Letter requirement as stated in the RFP instructing that the "the offeror is required to submit with the proposal a DBE Letter of Acknowledgement and Commitment signed and dated from each DBE acknowledging that the DBE is participating in the contract for the specified dollar value (\$) and scope of work.

INSTRUCTIONS - DBE LETTER OF ACKNOWLEDGMENT AND COMMITMENT

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

1. **RFP No.** - Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Offeror's Name** - Enter the proposing firm's name.
- 4A. **Description of work** - Scope of work to be performed that will be credited towards DBE participation. To include bid item number on the DBE Participation Commitment Form as applicable.
- 4B. **Dollar Value** - Enter the total dollar value of participation for the DBE firm.
5. **DBE Acknowledgement** – DBE to provide firm name, authorized person's name, signature, title, and telephone number if they have been notified that they were listed for the scope and value reflected in #4.

NOTE: If the offeror does not receive award of the prime contract, any and all representations in the letter of Acknowledgment and Commitment shall be null and void



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 _____(Offeror).

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

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

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

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

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

- 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 repod, documentation to demonstrate the DBE firms were provided information about the contract (location of project, contract number, proposal due date, items of work made available and contact information) in the Request for Proposal from the offeror, the offeror solicited through all reasonable means (e.g. attendance at pre-proposal meetings, advertising and written notices) the interest of all certified DBEs who have the capability to perform the work of the contract, offeror to provide proof of aforementioned items, and DBEs in the market area for the work identified in 'Item A' as follows:

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

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

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

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

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

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

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

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

NOTE: USE ADDITIONAL SHEETS AS NECESSARY TO DEMONSTRATE RESPONSIVENESS.



Bidders List

The Department of Transportation requires the Authority to create and maintain a "Bidders List" containing information about all firms (DBE and Non-DBE) that bid, proposal or quote on the Authority's DOT-assisted contracts, in accordance with 49 CFR Part 26.11. The "Bidders List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The offeror is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary offeror, and submit this information to the Authority no later than 4:00 p.m. on the 2nd business day after the Authority's proposal due date, or as otherwise specified in the solicitation. The Authority will utilize this information to assist in the Authority's DBE goal-setting process.

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

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

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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 F: 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 relay without liability on the representation made by their subcontractors in the certification and disclosure

forms.

f. Cost Allowability:

Nothing in this clause is to be interpreted to make allowable or reasonable any costs, which will otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provisions.

**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

I, _____, hereby certify on behalf (name of bidder/offeror) of _____ that:
(Firm name)

1. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds, other than Federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence making lobbying contracts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit the attached Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions.
3. If bidder/offeror does not have any reportable activities to disclose, they shall check the box entitled "No Reportable Activities" on the attached Standard Form-LLL "Disclosure of Lobbying Activities" and complete Section 16 of the form. The certifying official shall sign and date the form, print his/her name, title and telephone number.
4. The undersigned shall require that the language of this certification be included in all subcontracts, and that all subcontractors shall certify and disclose accordingly.

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

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

Executed this _____ day of _____, 202__

By _____
(Signature of authorized official)

(Title of authorized official)

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

DISCLOSURE OF LOBBYING ACTIVITIES

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

Approved by
OMB
003480045

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 G: SAFETY SPECIFICATIONS

LEVEL 3 HEALTH, SAFETY AND ENVIRONMENTAL (HSE) SPECIFICATIONS

REQUIRED HSE SUBMITTAL SUMMARY

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

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

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

1. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
2. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
3. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program.
4. Contractor shall provide a copy of their Hazard Communication Program and MSDS Management Program in compliance with CCR Title 8, Section 5194, Hazard Communication Standard.

5. On-Site HSE Representative:

On Facility Modification Projects, The Contractor shall submit a resume of the designated on-site qualified HSE Representative. The HSE Representative shall possess a current certification from the Board of Certified Safety Professionals (BCSP), plus five (5) years construction or scope agreement HSE experience enforcing HSE compliance on heavy or industrial construction project sites, the last two years of which have been administering HSE in the construction or scope discipline for which the Contractor is contracting with the Authority. The designated HSE Representative shall participate in all HSE related submittals through completion of scope.

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

provide a resume and have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction/scope discipline for which Contractor is contracting with the Authority.

6. A Detailed Site Specific HSE Work Implementation Plan:

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

PART I – GENERAL

1.0 GENERAL HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS

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

hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.

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

PART II – SPECIFIC REQUIREMENTS

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

2.1 REQUIRED DOCUMENTATION / REPORTING REQUIREMENTS

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

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

- A. A Comprehensive Project Specific Health, Safety, and Environmental (HSE) Work Plan.
 - a. The Contractor shall develop a site project plan that may include, but is not limited to: Permits, Evacuation, Emergency Plan, Roles and Responsibilities, Scope and Construction Activity Details, Constructability Review, Contractor Coordination Process, Safe Work Methods, Hazard Identification & Risk Control, First Aid and Injury Management, Emergency Procedures, Public Protection, Authority and Contractor Site Rules, Incident Reporting and Investigation, Specialized Work or Licensing, Training and Orientation Requirements, Chemical Management, and Subcontractor Management.

- b. A Detailed Site Specific HSE Implementation Plan: This plan shall be prepared and submitted by a recognized HSE professional (current BCSP Certification in good standing, i.e., CSP, CHST, OHST) experienced in developing compliant written HSE programs, acceptable to OCTA. Indicate the methods and procedures, and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, SCAQMD rules, NFPA, NEC, ANSI codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
- B. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
- C. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
- D. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
- E. Contractor shall provide the resume and qualifications/certifications of assigned project designated Onsite HSE Representative for this scope as identified in section 2.3 of this specification.
- F. Accident/Incident investigation report within 24 hours of event (immediate verbal notification to Authority Project Manager, followed by Written Report).

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

- G. A copy of Contractor weekly site safety inspection report with status of corrections, upon request, within 72 hours.
- H. Contractor shall provide a copy of the Contractors and subcontractors competent person list (submit to Authority Project Manager, upon Authority request, within 72 hours).
- I. Contractors and subcontractors training records for qualified equipment operators, electrical worker certification (NFPA 70E), confined space training, HAZWOPER training, and similar personnel safety training certificates as applicable to the agreement scope and as requested by the OCTA Project Manager and/or HSEC department, upon Authority request, within 72 hours and prior to starting or during the scope activity (submit to Project Manager).
- J. A monthly report that includes number of workers on project, a list of subcontractors, work hours (month, year to date, & project cumulative) of each contractor, labor designation, OSHA Recordable injuries and illnesses

segregated by medical treatment cases, restricted workday cases, number of restricted days, lost workday cases, and number of lost work days, and recordable incident rate. Contractor shall provide to the Authority, upon request, within 72 hours.

K. TRAINING DOCUMENTATION

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

2.2 HAZARD COMMUNICATION (CCR Title 8, Section 5194)

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

2.3 DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE

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

QUALIFICATIONS – On Capital Programs, the Contractor shall submit a resume of the full time, on-site qualified HSE Representative(s) who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for HSE oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-site HSE Representative(s) shall have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP), or a Construction Health and Safety Technician (CHST) with current

standing from the BCSP or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH), or an equal professional HSE Certificate of standing from The National Examination Board in Occupational Safety and Health (NEBOSH), that is acceptable to the Authority. The Contractor's On-site HSE Representative(s) shall be on site during all operational hours. The On-site HSE Representative(s) shall set up, carry forward and aggressively and effectively maintain the project specific safety program and IIPP covering all phases of the work. If at any time the Contractor wishes to replace their On-site HSE Representative(s), the Contractor must provide written notice thirty (30) days prior to change of personnel to the Authority. The Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the scope work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Authority who may be involved. This requirement applies continuously and is not limited to normal working hours. The designated HSE Representative shall participate in all HSE related submittals. The Authority reserves the right to allow for an exception to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.

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

1. Capital Programs may include, but are not limited to, projects involving demolition and construction of; heavy construction, rail projects, highway projects, parking lots and structures, fuel stations, building construction, facility modifications, bus base construction, EPA/DTSC remediation, AQMD air or soil monitoring, fuel tank removal or modification, major bus base modifications, handling potential hazardous waste projects, and similar projects as deemed a Capital Program at the sole discretion by the Authority.
2. Facility Modification Projects may include, but are not limited to, projects involving minor demolition and construction or improvement projects for transportation centers, bus base sites and/or building modifications, equipment and/or building upgrades, and similar projects as deemed a Facility Modification Project at the sole discretion by the Authority.
3. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions

which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.

4. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the project.
- C. The Contractor shall designate a Competent Individual for each task, as required by Cal-OSHA standards or laws. The task Competent Individual shall be responsible for the prevention of accidents. If the Authority or any public agency with jurisdiction notifies the Contractor of any claimed dangerous condition at the site that is within the Contractor's care, custody or control, the Contractor shall take immediate action to rectify the condition at no additional cost to the Authority. The Contractor shall be responsible for the payment of all fines levied against the Authority for deficiencies relating to the Contractor's supervision or conduct and/or control of the scope agreement.
 - D. On Facility Modification Projects, the Authority Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in section 2.3 (C), above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 15 workers, there are multiple scope work sites, or as warranted by the scope of work at the sole discretion by the Authority.
 - E. On Capital Programs, the Authority's Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in item 2.3 (C) above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 50 workers, or is warranted by the scope of work.

2.4 SITE HSE ORIENTATION

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

2.5 INCIDENT NOTIFICATION AND INVESTIGATION

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

1. Damage to Authority property (or incidents involving third party property damage);
 2. Reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
 3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An initial immediate verbal notification, followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.

A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that led to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, copy of the Physician's first report of injury, updated OSHA 300 Log, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to OCTA.

- C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a senior executive from the Contractors' organization to participate in the presentation. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.
1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement.
 2. Serious Incident: includes property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, etc.) notification or representation.
 3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.

4. Significant Near Miss Incident; includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

2.6 REGULAR INSPECTIONS & THIRD PARTY INSPECTIONS

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

2.7 ENVIRONMENTAL REQUIREMENTS

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.
- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.

- E. If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined in California Health and Safety Code, and all regulations pursuant thereto) which has not been rendered harmless, the Contractor shall immediately stop work in that area affected and report the condition to the Authority in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Authority and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous substance and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous substance, or when it has been rendered harmless, by written agreement of the Authority and the Contractor, or in accordance with a final determination by an Environmental Consultant employed by the Authority.
- F. The Contractor shall not permit any hazardous substances to be brought onto or stored at the Project Site or used in the construction of the work, except for specified materials and commonly used construction materials for which there are no reasonable substitutes. All such materials shall be handled in accordance with all manufacturers' guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials shall be given by the Contractor. The Contractor shall not intentionally release or dispose of hazardous substances at the Project Site or into the soil, drains, surface or ground water, or air, nor shall the Contractor allow any Sub-Contractor, subcontractor or supplier or any other person for whose acts the Contractor or any subcontractor, vendor or supplier may be liable, to do so. For purposes of Contract Documents, "hazardous substance" means any substance or material which has been determined or during the time of performance of the work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

2.8 VEHICLE AND ROADWAY SAFETY REQUIREMENTS

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

2.9 LANGUAGE REQUIREMENTS

For safety reasons, the Contractor shall ensure employees that do not read, or understand English, shall be within visual and hearing range of a bilingual

supervisor or responsible designee at all times when on the Authority property or projects.

2.10 PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

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

- A. **RESPIRATORS** (CCR Title 8, Section 5144) - The required documentation for training and respirator use shall be provided to the Authority's Project Manager upon request within 72 hours. All compliance documentation as required by CCR Title 8, Section 5144, Respiratory Protective Equipment.
- B. **EYE PROTECTION** – The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.
- C. **BUS BASE** – Minimum PPE required includes but is not limited to; Eye protection, class 2 reflective vest, steel toe or construction type footwear that meets ANSI Z41 1991 are recommended.
- D. **CONSTRUCTION PROJECTS** - Minimum PPE required includes but is not limited to; hard hat, eye protection, hand protection, class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 are recommended.
- E. **HARD HATS**: Approved hard hat that meet ANSI Z89. 1 (latest revision). Hard hats should be affixed with the company/agency logo and/or name. The bill shall be worn forward. Metal hard hats and cowboy style are forbidden on Authority projects.
- F. **FOOTWEAR**: Enclosed leather that covers the ankles, such as a construction type boot. Employees shall not wear casual dress shoes, open toe, sneakers, sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal in construction work areas. Safety toe footwear that meets ANSI Z41 1991 are recommended on construction sites and in operating facilities.
- G. **CLOTHING/SHIRTS**: minimum or waist length shirts with sleeves (4" minimum).
- H. **CLOTHING/TROUSERS**: Cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. No sweat pants, or trousers with holes.

2.11 AERIAL DEVICES (CCR Title 8, Section 3648)

Aerial devices are defined in CCR Title 8 as any vehicle-mounted or self-propelled device, telescoping extensible or articulating, or both, which is primarily designed to position personnel. If aerial devices are to be used, the required documentation in

CCR Title 8, Section 3648 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

2.12 CONFINED SPACE ENTRY (CCR Title 8, Section 5157)

Before any employee will be allowed to enter a confined space, the required documentation as required by CCR Title 8, Section 5157 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. **RECOMMENDED:** a copy of the most recent calibration record for each air monitoring unit, 3-gas monitor or "sniffer" to be used by the Entry Supervisor prior to entering permit-required confined spaces.

2.13 CRANES

- A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. In addition, Contractor shall comply with the following requirements: Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items 1, 2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.
 - 1. Cranes require a submittal of the annual certification, and copy of the cranes most recent quarterly inspection.
 - 2. A copy of each crane operator's qualification (NCCCO or equivalent) of company-authorized crane operators that have been properly trained in the equipment's use and limitations. Operator certification as required by CCR Title 8, Section 5006.1.
 - 3. A rigging plan is required for all lifts. Critical lifts require an engineered plan designed by a registered professional engineer licensed in the State of California.
 - 4. Contractor shall provide the name and qualifications of each "Qualified Rigger" as defined by OSHA.
 - 5. Rigging scope activity shall comply with 29 CFR Subparts 1926.250, 1929.753 and CCR Title 8 Standards.
 - 6. All rigging equipment shall be free from defects, in good operating condition and maintained in a safe condition.
 - 7. Rigging equipment shall be inspected by a designated, competent employee prior to initial use on the project, prior to each use, and documented inspections performed regularly. Records shall be kept on jobsite of each of these inspections by contractor and be made available to the Authority upon request within 72 hours.

8. Only one (1) sling eye should be in a hook, for multiple slings a shackle shall be used to prevent separation of slings, and prevent stress on weak points of the hook.

9. Contractor shall prepare a documented daily crane inspection report.

B. Pick and carry with rubber tired cranes is forbidden on Authority projects.

C. Engineered Critical Lifts

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

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.
4. A single lift where two or more cranes are used, including tandem lifts and tailing cranes.
5. Lifts made in close proximity of power lines, as defined by CCR Title 8 voltage clearance specifications.
6. Lifts involving helicopters, and specialized or unique and complex rigging equipment.
7. Hoisting of suspended work platforms.
8. Static tower crane erection and dismantlement.
9. Making lifts below the ground level where the crane is positioned.

Note: Where the below the ground lift is minimal (evaluated by California registered professional engineer), a critical lift plan may not be required.

D. Critical Lift Plan

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

1. Crane manufacturer, capacity, and all specifications for the configuration to be used for the lift.

2. Load chart data for the crane to be used to make the lift. Total calculated weight of the load to be lifted including all rigging and other deductions consistent with the manufacturer's load chart.
3. Engineering data shall be provided on the hook assembly (manufacturer's certification or independent laboratory testing and load testing within the past 60 days), below-the hook rigging, and all specialized below-the-hook lifting devices.
4. Diagrams of the lift that provides geometrical conditions of the load, rigging, and all crane positions during the lift. The drawing shall provide the following:
 - A. Locations of all components to be lifted prior, during and after the lift is completed.
 - B. Radius points.
 - C. Swing patterns.
 - D. In the event that the lift must be aborted, positions where the load may be safely landed.
 - E. Areas where any personnel, public, and vehicles must be evacuated during the lift.
5. Potential ground loading for each point of contact by the crane in selected locations in which the crane will perform the critical lift.
6. Soil and subsurface data and information pertaining to the location on which the crane used for the critical lift will be positioned. This information shall be procured from an authoritative source such as a geotechnical engineer or a professional civil engineer registered in the state of California.

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

7. An engineer shall use the data provided in #5 and #6 above to verify and confirm the following:
 - A. That the soil and subsurface conditions are capable of supporting all loads imposed during the critical lift.
 - B. That the designs of cribbing and other supports used under the crane load points are appropriate to safely transfer such loads.
8. Signature and stamp on the plan by a California registered professional engineer, evidencing review of the plan as meeting the requirements that all

loads and load information and calculations contained in the plan are approved, acceptable and safe to perform.

9. Operator qualifications.
10. Method by which communication will be provided to the crane operator. (Designated signal person, two-way radio, hard wire phone system, etc.).
11. A critical lift hazard analysis which identifies the particular hazards (including weather, wind, obstructions, etc.) associated with the lift and the means and methods to reduce, mitigate, or eliminate the hazards.
12. Emergency action plan.
13. Documentation of lift and pre-job meeting shall be conducted by Contractor's Project Manager.

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

E. OVERHEAD CRANES

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

2.14 DEMOLITION OPERATIONS (CCR Title 8, Section 1734)

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

- A. The Contractor shall be responsible for visiting and examining the project site to assess and personally determine the extent of demolition, associated work, debris removal, disposal and general work to be done under this section.
- B. The Contractor shall take possession of all demolished materials, except as noted otherwise in the Contract Documents, and be responsible for disposing of them in accordance with applicable laws and regulations. On-site burning or burial of demolition materials will not be permitted.
- C. Provide continuous noise and dust abatement as required, preventing disturbances and nuisances to the public, workers, and the occupants of adjacent premises and the surrounding areas. Dampen areas affected by demolition operation as necessary to prevent dust nuisance.
- D. Site demolition plan: Indicate methods, procedures, equipment, and structures to be employed. Specify safety measures in accordance with applicable codes including signs, barriers, and temporary walkways. Plans shall be prepared by a

qualified person (CSP, CIH, CHST, CHMM, etc.), or as necessary by a professional engineer licensed to practice in the State of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

- E. Equipment, haul routes, and disposal sites to be used in the demolition and disposal work. Copy of manifests showing delivery of disposed materials in accordance with the plan and permit conditions. Certification that all demolished materials removed from the site have been disposed of in accordance with applicable laws and regulations.

2.15 EXCAVATION OPERATIONS (CCR Title 8, Section 1541)

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

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

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

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

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

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

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

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

2.18 ELECTRICAL OPERATIONS

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

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

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

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

Only qualified persons shall work on electrical equipment or systems.

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

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

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

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

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

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

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

2.21 WARNING SIGNS AND DEVICES

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

2.22 STEEL ERECTION

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

- A. Erection planning should incorporate installation methods using aerial devices (man-lifts) and elevated work platforms (scissor lift) to minimize fall hazards of climbing steel where possible. A detailed written job safety analysis (JSA) shall

identify installation methods, equipment, and control methods to minimize potential fall hazards.

- B. The Contractor shall not allow any employee to walk the steel unprotected from falls. Contractor employees must be tied-off and "coon" the beam until safety cables are provided to which employees shall use 100% tie-off protection. Two lanyards are required to ensure 100% tie-off protection.
- C. A safe means of access to the level being worked shall be planned. Climbing and sliding down columns are not considered safe access and are forbidden on Authority projects.
- D. A qualified rigger shall inspect the rigging prior to each shift and each lift.
- E. Multiple lift rigging (Christmas Treeing) lifts are forbidden on Authority property and controlled projects.

2.23 AUDITS

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

2.24 RAILWAY SAFETY PRECAUTIONS

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

ANSI Z41 1991 (lace-up type over the ankle) and hearing protection (on person and worn as necessary).

2.25 FINES

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

2.26 COMPLIANCE COSTS

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

2.27 REFERENCES

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

END OF DOCUMENT

**EXHIBIT H: CERTIFICATION OF INDIRECT COSTS AND FINANCIAL
MANAGEMENT SYSTEM**



Inspector General

California Department of Transportation

Certification of Indirect Costs and Financial Management System

(Note: If a Safe Harbor Indirect Cost Rate is approved, this form is not required)

Consultant's Full Legal Name: _____

Important: Consultant means the individual or consultant providing engineering and design related services as a party of a contract with a recipient or sub-recipient of Federal assistance. Therefore, the Indirect Cost Rate(s) shall not be combined with its parent company or subsidiaries.

Indirect Cost Rate (ICR):

Combined Rate: _____ Or

Home Office Rate: _____ and Field Office Rate (if applicable): _____

Facilities Capital Cost of Money (if applicable): _____

Fiscal Period:* _____

* Fiscal period is annual one year applicable accounting period that the ICR was developed (not the contract period). The ICR is based on the consultant's one-year applicable accounting period for which financial statements are regularly prepared by the consultant.

I have reviewed the proposal to establish an ICR(s) for the fiscal period as specified above and have determined to the best of my knowledge and belief that:

- All costs included in the cost proposal to establish the ICR(s) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) 48, Code of Federal Regulations (CFR), Chapter 1, Part 31 (48 CFR Part 31).
- The cost proposal does not include any costs which are expressly unallowable under the cost principles of 48 CFR Part 31.
- The accounting treatment and billing of prevailing wage delta costs are consistent with our prevailing wage policy as either direct labor, indirect costs, or other direct costs on all federally-funded A&E Consultant Contracts.
- All known material transactions or events that have occurred subsequent to year-end affecting the consultant's ownership, organization, and indirect cost rates have been disclosed as of the date of this certification.

I am providing the required and applicable documents as instructed on the Financial Document Review Request form.

Financial Management System:

Our labor charging, job costing, and accounting systems meet the standards for financial reporting, accounting records, and internal control adequate to demonstrate that costs claimed have been incurred, appropriately accounted for, are allocable to the contract, and comply with the federal requirements as set forth in [Title 23 United States Code \(U.S.C.\) Section 112\(b\)\(2\); 48 CFR Part 31.201-2\(d\); 23 CFR, Chapter 1, Part 172.11\(a\)\(2\);](#) and all applicable state and federal rules and regulations.

Our financial management system has the following attributes:

- Account numbers identifying allowable direct, indirect, and unallowable cost accounts;
- Ability to accumulate and segregate allowable direct, indirect, and unallowable costs into separate cost accounts;

- Ability to accumulate and segregate allowable direct costs by project, contract and type of cost;
- Internal controls to maintain integrity of financial management system;
- Ability to account and record costs consistently and to ensure costs billed are in compliance with FAR;
- Ability to ensure and demonstrate costs billed reconcile to general ledgers and job costing system; and
- Ability to ensure costs are in compliance with contract terms and federal and state requirements.

Cost Reimbursements on Contracts:

I also understand that failure to comply with 48 CFR Part 16.301-3 or knowingly charge unallowable costs to Federal-Aid Highway Program (FAHP) contracts may result in possible penalties and sanctions as provided by the following:

- Sanctions and Penalties - [23 CFR Part 172.11\(c\)\(4\)](#)
- False Claims Act - [Title 31 U.S.C. Sections 3729-3733](#)
- Statements or entries generally - [Title 18 U.S.C. Section 1001](#)
- Major Fraud Act - [Title 18 U.S.C. Section 1031](#)

All A&E Contract Information:

- Total participation amount _____ on all State and FAHP contracts for Architectural & Engineering services that the consultant received in the last three fiscal periods.
- The number of states in which the consultant does business is _____
- Years of consultant's experience with 48 CFR Part 31 is _____
- Identify the type of audits listed below that the consultant has had performed (if applicable):

Cognizant ICR Audit

Local Govt ICR Audit

Caltrans ICR Audit

CPA ICR Audit

Federal Govt ICR Audit

I, the undersigned, certify all of the above to the best of my knowledge and belief and that I have reviewed the ICR Schedule to determine that any costs which are expressly unallowable under the Federal cost principles have been removed and comply with [Title 23 U.S.C. Section 112\(b\)\(2\)](#), [48 CFR Part 31](#), [23 CFR Part 172](#), and all applicable state and federal rules and regulations. I also certify that I understand that all documentation of compliance must be retained by the consultant. I hereby acknowledge that costs that are noncompliant with the federal and state requirements are not eligible for reimbursement and must be returned to Caltrans.

Name:** _____

Title:**: _____

Signature: _____

Date: _____

Phone:**: _____

Email:**: _____

**An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President, a Chief Financial Officer, or equivalent, who has authority to represent the financial information used to establish the indirect cost rate.

Note: Both prime and subconsultants as parties of a contract must complete their own forms. Caltrans will not process local agency's invoices until a complete form is accepted and approved by the Independent Office of Audits and Investigations.

EXHIBIT I: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

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

Offeror:_____

RFP No.:_____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

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

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

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:
