

REQUEST FOR PROPOSALS (RFP) 8-1969

**CONSTRUCTION MANAGEMENT
SUPPORT SERVICES FOR THE
INTERSTATE 5 WIDENING PROJECT
BETWEEN STATE ROUTE 73 AND
OSO PARKWAY**



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

Key RFP Dates

Issue Date:	October 22, 2018
Pre-Proposal Conference Date:	November 1, 2018
Question Submittal Date:	November 6, 2018
Proposal Submittal Date:	November 27, 2018
Interview Date:	January 8, 2019

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

TABLE OF CONTENTS

SECTION I: INSTRUCTIONS TO OFFERORS	1
SECTION II: PROPOSAL CONTENT	10
SECTION III: EVALUATION AND AWARD	18
EXHIBIT A: SCOPE OF WORK.....	22
EXHIBIT B: PROPOSED AGREEMENT	23
EXHIBIT C: CAMPAIGN CONTRIBUTION DISCLOSURE FORM.....	24
EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS.....	29
EXHIBIT E: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND FORMS.....	31
EXHIBIT F: REQUEST FOR DBE SUBCONTRACTOR SUBSTITUTION.....	52
EXHIBIT G: RESTRICTIONS ON LOBBYING.....	55
EXHIBIT H: SAFETY SPECIFICATIONS	67
EXHIBIT I: CERTIFICATION OF CONSULTANT COMMISSION AND FEES	71
EXHIBIT J: CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM.....	73
EXHIBIT K: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS.....	76



October 22, 2018

NOTICE OF REQUEST FOR PROPOSALS

(RFP): 8-1969: "CONSTRUCTION MANAGEMENT SUPPORT SERVICES FOR INTERSTATE 5 WIDENING PROJECT BETWEEN STATE ROUTE 73 AND OSO PARKWAY"

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants for Construction Management Support Services For the Interstate 5 Widening Project Between State Route 73 and Oso Parkway. (Segment 1)

Prohibition

The following prohibition applies to this procurement.

The firm, including all subconsultants (at any tier), regardless of the level of service provided by said subconsultants, that is awarded this contract for construction management services is prohibited from submitting a bid for the construction of this Project.

The firm, including all subconsultants (at any tier), awarded the design contract for Interstate 5 Widening Project Between State Route 73 and Oso Parkway for the plans, specifications and estimates are not eligible to participate in this solicitation for Construction Management Services.

The firm, including all subconsultants (at any tier), awarded the Agreement for the Program Management Consultant Services for the Authority's Highway Programs are not eligible to participate in this procurement for Construction Management Support Services.

The Authority has set a **17%** Disadvantaged Business Enterprise (DBE) participation goal for this project. Award of this contract is contingent upon Consultant meeting the DBE attainment requirements including the good faith effort to meet the established goal.

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

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

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

Proposals must be received in the Authority's office at or before 2:00 p.m. on November 27, 2018.

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: Marjorie Morris Threats, Sr. Contract Administrator**

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

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

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

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

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

To receive all further information regarding this RFP 8-1969, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:

Construction

Professional Consulting

Professional Services

Commodity:

Construction Management
Services

Inspection Services

Traffic Control Services

Consultant Services - General

Traffic Planning Consulting

Engineering - Civil

Engineering - General

Inspection - Testing & Analysis

Land Surveying

A pre-proposal conference will be held on **November 1, 2018**, at **1:30 p.m.** at the Authority's Administrative Office, 550 South Main Street, Orange, California, in Conference Room 08. All prospective Offerors are encouraged to attend the pre-proposal conference.

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

The Authority has established **January 8, 2019**, 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 on **November 1, 2018**, at **1:30 p.m.** the Authority's Administrative Office, 550 South Main Street, Orange, California, in Conference Room 08. 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:

Marjorie Morris Threats, Sr. Contract Administrator
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560. 5633, Fax: 714.560.5792
Email: mthreats@octa.net

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

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

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on **November 6, 2018**.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: mthreats@octa.net

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than **November 13, 2018**. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Marjorie Morris Threats, Sr. Contract Administrator.

To receive email notification of Authority responses when they are posted on CAMM NET, firms and subconsultants must be registered on CAMM NET with 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
	Inspection Services
	Traffic Control Services
Professional Consulting	Consultant Services - General
	Traffic Planning Consulting
Professional Services	Engineering - Civil
	Engineering - General
	Inspection - Testing & Analysis
	Land Surveying

Inquiries received after 5:00 p.m. on November 6, 2018, 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 **November 27, 2018**.

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: Marjorie Morris Threats, Sr. Contract Administrator**

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

Orange County Transportation Authority
Contracts Administration and Materials Management (Camm)
P.O. Box 14184
Orange, California 92863-1584
Attention: Marjorie Morris Threats, Sr. Contract Administrator

3. Identification of Proposals

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

4. Acceptance of Proposals

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

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

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

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

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

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

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

M. PREVAILING WAGES

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

N. CODE OF CONDUCT

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

O. DISADVANTAGED BUSINESS ENTERPRISE

The Authority has established a seventeen percent (17%) Disadvantaged Business Enterprise (DBE) participation goal for the services required in this solicitation.

P. NONDISCRIMINATION

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

Q. PRIME AND LOWER TIER DEBARMENT

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

R. CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

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

S. PROHIBITION

The following prohibition apply to this procurement:

Offerors, including all subconsultants (at any tier), regardless of the level of service provided by said subconsultants, that is awarded this contract for construction management services is prohibited from submitting a bid for the construction of this Project.

The firm, including all subconsultants (at any tier), awarded the design contract for Interstate 5 Widening Project Between State Route 73 and Oso Parkway for the plans, specifications and estimates are not eligible to participate in this solicitation for Construction Management Services.

The firm, including all subconsultants (at any tier), awarded the Agreement for the Program Management Consultant Services for the Authority's Highway Programs

are not eligible to participate in this procurement for Construction Management Support Services.

DRAFT

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 Marjorie Morris Threats, Sr. Contract Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 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. Restrictions on Lobbying Form

As a recipient of federal funds, the Authority is required to certify compliance with the influencing restrictions and efforts of Offeror to influence federal officials regarding specific procurements in excess of \$100,000 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

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

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

4. Safety Specifications

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

5. Certification of Consultant, Commissions & Fees

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

6. Request for DBE Subcontractor/Supplier Substitution

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

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

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

- E-1 (Exhibit 10-O1) – Consultant Proposal DBE Commitment
- E-2 Exhibit 10-O2) – Consultant Contract DBE Information
- E-3 Bidders List
- E-4 DBE Information – Good Faith Efforts
- E-5 Final Report-Utilization of Disadvantaged Business Enterprises (DBE) First-Tier Subcontractors
- E-6 Monthly Race-Conscious DBE Subcontractors Paid Report Summary and payment Verification (Form 103)
- F Request for DBE Subcontractor/Supplier Substitution

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

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

9. 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** **25%**

Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
2. **Staffing and Project Organization** **40%**

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
3. **Work Plan** **35%**

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

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established **January 8, 2019**, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

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

C. AWARD

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

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

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

DRAFT

EXHIBIT A: SCOPE OF WORK

Exhibit A

**CONSTRUCTION INSPECTION AND
ADMINISTRATIVE SUPPORT SERVICES
FOR THE
INTERSTATE 5 (I-5) WIDENING PROJECT
BETWEEN
State Route 73 (SR-73) AND Oso Parkway
(Segment 1)**

SCOPE OF WORK

PROJECT DESCRIPTION

1.1 Introduction

The Orange County Transportation Authority (OCTA) and California Department of Transportation (Caltrans) require inspection and administrative support staff for construction of the Interstate 5 (I-5) Widening, from State Route 73 (SR-73) to Oso Parkway (Segment 1), Project.

1.2 Statement of Intent

CONSULTANT shall provide qualified personnel to perform the function of construction inspection (including roadway and structures), CPM scheduler, claims support, Office Engineer, materials testing, plant inspection, and electrical inspection. These services shall include inspection services, field/office contract administration, and other services as determined necessary by the OCTA Project Manager. Caltrans will lead the construction management and administration of the construction contract and will provide the Resident Engineer (RE), Principal Assistant Resident Engineer, Structural Representative, additional inspection services as needed and other functional support services necessary to administer the construction contract. CONSULTANT inspection personnel shall be assigned full time or part time as needed and shall provide assistance to, and work under the direction of the Caltrans RE. CONSULTANT shall also provide a fully equipped field office for all staff assigned to the project including Caltrans, OCTA, and CONSULTANT'S own staff.

1.3 Project Description

1.3 -1 Background

Caltrans District 12, in cooperation with OCTA, proposes the construction of Interstate I-5 Widening, SR-73 to Oso Parkway, Project. The proposed project is located in Orange County on I-5 and traverses through the cities of Mission Viejo and Laguna Niguel. The proposed project limits cover a distance of a 2.1-mile corridor. The Environmental Document and Project Report were approved on May 6, 2014.

The final design phase for this project is scheduled to be complete in early-2019 and contract documents are being developed for the construction-bidding phase to occur in mid-2019. The OCTA is expecting funding for the project from Local Partnership Program (LPP) funds, Surface Transportation Block Grant (STBG) funds, State Transportation Improvement Program (STIP)

funds, and in M2 funds. As the implementing agency OCTA contracted with WKE, Inc (WKE) to prepare the final design Plans, Specifications, and Estimates (PS&E) for this project. Caltrans provided oversight up to the completion of the PS&E phase. Caltrans will be the lead agency during the construction phase and will administer the contract for the construction phase.

1.3 -2 Location and Limits

The I-5 Widening Project is located in the cities of Mission Viejo and Laguna Niguel. The total length of this project is 2.1 miles.

1.3 -3 General Project Description

The I-5 Widening Project, between SR-73 and Oso Parkway will add General Purpose lane in each direction on the freeway, reconstruct the median barrier and replace the Avery Parkway undercrossing. The project construction will be in accordance with the Caltrans approved PS&E documents for project EA# 12-0K0214.

1.4 Project Delivery

The design consultant, who prepared the PS&E, WKE will provide construction support services during construction.

Caltrans will advertise, award, and administer the construction contract. Caltrans will provide the Resident Engineer, Principal Assistant RE, Structures Representative, Surveying and other support as outlined in Section 1.2 "Statement of Intent" above. CONSULTANT shall be responsible for coordinating with Caltrans, design team and other stakeholders as necessary.

Caltrans is the lead agency for the right-of-way certification and utility relocation on the project. All utility and right of way issues during construction will be the responsibility of Caltrans as defined in the cooperative agreement between Caltrans and OCTA.

1.5 Project Schedule and Cost

Shown below are the Project Ready-To-List (RTL), construction award, construction completion date, and estimated cost for construction:

Ready-To-List	March 2019
Construction Award	August 2019
Construction Completion	January 2024
Construction Cost:	\$112,000,000

GENERAL CONDITIONS AND REQUIREMENTS

2.1 Project General Conditions and Requirements

- 2.1-1 The number of project personnel and duration of the assignments will vary depending on the needs of the project. The final number of personnel and exact duration of assignment will be determined by OCTA and Caltrans. CONSULTANT personnel shall be available within two (2) weeks from written notification by OCTA and up to a maximum of 6 months after Caltrans acceptance of the construction project.
- 2.1-2 CONSULTANT shall assist in verifying compliance with the labor standards provisions of the project and the related wage determination decisions of the Secretary of Labor.
- 2.1-3 CONSULTANT shall assist Caltrans in verifying compliance with the safety and accident prevention provisions of the project. Caltrans shall retain jurisdictional control for traffic control but shall receive assistance from CONSULTANT forces in reviewing and monitoring.
- 2.1-4 CONSULTANT shall assist Caltrans in verifying compliance with the equal employment opportunity (EEOC) provisions of the project.
- 2.1-5 All services required hereunder shall be performed in accordance with latest Caltrans regulations, policies, procedures, manuals, and standards. Documents shall be made available upon request.
- 2.1-6 CONSULTANT shall furnish a Project Manager to coordinate the CONSULTANT's operations with Caltrans and OCTA. The Project Manager shall be responsible for all matters related to the CONSULTANT's personnel and operations.
- 2.1-7 CONSULTANT's Project Manager shall be accessible to Caltrans and OCTA at all times during Caltrans normal working hours.
- 2.1-8 CONSULTANT shall provide construction management support services to control quality and manage work. CONSULTANT shall perform the following administrative activities:
 - a. Prepare, circulate, and file correspondence and memos as appropriate.
 - b. At the end of each month, the CONSULTANT shall report the progress of the work. Progress shall be based on actual work accomplished such as estimated progress toward completion. The progress report shall include a staff labor report. Progress payments will be based upon actual time and expenses incurred.

- c. The CONSULTANT shall submit 1 copy of a monthly Progress Report to the OCTA and Caltrans Project Manager consisting of a written narrative and an updated progress and expenditure curve. This report shall be received no later than the 10th calendar day of the month. The narrative portion of the monthly Progress Report shall describe overall progress of the work, discuss significant problems and present proposed corrective action and show the status of major changes.
- 2.1-9 To ensure an understanding of contract objectives, meetings between Caltrans, OCTA, and the CONSULTANT will be held as often as deemed necessary. All work objectives, the work schedules, the terms of the contract, and any other related issues will be discussed and any problems will be resolved.
- 2.1-10 OCTA will designate a Project Manager to administer the CONSULTANT Agreement and provide general direction to the CONSULTANT.
- 2.1-11 Resumes of personnel must be submitted to OCTA for review and approval prior to assignment to a project. Caltrans, OCTA and CONSULTANT will have the responsibility of determining the quality and quantity of work performed by the CONSULTANT's personnel. If, at any time, the level of performance is below expectations, OCTA shall have the right to request removal of any project personnel. OCTA may request another person to be assigned as needed.
- 2.1-12 If a CONSULTANT's employee is on a leave of absence, the Project Manager shall provide an equally qualified replacement employee until the assigned employee returns to work. The replacement employee shall meet all the requirements of a permanently assigned employee.
- 2.1-13 The typical workday includes all hours worked by the Caltrans' construction contractor, normally 40 hours per week. If ordered by the RE, overtime for the CONSULTANT's employees may be required. The construction contractor's operations may be restricted to specific hours during the week, which shall become the normal workday for CONSULTANT's personnel. On days when the construction contractor, such as rainy or unsuitable weather days, does not perform work CONSULTANT services shall not be provided unless authorized by the RE. The RE will provide 8 hours advance notice if CONSULTANT services are not required.
- 2.1-14 All personnel shall be knowledgeable of, and comply with, all applicable local, Caltrans, and federal regulations; cooperate and consult with Caltrans and OCTA officials during the course of the contract; and perform other duties as may be required to assure that the construction is being performed in accordance with the project plans and specifications.

- 2.1-15 CONSULTANT shall keep detailed records and document the work as directed by the Caltrans RE.
- 2.1-16 Caltrans will furnish a representative to perform the usual functions of a RE. Caltrans Department of Structures will provide the Senior Bridge Representative.
- 2.1-17 Caltrans or OCTA will provide CONSULTANT with the following:
- a. Caltrans construction forms and other policies and procedures to be followed by CONSULTANT's personnel in the performance of the work.
 - b. A set of approved project plans and special provisions for the project.

STATEMENT OF SERVICES

3.0 Construction Inspection Services

3.1 General

CONSULTANT will be required to provide:

- a. Inspection and administration personnel
- b. A fully equipped field office
- c. Miscellaneous equipment, vehicles, and tools.
- d. Materials testing lab facility

The number of CONSULTANT personnel shall be dependent upon the actual work scope. The anticipated category and approximate annual quantity of personnel required is (based on a construction duration of 1,100 working days and 1,758 hours/year):

	<u>Personnel</u>	<u>Total Hours</u>
Project Manager	0.25	1,900
Senior Inspector (Roadway)	1.0	7,600
Inspector (Roadway)	1.25	9,825
Inspector (Structural)	1.65	13,300
Inspector (Electrical)	0.75	5,700
Office Engineer	0.5	3,800
CPM Scheduler	0.25	1,900
Claims Support	0.25	1,900
Field Materials Testing	1.0	7,600
Environmental / Paleo monitoring	<u>0.55</u>	<u>4,180</u>
Total	7.45	57,705

3.2 Construction Inspection and Administrative Support Services Requirements

Inspection work shall be performed when conditions (such as weather, traffic, and other factors) prevent a safe, efficient operation or as directed by Caltrans or AUTHORITY.

Assignments to be performed by CONSULTANT personnel may include, but are not limited to, the following:

- 3.2-1 Perform and assist in performing the duties of construction inspection and engineering including: paving and subgrade inspection, structures inspection, electrical inspection, drainage, signing and striping inspection, quantity calculations, checking grade and alignment, construction traffic control, and ensuring compliance with project plans and specifications.
- 3.2-2 Analyze the project plans and specifications for possible errors and deficiencies and report such findings to the RE. Identify actual and potential problems associated with the construction project and recommend sound engineering solutions to the RE. If the RE determines that changes are necessary, CONSULTANT's personnel shall assist in implementing and processing of "Change Orders" in accordance with Caltran's Standard Specifications.
- 3.2-3 Adhere to all safety and health code and regulations and enforce applicable contract provisions for the protection of the public and project personnel. Prepare Assistant RE daily diaries in accordance with the Caltrans construction manual.
- 3.2-4 Prepare calculations, records, reports, and correspondence related to project activities.
- 3.2-5 Consultant to assist in the preparation of As-Built plans.
- 3.2-6 Assist in preparing claims reports and be available for any claims settlements meetings.
- 3.2-7 Perform and assist in review of contractor's Critical Path Method (CPM) schedule and construction staging plans.
- 3.2-8 Assist in performing Storm Water Pollution Prevention (SWPP) duties.

3.3 Inspection Standards

Construction inspection and contract administration shall be in accordance with:

- 3.3-1 The Manual of Traffic Controls for Construction and Maintenance Work Zones.
- 3.3-2 The Caltrans Standard Specifications and Standard Plans.
- 3.3-3 The project plans and special provisions.
- 3.3-4 The Caltrans Construction Manual and other applicable Caltrans manuals.
- 3.3-5 Caltrans and OCTA shall decide all questions which may arise as to the quality or acceptability of deliverables furnished and work performed for this contract.

3.4 Construction Management, Inspection and Survey Deliverables

CONSULTANT shall create and maintain the following documentation and provide the following deliverables:

- 3.4-1 Daily reports and extra-work diaries.
- 3.4-2 Monthly progress reports prepared by the CONSULTANT's project manager.
- 3.4-3 Construction contract progress payment and quantity documents delivered to the RE the morning of the day specified in the contract payment schedule.
- 3.4-4 Final payment quantity documents delivered to the RE by no later than 5 working days after acceptance by Caltrans of the completed construction project.
- 3.4-5 Field measurements, field, and laboratory test data and other documents as required by Caltrans procedures.
- 3.4-6 All reports, calculations, and other applicable documents prepared for the project.

3.5 Field Office Requirements

CONSULTANT shall provide a fully equipped and operational field office. It is not anticipated right-of-way will be provided to provide temporary trailers as the field office.

3.5-1 The field office shall house all construction personnel assigned to the project. The construction staff includes: Caltrans personnel, CONSULTANT inspection personnel, and one office for the construction survey crew.

3.5-2 The field office shall have one desk and chair for every person assigned to the project, a desktop computer for CONSULTANT personnel only, internet access (T1 line), phones, fax machine, copy machine, full sized plotter, and conference table and chairs, and other normal office furniture, equipment, and utilities. CONSULTANT shall dispose of office furniture and equipment at project completion.

3.5-3 The field office shall also provide a common area (kitchen), bathrooms, field laboratory storage area, miscellaneous equipment storage area, and a large conference area for project meetings.

3.6 Miscellaneous Equipment, Inspection Vehicles, and Tools

CONSULTANT shall provide all necessary instruments, tools, and safety equipment required for their personnel to perform their work accurately, efficiently, and safely.

3.6-1 CONSULTANT shall provide one inspection vehicle (truck) for each inspector. Vehicles without side windows shall not be used. Caltrans-furnished magnetic logos shall be affixed to each side of the vehicle at all times it is used for the work under this contract.

3.6-2 CONSULTANT shall provide other field materials such as testing equipment and safety equipment, as needed, for use by their staff on the project.

3.6-3 CONSULTANT shall provide each inspector with a cellular phone.

3.7 Personnel Qualifications and Responsibilities

The preferred minimum qualifications for CONSULTANT personnel assigned to this project are as follows:

3.7-1 Project Manager

The preferred minimum qualifications for the position of Project Manager are:

- a) Minimum of 10 years project management experience on similar highway construction/bridge construction projects, or other relative equivalent experience as determined by OCTA.
- b) Thorough knowledge of Caltrans construction practices, and the ability to read and interpret plans and specifications.
- c) Ability to make effective decisions concerning field problems and work in progress.
- d) Licensed Civil Engineer in the State of California.
- e) Ability to use typical computer programs such as Microsoft Word, Outlook, and Excel.

Under the direction of OCTA and Caltrans, the Project Manager will assume the following functional responsibilities:

- a) Review, monitor, train, and provide general direction for CONSULTANT's personnel.
- b) Assign personnel to projects on an as-needed basis.
- c) Administer personnel leave subject to approval of the Caltrans' RE.
- d) Prepare monthly reports for delivery to the OCTA Project Manager.
- e) Maintain continuous communication with the Caltrans' Resident Engineer, OCTA Project Manager, CONSULTANT field personnel, and with public outreach personnel.
- f) Coordinate/communicate with the OCTA Project manager, staffing needs, and ensure project support costs are within budget.
- g) Advise the OCTA Project Manager of major project issues and contract status.
- h) Provide expert advice when called upon.

3.7-2 Senior Roadway Inspector

Minimum qualification is at least 5 years working as a Resident Engineer on Caltrans Highway improvement projects of similar size and complexity.

- a) Act as the lead inspector and provide guidance to other CONSULTANT inspectors and staff in carrying out their day to day duties.
- b) Provide consultation on complex contract interpretation issues as called upon by the RE. Act as an advisor to the RE.
- c) Thorough knowledge of Caltrans construction practices.
- d) Ability to make effective decisions concerning field problems and work in progress.
- e) Licensed Civil Engineer in the State of California.

- f) Maintain continuous communication with the Caltrans RE, lead staff, OCTA Project Manager, field staff, public outreach personnel, and with construction administration staff.
- g) Provide expert advice when called upon.

3.7-3 Roadway Inspectors

Preferred minimum qualification for the position of roadway inspectors will be as follows:

- a) Minimum of 3 years of relevant construction inspection and management experience on similar highway construction projects.
- b) Knowledge of construction practices, physical characteristics and properties of highway construction inspection, and the approved methods and equipment used in performing physical inspections.
- c) Ability to work independently and perform inspection duties in the construction field office.
- d) Ability to effectively make minor decision concerning work in progress and solving field and office problems.
- e) Ability to use typical computer programs such as Microsoft Word, Outlook, and Excel.
- f) Ability and experience with review of Critical Path Method (CPM) baseline schedule including updates and revisions. Ability to run Claim Digger or other available software to detect changes to the CPM schedule for Claims analysis purposes.
- g) Assist in the response to potential claims filed by the contractor and preparation of documentation for contract claims and claim reports.

Under the direction of the Caltrans Senior RE the Roadway Inspector(s) will assume the following functional responsibilities:

- a) Perform inspections to achieve compliance with contract plans and specifications on all phases of Highway construction, such as paving, structures, grading, drainage, utility relocation, electrical installation, sign installation, and landscaping items.
- b) Perform quantity calculations for progress pay estimates and keep project records.
- c) Perform design for minor changes and make design estimates for contract change orders.
- d) Perform analytical calculations for items such as basic earthwork and grading, special staking procedures and redesigning facilities to fit existing field conditions.
- e) Perform analytical calculation for items such as basic earthwork and grading, special staking procedures and redesigning facilities to fit existing field conditions.

- f) Maintain continuous communication with the Caltrans' RE, OCTA Project Manager, Principal Assistant (Resident) Engineer, field personnel, public outreach personnel, and with construction administration staff.

3.7-4 Structures Inspectors

Preferred minimum qualifications for the position of structures inspectors will be as follows:

- a) Minimum of 3 years of relevant construction inspection and management experience on similar construction projects involving bridges, retaining walls, sound walls, barriers, drainage structures, sign structures, and other structures.
- b) Knowledge of construction practices, physical characteristics and properties of structures construction inspection, and the approved methods and equipment used in performing physical inspection.
- c) Ability to perform calculations such as grade, deflection, stress, alignment. Ability to perform calculations to check the various elements of structures (i.e. beams, columns, etc.) as used in contractor's temporary works.
- d) Assist in reviewing false work plans, shoring plans, demolition plans, concrete mix designs and other submittals provided by the contractors as required by the contract documents.
- e) Ability to work independently and perform inspection duties in the construction field office.
- f) Ability to effectively make minor decisions concerning work in progress and solving field and office problems.
- g) Ability to use typical computer programs such as Microsoft Word, Outlook, Access, and Excel.

Under the direction of the Caltrans Senior Structures Representative, the Structures Inspectors will assume the following functional responsibilities:

- a) In a field setting perform soil calculations, establish surveying control line and grade as required by established Office of Structures Construction (OSC) Practices & Procedures, ensure that the contractors materials are in compliance and as required by the contract documents, verify field dimensions. Must be present for concrete pours and assure that the concrete is cured properly. Oversee removal and placement of existing materials. Confer with contractors regarding compliance with plans, specifications, quality of work, construction activity, and CAL-OSHA regulations.
- b) Assist in identifying the need for Contract Change Orders (CCOs), preparation of CCOs, contract estimates and other documents, such as responses to contractor's claims, and reports and letters involved in the construction of engineering projects.

- c) Perform quantity calculations for progress pay estimates and keep project records.
- d) Maintain continuous communication with the Caltrans' RE, OCTA Project Manager, Principal Assistant (Resident) Engineer, field personnel, public outreach personnel, and with construction administration staff.

3.7-5 Electrical Inspector

The preferred minimum qualifications for the position of Electrical Inspector(s) are as follows:

- a) Minimum of 3 years of relevant electrical inspection and management experience on a similar highway construction project is required.
- b) Knowledge of intelligent transportation system (ITS) elements such as ramp metering systems, CCTV systems, electrical systems, highway advisory radio (HAR) systems, communication Systems (wireless, hardwire & fiber-optics), changeable message signs, vehicle detection systems, traffic signal systems, transit signal priority, emergency vehicle priority, etc.
- c) Knowledge of construction practices, physical characteristics and properties of roadway, structures, drainage and utility systems construction materials, and the approved methods and equipment used in making physical tests of construction materials.
- d) Ability to work independently and perform duties in the construction field office.
- e) Ability to effectively make minor decisions concerning work in progress and solving field and office problems.
- f) Proficient in the use of computer application programs Word and Excel.

Under the direction of the Caltrans Senior RE, the Electrical Inspector will assume the following functional responsibilities:

- g) Perform quality assurance inspections to achieve compliance with contract plans and specifications on all electrical installation.
- h) Perform quantity calculations and measurement for progress pay estimates and keep daily project records.
- i) Perform calculations and measurement of electrical components.
- j) Perform design for minor changes and make design estimates for contract change orders.
- k) Maintain continuous communication with the Caltrans' RE, OCTA Project Manager, Principal Assistant Resident Engineer, field personnel, public outreach personnel, and with construction administration staff.

3.7-5.1 Office Engineer

- a. Minimum of 3 years of relevant construction inspection and/or office engineering experience.
- b. Ability to work independently and perform typical construction field office duties.
- c. Thorough knowledge of Caltrans construction practices, and the ability to read and interpret plans and specifications.
- d. Thorough knowledge of the construction manual regarding estimates, extra work bidding, change orders, and other administrative duties.
- e. Maintain continuous communication with the Caltrans' RE, OCTA Project Manager, and Caltrans District Construction Administration.
- f. Ability to use typical computer programs such as Microsoft Word, Excel, Outlook, Scheduling software, and Expedition or equivalent.

Under direction of Caltrans' Senior RE, the office engineer will assume the following functional responsibilities:

- a. Perform quality calculations for progress pay estimates and keep for project records.
- b. Draft Change Orders and process for approval.
- c. Maintain continuous communications with the Caltrans' RE, OCTA Project Manager, construction administration staff, and the District Construction office.

3.7-6 Scheduling Support Specialist

Construction scheduling support CONSULTANT shall be knowledgeable and experienced in the following:

- a) Using Primavera Project Management Software (P6/P7), Primavera Project Planner (P3), SureTrack, Microsoft Project and Microsoft Office (Word, Excel, Powerpoint etc.) software.
- b) Generating, reviewing, and analyzing Critical Path Method (CPM) schedules with respect to time, resource, and cost. The CONSULTANT shall possess the experience and skills to track Contractor's submittals and CALTRANS submittals reviews, and in conjunction with schedule analysis, determine credits to State-owned Float activity for time saved on the critical path for early review of submittals. The CONSULTANT shall also possess the experience and skills to determine other savings to the critical path due to actions by CALTRANS.
- c) Monitoring and analyzing Contractor's performance of the work with respect to time, resource, and cost. Generating project correspondence, daily diaries, monthly contract item payments related to scheduling work, Weekly Statement of Working Days, reports, plots exhibits, other presentation materials and other items related to scheduling.
- d) Generating, reviewing and analyzing reports with respect to time, resource and cost.

- e) Generating, reviewing, and analyzing Time Impact Analyses.
- f) Providing specialized expertise for the support of review and analysis of potential claims.
- g) Negotiating issues related to construction scheduling.
- h) Conducting constructability reviews.
- i) Making presentations as needed. Providing training in areas related to scheduling.
- j) General construction process and terminology.
- k) Working knowledge of CALTRANS plans, specifications, and manuals (Standard Plans, Standard Specifications, Construction Manual etc.)
- l) Construction scheduling support CONSULTANT shall possess excellent oral and written communications skills.
- m) Minimum of 4 years' experience performing construction scheduling for highway, or major public works projects, performing related duties as described above.

3.7-7 Claims Support

The construction claims support CONSULTANT shall be knowledgeable and experienced in the following:

- a) Using Primavera Project Management Software (P6/P7), Primavera Project Planner (P3), Suretrack, Microsoft Project, and Microsoft Office (Word, Excel, PowerPoint etc.) software.
- b) Generating and analyzing Critical Path Method (CPM) schedules with respect to time, resource, and cost. The CONSULTANT shall possess the experience and skills to conduct detailed schedule analysis.
- c) Have at least 5 years' experience with Claims analysis, responding to potential claims, preparing claims reports and presenting to the Dispute Review Boards or District Claims Board.
- d) Analyzing Time Impact Analyses.

3.8 Inspection and Safety

In addition to the requirements specified elsewhere in this contract, the following also shall apply.

3.8-1 CONSULTANT shall conform to the safety provisions of the Caltrans Construction and Survey Manuals.

3.8-2 CONSULTANT's personnel shall wear white hard hats, safety orange vests and rubber-soled shoes at all times while working in the field.

3.8-3 CONSULTANT shall provide appropriate safety training for all CONSULTANT's personnel required to work on and near highways.

3.8-4 All safety equipment shall be provided by the CONSULTANT.

3.9 Field Material Testing

SOILS AND MATERIALS TESTING SERVICES

- 3.9-1 Materials sampling and testing shall be in accordance with the Project plans, technical specifications, standard specifications, and other applicable standards and procedures.
- 3.9-2 The contractor for the Project shall be responsible to provide Quality Assurance/Quality Control Soils and Materials Testing Services. CONSULTANT shall provide a certified laboratory to perform soils and materials testing services on an as needed basis in order to validate construction contractor test results.
- 3.9-3 The laboratory, whether temporary or permanent, is to be in the general vicinity of the project area and no more than 30 miles from the field office for the project.
- 3.9-4 Testing shall be performed in accordance with the California Test Methods and shall meet the latest requirement of ASTM.
- 3.9-5 Testing machines must be calibrated annually or more frequently by impartial means using devices of accuracy traceable to the National Bureau of Standards.
- 3.9-6 The laboratory shall participate in the AASHTO Materials Reference Laboratory (AMRL) or Cement or Concrete Reference Laboratory (CCRL) inspection programs as appropriate. Copies of applications, correspondence, reports, and corrective actions shall be provided to OCTA if requested.
- 3.9-7 The laboratory shall have a quality control plan and a quality assurance 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.
- 3.9-8 The laboratory shall maintain an inventory of the testing equipment (listing the manufacturer, model serial number, calibration, and tolerances).
- 3.9-9 The laboratory shall maintain a laboratory procedure manual describing the methods used for recording, processing, and reporting data, the sources of references material, standards, and test methods.
- 3.9-10 CONSULTANT and the laboratory shall be responsible for all soils and materials testing performed for the project include source testing if required.
- 3.9-11 CONSULTANT shall perform concrete batch plant inspections.

Paleo:

The following requirements shall pertain to Consultant's monitoring activities:

- a. At the direction of the Caltrans Contract Manager in coordination with the Caltrans Task Order Manager, and detailed in executed task orders, Consultant shall undertake monitoring of construction activities to identify the presence or absence of intact subsurface paleontological deposits within the construction area. If paleontological deposits are revealed during monitoring activities and it is determined, in consultation with Caltrans that data recovery efforts are required, Consultant may be responsible for conducting those efforts.
- b. The Consultant shall perform on-site construction monitoring. The Consultant will attend pre-construction meetings. The Consultant shall monitor construction in the vicinity of known significant fossil localities and in areas with geological formations with moderate to high probability of producing significant Paleontological resources. A Paleontologist will be present at all times to monitor during the original cutting of previously undisturbed sediments of the formations.
- c. Consultant's pre-field research should include:
 - i. A visit to each construction area to be monitored.
 - ii. A review of the paleontological reports that identified the need for monitoring and a literature review of paleontological reports that characterize the content of.
- d. Consultant shall provide its own equipment for the purpose of completing all monitoring activities. Caltrans may provide additional services and/or facilities, to be decided before implementation of monitoring, as defined in the Task Order.
- e. If monitoring results are negative for paleontological deposits, Consultant shall submit three (3) draft copies of a Construction Monitoring Report (CMR) within three (3) weeks of completion of monitoring activities. The draft CMR shall include all required maps, stratigraphic profiles and photographs. Caltrans shall complete review of the draft CMR within two (2) weeks of receipts. Within four (4) weeks after receipts of Caltrans' comments, Consultant shall submit ten (10) copies of the final report, incorporating changes and additions as requested by Caltrans. In addition, Consultant will submit one (1) unbound, reproducible original report including all original maps, illustrations and photographs (including negatives).
- f. If intact paleontological deposits are revealed during monitoring activities, Consultant shall inform Caltrans' Resident Engineer of the necessity of halting work in the area of the deposits. Immediately thereafter, Consultant shall contact the Caltrans Contract Manager in coordination with the Caltrans Task Order Manager to determine necessity for conducting data recovery efforts.
- g. If Caltrans determines that data recovery efforts are necessary, Caltrans may choose to issue a Task Order for the additional work, to prepare a

separate contract for the data recovery work, or to perform the work in-house. If Caltrans issues a Task Order for the data recovery work, the Consultant shall prepare a proposal within five (5) working days of receipt of Caltrans' Task Order. Unless otherwise specified in the Task Order, Consultant's proposal shall outline the scope of work, schedule of investigation, purposes of the investigation, field and recordation techniques to be employed, analytical techniques to be employed, curation requirements, appropriate safety measures to be taken, and a research design of appropriate scale and depth to place the proposed investigation in context for the purposes of meeting the objectives of the investigation, as outlined in the Task Order.

- h. The Consultant shall perform fossil recovery. Through excavation, the Consultant shall recover both macro and micro fossils encountered during monitoring. Data recovery methods may include both manual and mechanical techniques. Plaster jackets and/or application of preservative materials will be used to stabilize and remove macrofossils. Microfossils will be recovered by taking bulk samples of the fossil-bearing matrix and screen washing the material. The Consultant, in consultation with the Department Environmental Branch Chief, will determine adequate sample size.
- i. The Consultant shall identify, catalog, and curate macrofossils. The Consultant will prepare recovered specimens to a point of identification and stabilize them for preservation. Specimens will be identified and catalogued. The Consultant will arrange for adequate storage of specimens recovered during monitoring and salvage operations. Adequate storage includes curation of individual specimens into the collections of a recognized, paleontologic specimen repository with a permanent Curator, such as a museum or a university.
- j. The Consultant shall sort, identify, catalog, and curate microfossils. The Consultant will use appropriate methods to sort, by heavy liquid flotation and screening. The Consultant shall identify by use of microscope, comparative collections, manuals and relevant literature. The Consultant shall catalog and curate similar to the macrofossils.
- k. The Consultant shall perform fossil dating. Where appropriate, the Consultant, shall date both the macro and micro specimens using uranium series dating, radiocarbon C-14 dating, thermoluminescence, amino acid racemization dating; bio-stratigraphic analysis, pedological analysis.
- l. The Consultant shall prepare a mitigation report. The Consultant shall prepare a report presenting the findings of the data recovery program. The report will include a discussion of the field and laboratory methodology, site geology, site stratigraphy, faunal list, and the significant relationship of the site compared to similar fossil localities and its contribution to local and regional research issues. An itemized inventory list of curated specimens will be appended to the report.

Bio:

The consultant shall provide a 10(a)(1)(A) permitted biologist(s) who is familiar with California Gnatcatcher, Least Bell's Vireo, and their habitats and have experience monitoring these species. Since the qualified biologist(s) needs to be approved by the USFWS, the biologist (s) CV shall be submitted to Caltrans in five days. Caltrans Biologists may accompany the monitor(s) during field activities. In accordance with project avoidance and minimization measures listed in the NES, ECR, and PLAC listed above, the qualify biologist shall:

❖ Education program

The consultant biologist shall develop training program in accordance with condition # CM 6 of the informal section 7 consultation letter dated February 02, 2016. The biologist will provide training/awareness program to all construction employee prior to beginning of construction.

❖ Monitor ESA and silt fences installation

In accordance with the measures listed in the FWS informal section 7 consultation letter, the consultant qualified biologist will monitor the ESA fence installation around riparian and CSS habitat areas. Biologist will provide guidance to contractor during installation of ESA fences and ensure that the limits of the vegetation clearing are marked with the fencing and construction personnel remain within the identified project footprint.

❖ Pre-construction Bird survey

The consultant biologist will conduct pre-construction bird surveys prior to vegetation clearing and grubbing occurs within the project limit. The survey will consist of a single visit between the hours of ½-hr before sunrise to 11 am by a qualified biologist familiar with the nesting species and nesting requirements of bird species potentially breeding in the project area. If nesting birds are found, the Biologist shall coordinate with District biologist and implement appropriate measures.

❖ Protocol Survey

If the construction work is to occur adjacent to CSS, identified as ESA on the plans during Gnatcatcher nesting season, the permitted Biologist will

conduct 3 gnatcatcher protocol surveys prior to the initiation of construction work adjacent to CSS habitat areas.

❖ Weekly construction monitoring

The consultant permitted biologist will monitor construction activities around CSS areas weekly. The biologist shall ensure appropriate avoidance and minimization measures included in the ECR and USFWS letters are implemented during construction period.

During weekly monitoring, biological monitors shall provide a field memo on the following Monday for the prior week. This memo is to include the staff names, survey times, survey locations, construction activities monitors, locations of any sensitive species, and findings of note. This memo may be submitted via email to Kedest Ketsela at Kedest.Ketsela@dot.ca.gov.

Final construction monitoring report shall be submitted upon completion of construction. The report will be prepared in accordance with condition CM-7 of the FWS section 7 consultation letter and Special condition #3 of the LOP from US Army Corps of Engineers.

Biological monitoring biologists may be required to attend meetings with the RE, District Biologist, and Contractors during construction period. The exact schedules for these construction meetings are not known at this time. The meetings will likely occur on-site or at a construction office.

Cultural:

The scope of services relates to the actual technical studies and environmental documents prepared for this project. Per the federal requirements in the IS/MND/CE and the HPSR's ESA Action Plan, this shoulder widening project requires the presence of Archaeological monitor(s) and the presence of a Native American Monitor when performing ground disturbing activities within

archaeological sensitive areas. Tasks to be performed are within the WBS activity code(s) below:

- **WBS 280** Administration of Permits, Licenses, Agreements, and Certifications (PLACs) and Environmental Stewardship

If the hours/costs/construction timeframe need to be modified at a later date, an amendment may be required. The Consultant shall provide all materials, transportation, facilities, and personnel for completing all necessary mitigation measures pertaining to cultural resources per the 2013 HPSR and as outlined in this Task Order and summarized below:

- 1) One (1) Principal Archaeologist familiar with Caltrans guidelines and policies (Refer to Caltrans' SER Ch.2 Cultural for Archaeology qualifications at the following link: <http://www.dot.ca.gov/ser/vol2/vol2.htm>).
- 2) One (1) Archaeological Monitor to monitor ground disturbing activities within the archaeological site areas and monitor ESA fencing conditions. Caltrans will approve additional monitors as needed. The number of monitors employed shall be sufficient to adequately cover ground disturbing activities.
- 3) The monitor(s), in consultation with the Caltrans Project Coordinator and through the Resident Engineer (RE), shall have the authority to temporarily direct, divert or halt grading and/or construction activities should human remains or archaeological/historic resources be encountered during construction. Diagnostics artifacts discovered within the Caltrans right of way shall be provenienced and collected. Non-diagnostic artifacts within the Caltrans right-of-way and artifacts located on adjacent private property shall be provenienced but not collected. If archaeological features are discovered, construction in the vicinity of the feature shall be halted and the feature inspected. If the initial inspection indicates the feature may contain valuable archaeological data that could be destroyed by project construction, construction activities shall be redirected and the monitor(s) shall immediately notify the RE and Caltrans Project Coordinator of the nature of the find.

- 4) The Consultant shall retain Native American Monitor(s) from the Juaneno community to monitor ground-disturbing activities within the archaeological site areas, or as needed. Representatives from two groups expressed interest in monitoring during the PA&ED phase. The Native American Monitors shall work in conjunction with the Archaeological Monitors. Native American Monitors shall be employed on a full time basis for the duration stated above. The number of monitors employed shall be sufficient to adequately cover ground disturbing activities as needed. Native American coordination will be facilitated by the consultant.
- 5) Daily Monitoring Logs shall be prepared for each monitor for each day in the field. Daily Monitoring Logs will include pertinent field information (e.g. Name, Date, Project, Activities Monitored, Construction Personnel, Findings, etc.) and be submitted with the invoices.
- 6) Safety equipment (e.g., hard hats, vests, boots, etc.) is required on this project. Archaeological and Native American Monitors will wear safety hard hats and vests at all times in the field. The Consultant shall comply with any requirements for safety, vehicle operation, and parking specified by Caltrans. All vehicles will park in Caltrans approved areas unless otherwise specified.
- 7) A Draft and Final Archaeological Monitoring Report is required for this project. All contractual documentation and any archaeological artifacts collected will be submitted to the Caltrans Project Coordinator by the end of this Task Order.

EXHIBIT B: PROPOSED AGREEMENT

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B. AUTHORITY's failure to insist in any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance by CONSULTANT or to future performance of such terms or conditions and CONSULTANT obligation in respect thereto shall continue in full force and effect. 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," which is attached to, and by this reference, incorporated in and made a part of this Agreement. All services shall be provided at the times and places designated by AUTHORITY.

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

Names

Functions

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. Should the services of any key person become no longer available to CONSULTANT, the resume and

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

6 **ARTICLE 4. TERM OF AGREEMENT**

7 A. This Agreement shall go into effect on _____, contingent upon approval by
8 AUTHORITY, and CONSULTANT shall commence after notification to proceed by AUTHORITY's
9 Contract Administrator. This Agreement shall end on December 31, 2024, unless extended by
10 amendment to the Agreement, or terminated as provided hereunder.

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

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

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

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

21 C. The specified rate to be paid for field vehicle expense for CONSULTANT's field personnel
22 shall be \$_____/month/vehicle, . This rate shall be for a fully equipped vehicle, with radio and flashing
23 yellow light (if needed), as specified in Exhibit B of this Agreement. The specified rates to be paid for other
24 field equipment shall be, as listed in Exhibit B of this Agreement.

25 D. The method of payment for this contract, except those items to be paid for on a specified rate
26 basis, will be based on cost per unit of work. AUTHORITY will reimburse CONSULTANT for actual costs

(including labor costs, employee benefits, travel, equipment-rental costs, overhead and other direct costs) incurred by CONSULTANT in performance of the work. CONSULTANT will not be reimbursed for actual costs that exceed the estimated wage rates, employee benefits, travel, equipment rental, overhead and other estimated costs set forth in Exhibit B, unless additional reimbursement is provided for, by contract amendment. In no event, will CONSULTANT be reimbursed for overhead costs at a rate that exceeds AUTHORITY-approved overhead rate set forth in Exhibit B. In the event the AUTHORITY determines that changed work from that specified in Exhibit A, Scope of Work, and contract is required; the actual costs reimbursable by AUTHORITY may be adjusted by contract amendment to accommodate the changed work. The maximum total cost as specified in Article 7 shall not be exceeded unless authorized by contract amendment.

E. Reimbursement for transportation and subsistence costs shall not exceed the rates specified in Exhibit B of this Agreement.

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

G. For each full hour of labor satisfactorily performed by CONSULTANT's personnel under this Agreement, AUTHORITY shall reimburse CONSULTANT at the hourly labor rates specified in Exhibit B, entitled "Schedule of Fees," which is attached to and by this reference, incorporated in and made a part of this Agreement. The specified hourly rates shall include direct salary costs, employee benefits,

1 overhead and fee (profit). These rates are not adjustable for the term set in this Agreement. In addition,
2 AUTHORITY shall reimburse CONSULTANT for actual direct costs other than salary costs shown in
3 Exhibit B, which are directly incurred by its personnel in the performance of work under this Agreement.
4 The AUTHORITY will not reimburse CONSULTANT for local meals except for those authorized for
5 travelling personnel as shown in the attached Exhibit B.

6 H. For personnel subject to prevailing wage rates as described in the California Labor
7 Code, all salary increases which are the direct result of changes in the prevailing wage rates are
8 reimbursable.

9 I. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments
10 corresponding to the specified rates (labor and other direct costs) expended by CONSULTANT. Work
11 completed shall be documented in a monthly progress report prepared by CONSULTANT, which shall
12 accompany each invoice submitted by CONSULTANT. CONSULTANT shall also furnish such other
13 information as may be requested by AUTHORITY to substantiate the validity of an invoice, including
14 a current payroll register for personnel performing work under the classifications which are subject to
15 pay ranges listed in Exhibit B. At its sole discretion, AUTHORITY may decline to make full payment
16 for any work until such time as CONSULTANT has documented to AUTHORITY's satisfaction, that
17 CONSULTANT has fully completed all work required. AUTHORITY's payment in full for any work
18 completed shall not constitute AUTHORITY's final acceptance of CONSULTANT's work under such
19 task. Final acceptance shall occur only when Authority makes the final release of the retention
20 described in Paragraph J.

21 J. As partial security against CONSULTANT's failure to satisfactorily fulfill all of its
22 obligations under this Agreement, AUTHORITY shall retain ten (10%) percent of the amount of each
23 invoice submitted for payment by CONSULTANT. All retained funds shall be released by AUTHORITY
24 and shall be paid to CONSULTANT, upon final acceptance of CONSULTANT's work, and within sixty
25 (60) calendar days of payment of final invoice, unless AUTHORITY elects to audit CONSULTANT's
26 records in accordance with Article 17 Audit and Inspection of Records, of this Agreement. If AUTHORITY

elects to audit, retained funds shall be paid to CONSULTANT within thirty (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such audit. During the term of the Agreement, at its sole discretion, AUTHORITY reserves the right to release all or a portion of the retained amount based on CONSULTANT's satisfactory completion of certain milestones or tasks. CONSULTANT shall invoice AUTHORITY for the release of the retention in accordance with this Article.

K. Each invoice submitted shall be accompanied by the monthly progress report specified in paragraph L of this Article. AUTHORITY shall remit payment, less retention amount, within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-8-1969;
2. Specific work for which payment is being requested;
3. The time period covered by the invoice;
4. Labor performed during the billing period (staff name, hours charged, hourly billing rate, current charges and cumulative charges, and pay registers for staff using classifications);
5. Itemized expenses including support documentation incurred during the billing period;
6. Total monthly invoice by task (including project-to-date cumulative invoice amount);
7. Total amount of retention to be withheld by AUTHORITY, for the time period covered by the invoice;
8. Monthly Progress Report;
9. Certificate signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The

invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.

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

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

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

ARTICLE 6. PROMPT PAYMENT CLAUSE

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

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

C. These prompt payment provisions must be incorporated in all subcontract agreements issued by CONSULTANT under this Agreement.

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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 (\$) which shall include all amounts payable to CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of, this Agreement. The maximum cumulative payment obligation is inclusive of a not-to-exceed amount of ____Dollars (\$____) for reimbursement of field office expenses. Field office expensed and all other direct costs, including start-up cost, shall be reimbursed at cost when adequate supporting documentation is furnished with invoices submitted by CONSULTANT. The following overhead, profit and annual escalation rates apply to CONSULTANT:

Overhead rate (Field):

Overhead rate (Office):

Profit rate:

Escalation rate:

ARTICLE 8. NOTICES

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

To CONSULTANT:	To AUTHORITY:
	Orange County Transportation Authority
	550 South Main Street
	P.O. Box 14184
	Orange, CA 92863-1584
ATTENTION:	ATTENTION: Marjorie Morris-Threats

		Senior Contract Administrator
		<p>Tel: (714) 560 – 5633</p> <p>Email: mthreats@octa.net</p> <p>CC: Hamid Torkamanha, P.E.,</p> <p>Tel: (714) 560-5436</p> <p>Email: htorkamanha@octa.net</p>

ARTICLE 9. INDEPENDENT CONTRACTOR

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.

ARTICLE 10. INSURANCE

A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this Agreement. The following coverage shall be full coverage and not subject to self-insurance provision. Prior to commencement of the work described herein, and no later than ten (10) days after date of execution of Agreement, CONSULTANT shall furnish AUTHORITY a Certificate of Insurance stating that CONSULTANT shall provide the following insurance coverage:

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury with a minimum combined single limit of not less than \$2,000,000.00 per occurrence and \$4,000,000.00 general aggregate.
2. Automobile Liability to include owned, hired and non-owned autos with a combined single limit of \$1,000,000.00 per accident;
3. Workers' Compensation with limits as required by the State of California including

1 a waiver of subrogation in favor of AUTHORITY, its officers, directors, employees and agents;

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

3 5. Professional Liability/Error and Omissions with minimum limits of \$2,000,000.00
4 per claim.

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

12 C. CONSULTANT shall include on the face of the certificate of Insurance the Agreement
13 Number C- C-8-1969; and, the Contract Administrator's Name, Marjorie Morris-Threats, Senior Contract
14 Administrator.

15 D. CONSULTANT shall also include in each subcontract agreement the stipulation that
16 subconsultants shall maintain insurance coverage in the amounts required from CONSULTANT as
17 provided in this Agreement, prior to start of work.

18 E. Additionally, the Certificate of Insurance shall provide:

19 1. That the insurer will not cancel the insured's coverage without 30 days prior
20 written notice to AUTHORITY.

21 2. That AUTHORITY, its officers, agents, and employees are included as
22 additional insureds, but only insofar as the operations under this Agreement are concerned.

23 3. That AUTHORITY will not be responsible for any premiums or assessments on
24 the policy.

25 F. CONSULTANT agrees that the bodily injury liability insurance herein provided for, shall
26 be in effect at all times during the term of this Agreement. In the event said insurance coverage

expires at any time or times during the term of this Agreement, CONSULTANT agrees to provide at least thirty (30) days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the Agreement, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of AUTHORITY. In the event CONSULTANT fails to keep in effect at all times insurance coverage as herein provided, AUTHORITY may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event.

ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 8-1969; (3) CONSULTANT's technical proposal dated , CONSULTANT's cost proposals dated , and (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 12. CHANGES

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

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

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

ARTICLE 13. DISPUTES

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

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

ARTICLE 14. TERMINATION

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

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

for convenience.

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

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

ARTICLE 15. INDEMNIFICATION

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

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

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

employed by any of them as it is for the acts and omissions of persons directly employed by CONSULTANT. CONSULTANT's obligation to pay its subconsultant(s) is an independent obligation from AUTHORITY's obligation to make payments to the CONSULTANT.

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

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

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

F. Any substitution of subcontractors must be approved in writing by the AUTHORITY's Contract Administrator, prior to the start of work by the subcontractor.

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

<u>Subcontractor Name/Address</u>	<u>Subcontractor Amounts</u>
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ARTICLE 17. AUDIT AND INSPECTION OF RECORDS

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

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

C. 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 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.

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

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

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

21 E. CONSULTANT Cost Proposal is subject to a CPA ICR Audit Work Paper Review by The
22 California Department of Transportation's Audit and Investigation (Caltrans). Caltrans, at its sole
23 discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall
24 be adjusted by the CONSULTANT and approved by the AUTHORITY's Contract Administrator to conform
25 to the Work Paper Review recommendations included in the management letter or audit
26 recommendations included in the audit report. Refusal by the CONSULTANT to incorporate the Work

Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Agreement terms and cause for termination of the Agreement and disallowance of prior reimbursed costs.

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

- a. If the proposed rate is less than 150% - the provisional rate reimbursed will be 90% of the proposed rate.
- b. If the proposed rate is between 150% and 200% - the provisional rate will be 85% of the proposed rate.
- c. If the proposed rate is greater than 200% - the provisional rate will be 75% of the proposed rate.

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

3. If the CONSULTANT fails to comply with the provisions of this Section E, or if Caltrans is still unable to issue a cognizant approval letter after the revised independent CPA-audited ICR is submitted, overhead cost reimbursement will be limited to the provisional ICR that was established upon

initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this provisional ICR will become the actual and final ICR for reimbursement purposes under this Agreement.

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

ARTICLE 19. COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

A. CONSULTANT agrees that the Agreement Cost Principles and Procedures, CFR, Title 48, Chapter 1, Part 31.000 et seq., shall be used to determine the cost allowability of individual items.

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

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

ARTICLE 20. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, CONSULTANT shall not discriminate

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

7 **ARTICLE 22. PROHIBITED INTERESTS**

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

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

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

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

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

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

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

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

E. All subcontracts entered into as a result of this Agreement, shall contain all the provisions of this Article.

ARTICLE 24. PATENT AND COPYRIGHT INFRINGEMENT

A. In lieu of any other warranty by CONSULTANT against patent or copyright infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of the suit or claim and given authority, information and assistance at CONSULTANT's expense for the defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination 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 25. 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 26. FINISHED AND PRELIMINARY DATA

A. Upon completion of all work under this Agreement, ownership and title to all reports, documents, plans, specifications, and estimates, 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, photoprints and other graphic information required to be furnished under this Agreement, will automatically be vested in AUTHORITY and no further agreement will be necessary to transfer ownership to AUTHORITY.

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

C. CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with the modification, or misuse by AUTHORITY of the machine-readable information and data provided by

CONSULTANT under this Agreement. Further, CONSULTANT is not liable for claims, liabilities, or losses arising out of, or connected with any use by AUTHORITY of the project documentation on other projects, or for the completion of this project by others, except only as such use as may be authorized in writing by CONSULTANT.

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

E. 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 14 "Termination", and a price shall be negotiated for all preliminary data.

ARTICLE 27. STATE PREVAILING WAGE RATES

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. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, shall contain all of the provisions of this Article.

C. 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>.

ARTICLE 28. STATEMENT OF COMPLIANCE

During the performance of this Agreement, CONSULTANT, for itself, its assignees and

successors in interest agree as follows:

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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 Administrative Code, Section 8103.

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

C. Compliance with Regulations: The Consultant shall comply with regulations relative to Title VI (nondiscrimination in federally-assisted programs of the Department of Transportation – Title 49 Code of Federal Regulations, Part 21 - Effectuation of Title VI of the 1964 Civil Rights Act). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination

in which no person in the State of California shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.

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

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

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

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

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

G. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs,

activities, and services of public entities, as well as imposes specific requirements on public and private providers of transportation.

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

ARTICLE 29. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED CONSULTANT CONTRACTS

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

ARTICLE 30. PRIVACY ACT

CONSULTANT shall comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. §552a.

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

ARTICLE 31. CONFLICT OF INTEREST

A. 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. 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.

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

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

D. CONSULTANT hereby certifies that neither CONSULTANT, its employees, nor any firm affiliated with CONSULTANT providing services on this project prepared the Plans, Specifications, and Estimates for any construction project included within this Agreement. An affiliated firm is one, which is subject to the control of the same persons through joint-ownership, or otherwise.

E. CONSULTANT further certifies that neither consultant, nor any firm affiliated with CONSULTANT, will bid on any construction subcontracts included within the construction contract.

1 Additionally, CONSULTANT certifies that no person working under this Agreement is also employed by
2 the construction contractor for any project included within this Agreement.

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5 **ARTICLE 32. CODE OF CONDUCT**

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

9 **ARTICLE 33. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

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

14 **ARTICLE 34. INCORPORATION OF FEDERAL TERMS**

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

22 **ARTICLE 35. FEDERAL CHANGES**

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

contract.

ARTICLE 36. 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 entered into as a result of this Agreement.

ARTICLE 37. 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 USDOT regulations, "Program Fraud Civil Remedies," CFR, Title 49, 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 may cause to be made, pertaining to the underlying Agreement or 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 set forth in the Program Fraud Civil Remedies Act of 1986 against the CONSULTANT to the extent the Federal Government deems appropriate.

B. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an agreement connected with a project that is financed in whole or part with Federal assistance awarded by FTA, under the authority of 49 U.S.C. §5307 et seq., the Government reserves the right to impose the

penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n) (1) et seq. against the CONSULTANT, to the extent the Federal Government deems appropriate.

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

ARTICLE 38. RECYCLED PRODUCTS

CONSULTANT shall comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of CFR, Title 40, Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of CFR, Title 40, Part 247. CONSULTANT agrees to include this requirement in all of its subcontracts entered into as a result of this Agreement.

ARTICLE 39. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 40. CLEAN AIR

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

ARTICLE 41. CLEAN WATER REQUIREMENTS

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

Agreement.

ARTICLE 42. CONTINGENT FEE

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

ARTICLE 43. PROHIBITION

CONSULTANT, including all subconsultants (at any tier), regardless of the level of service provided by said subconsultants, that is awarded this contract for construction management services is prohibited from participation (at any tier) on the construction of this project.

Consultant, including all subconsultants (at any tier), awarded the design contract for Interstate 5 Widening Project Between State Route 73 and Oso Parkway for the plans, specifications and estimates are not eligible to participate in this solicitation for Construction Management Services.

The firm awarded the Agreement for the Program Management Consultant Services for the Authority's Highway Programs are not eligible to participate in this procurement for Construction Management Support Services.

ARTICLE 44. DEBARMENT AND SUSPENSION CERTIFICATION

A. CONSULTANT's signature affixed herein, shall constitute a certification under penalty of perjury under the laws of the State of California, that CONSULTANT has complied with CFR Title 2, Part 180, "OMB Guidelines to Agencies on Government wide Debarment and Suspension (nonprocurement)", which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination

of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this certification must be disclosed in writing to the AUTHORITY.

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

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

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

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

1. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of CONSULTANT to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or 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 an officer or employee of any federal 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; CONSULTANT shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its

instructions.

B. This certification is a material representation of fact upon which reliance was 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 a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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

ARTICLE 46. 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.

ARTICLE 47. DISADVANTAGED BUSINESS ENTERPRISE GOAL

A. CONSULTANT hereby agrees to attain DBE participation in the amount of (15%) percent of the total Agreement amount. CONSULTANT shall enter into agreements for the services identified in Attachment entitled "Consultant Contract DBE Commitment Caltrans Exhibit 10-O2".

B. CONSULTANT is required to comply with this goal for the duration of this Agreement.

CONSULTANT's failure to comply with the DBE participation provisions may result in:

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

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

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

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

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

F. CONSULTANT, subconsultants and suppliers shall permit access to their books, records, and accounts by the Contract Administrator, or a designated representative, for the purpose of investigation to ascertain compliance with these specified requirements. Such records shall be maintained in a fashion which is readily accessible to AUTHORITY, as described in Article 17 Audit and Inspection of Records, for a minimum of four (4) years from the date of final payment by AUTHORITY.

ARTICLE 48. EQUIPMENT PURCHASE

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

B. For purchase of any item, service or consulting work not covered in CONSULTANT's Cost Proposal and exceeding \$5,000.00 prior authorization by AUTHORITY's Project Manager; three

(3) competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

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

ARTICLE 49. HEALTH AND SAFETY REQUIREMENTS

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

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

ARTICLE 50. CONFIDENTIALITY OF DATA

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

1 unauthorized use and disclosure.

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

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

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

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

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

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

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

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

25 **ARTICLE 53. EVALUATION OF CONSULTANT**

26 CONSULTANT's performance will be evaluated by AUTHORITY. A copy of the evaluation will

1 be sent to CONSULTANT for comments. The evaluation together with any comments shall be retained
2 as part of the contract record.

3 **ARTICLE 54. FORCE MAJEURE**

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

11 This Agreement shall be made effective upon execution by both parties.

12 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C- C-8-1969 to be
13 executed on the date first above written.

14 **CONSULTANT**

ORANGE COUNTY TRANSPORTATION AUTHORITY

15
16 By: _____ By: _____
17 Darrell E. Johnson
18 Chief Executive Officer

19 **APPROVED AS TO FORM:**

20
21 By: _____
22 James M. Donich
23 General Counsel

24 **APPROVED:**

25
26 By: _____

James G. Beil, PE
Executive Director, Capital Programs

Date: _____

DRAFT

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

I. DBE Participation

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

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

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

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

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

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

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

II. DBE Policy and Applicability

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

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

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

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

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

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

III. Authority's DBE Policy Implementation Directives

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

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

A. Definitions

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

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

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

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

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

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

B. "Social Disadvantage"

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

C. "Economic Disadvantage"

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

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

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

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

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

The Form 103 must include the following information:

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

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

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

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

3. Consultant Assurance of Full Compliance with Prompt Payment Provisions

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

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

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

4. DBE Subcontract Agreements

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

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

5. "Monthly DBE Trucking Verification" Form

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

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

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

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

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

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

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

V. DBE Eligibility and Commercially Useful Function Standards

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

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

VI. DBE Crediting Provisions

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

credited toward the Prime Consultant's DBE attainment.

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

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

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

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

VII. Performance of DBE Subconsultants

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

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

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

G. Listed DBE becomes bankrupt or insolvent.

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

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

VIII. Additional DBE Subconsultants

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

IX. DBE "Frauds" and "Fronts"

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

X. Consultant's Assurance Clause Regarding Non-Discrimination

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

XI. Prompt Payment Clause

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

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

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

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

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

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

XII. Administrative Remedies and Enforcement

Consultant must fully comply with the DBE contract requirements, including the Authority's DBE Program and Title 49 CFR, Part 26 "Participation of Disadvantaged Businesses in Department of Transportation Financial Assistance Programs" and ensure that all Subconsultants regardless of tier are also fully compliant. Consultant's failure to comply constitutes a material breach of contract, wherein the Authority will impose all available administrative sanctions including payment withholdings, necessary to effectuate full compliance. In instances of identified non-compliance, a Cure Notice will be issued to the Consultant identifying the DBE non-compliance matter(s) and specifying the required course of action for remedy.

The Consultant must be given ten (10) working days from the date of the Cure Notice to remedy or to (1) File a written appeal accompanied with supporting documentation and/or (2) Request a hearing with the Authority to reconsider the Authority's DBE determination. Failure to respond within the ten (10) working day period must constitute a waiver of the Consultant's right to appeal. If the Consultant files an appeal, the Authority, must issue a written determination and/or set a hearing date within ten (10) working days of receipt of the

written appeal, as applicable. A final Determination will be issued within ten (10) working days after the hearing, as applicable.

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

Failure to comply with the Cure Notice and/or to remedy the identified DBE non-compliance matter(s) is a material breach of contract and is subject to administrative remedies, including, withholding at minimum of two (2%) percent of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all withholdings.

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

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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

Lisa A. Bartlett, Chairwoman

Tim Shaw, Vice Chairman

Laurie Davies, Director

Barbara Delgleize, Director

Andrew Do, Director

Lori Donchak, Director

Michael Hennessey, Director

Steve Jones, Director

Mark A. Murphy, Director

Richard Murphy, Director

Al Murray, Director

Shawn Nelson, Director

Miguel Pulido, Director

Todd Spitzer, Director

Michelle Steel, Director

Tom Tait, Director

Greg Winterbottom, Director

EXHIBIT D: STATUS OF PAST AND PRESENT CONTRACTS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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 AND
FORMS**

DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS AND INSTRUCTIONS

A. 1. TERMS AS USED IN THIS DOCUMENT

- The term “Disadvantaged Business Enterprise” or “DBE” means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in Title 49, Part 26.5, Code of Federal Regulations (CFR), and is one of the following groups:
 1. Black American
 2. Hispanic American
 3. Native American
 4. Asian-Pacific American
 5. Subcontinent Asian American
 6. Women
- The term “bidder” also means “proposer” or “offeror.”
- The term “Agreement” also means “Contract.”
- Agency also means the local entity entering into this contract with the Contractor or Consultant.
- The term “Small Business” or “SB” is as defined in 49 CFR 26.65.

2. AUTHORITY AND RESPONSIBILITY

- A. DBEs and other small businesses are strongly encouraged to participate in the performance of Agreements financed in whole or in part with federal funds (See 49 CFR 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”). The Offeror should ensure that DBEs and other small businesses have the opportunity to participate in the performance of the work that is the subject of this solicitation and should take all necessary and reasonable steps for this assurance. The Offeror shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- B. Offerors are encouraged to use services offered by financial institutions owned and controlled by DBEs.

B. 3. SUBMISSION OF DBE INFORMATION

“Exhibit E-1 Consultant Proposal DBE (Consultant Contract) Commitment”

A “Consultant Proposal DBE (Consultant Contract) Commitment” form shall be included with the Request for Proposal. The purpose of the form is to track the proposers progress towards meeting the Contract Goal. This form collects

information on all DBEs towards meeting the contract goal. Even if no DBE participation will be reported, the Offeror must execute and return the form.

“Exhibit E-2 Consultant Contract DBE (Consultant Contract) Information”

A “Consultant Contract DBE (Consultant Contract) Information” form shall be included with the Request for Proposal. The purpose of the form is to collect data required under 49 CFR 26. This form collects information on all DBEs. Even if no DBE participation will be reported, the successful Offeror must execute and return the form.

“Exhibit E-3 Bidders List”

The U.S. Department of Transportation (DOT) requires the Authority to create and maintain a “Bidders List” containing information about all firms (DBE and non-DBE) that bid, propose or quote on the Authority’s DOT-assisted contracts, in accordance with 49 CFR Part 26.11, for use in the Authority’s overall annual DBE goal-setting process. Therefore, the Offeror shall provide the requested information for every firm who submitted a bid, proposal or quote, including the primary Offeror, whether successful or unsuccessful in their attempt to obtain a contract:

- a. Firm name;
- b. Firm address;
- c. Firm’s status as a DBE or non-DBE;
- d. Age of the firm;
- e. Type of services provided by the firm; and
- f. Range of annual gross receipts for the last year.

The “Bidders List” information must be submitted on ***Exhibit E-3*** and should be included with the proposal submittal; however, in the event that the referenced Exhibit is not included, the Exhibit shall be submitted to the Authority no later than 48 hours following proposal submission due date and timeline for the Offeror to be deemed responsive.

C. 4. DBE PARTICIPATION GENERAL INFORMATION

It is the Offeror’s responsibility to be fully informed regarding the requirements of 49 CFR, Part 26, and the Department’s (California Department of Transportation) DBE program developed pursuant to the regulations. Particular attention is directed to the following:

- A. A DBE must be a small business firm defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
- B. A certified DBE may participate as a prime contractor, subcontractor, joint venture partner, as a vendor of material or supplies, or as a trucking company.

- C. A DBE bidder, not bidding as a joint venture with a non-DBE, will be required to document one or a combination of the following:
1. The bidder is a DBE and will meet the goal by performing work with its own forces.
 2. The bidder will meet the goal through work performed by DBE subcontractors, suppliers or trucking companies.
 3. The bidder, prior to bidding, made adequate good faith efforts to meet the goal.
- D. A DBE joint venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
- E. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is, a DBE firm must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.
- F. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
- G. An Offeror who is a certified DBE is eligible to claim all of the work in the Agreement toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.

D. 5. RESOURCES

- A. The CUCP database includes the certified DBEs from all certifying agencies participating in the CUCP. If you believe a firm is certified that cannot be located on the database, please contact the Caltrans Office of Certification toll free number 1-866-810-6346 for assistance. Bidder/Proposer may call (916) 440-0539 for web or download assistance.
- B. Access the CUCP database from the Department of Transportation, Civil Rights, Business Enterprise Program website at: <http://www.dot.ca.gov/hq/bep/>.
- Click on the link in the left menu titled Find a Certified Firm
 - Click on Query Form link, located in the first sentence
 - Click on Certified DBE's (UCP) located on the first line in the center of the page
 - Click on Click To Access DBE Query Form

- Searches can be performed by one or more criteria
- Follow instructions on the screen
- “Start Search,” “Requery,” “Civil Rights Home,” and “Caltrans Home” links are located at the bottom of the query form

C. How to Obtain a List of Certified DBEs without Internet Access

DBE Directory: If you do not have Internet access, Caltrans also publishes a directory of certified DBE firms extracted from the on-line database. A copy of the directory of certified DBEs may be ordered from the Caltrans Division of Procurement and Contracts/Material and Distribution Branch/Publication Unit, 1900 Royal Oaks Drive, Sacramento, CA 95815, Telephone: (916) 445-3520.

6. MATERIALS OR SUPPLIES PURCHASED FROM DBES COUNT TOWARDS DBE CREDIT AND PURCHASES WILL COUNT TOWARDS THE DBE GOAL UNDER THE FOLLOWING CONDITIONS:

- A. If the materials or supplies are obtained from a DBE manufacturer, count one hundred percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory, or establishment that produces on the premises, the materials, supplies, articles, or equipment required under the Agreement and of the general character described by the specifications.
- B. If the materials or supplies are purchased from a DBE regular dealer, count sixty percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the Agreement are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating or maintaining a place of business provided in this section.
- C. If the person both owns and operates distribution equipment for the products, any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not an ad hoc or Agreement-by -Agreement basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this section.
- D. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions

charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

7. FOR DBE TRUCKING COMPANIES: CREDIT FOR DBES WILL COUNT TOWARDS DBE CREDIT, UNDER THE FOLLOWING CONDITIONS:

- A. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Agreement, and there cannot be a contrived arrangement for the purpose of meeting the DBE goal.
- B. The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the Agreement.
- C. The DBE receives credit for the total value of the transportation services it provides on the Agreement using trucks it owns, insures, and operates using drivers it employs.
- D. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the Agreement
- E. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by the DBE.
- F. For the purposes of this Section D, a lease must indicate that the DBE has exclusive use and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, as long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

EXHIBIT 10-01 CONSULTANT PROPOSAL DBE COMMITMENT

(Inclusive of all DBEs listed at bid proposal. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Consultant Name: _____			
5. Contract DBE Goal %: _____			
DBE Commitment Information			
6. Description of Services to be Provided	7. DBE Firm Contact Information	8. DBE Cert. Number	9. DBE %
Local Agency to Complete this Section		10. Total % Claimed	_____ %
16. Local Agency Contract Number: _____ 17. Federal-aid Project Number: _____ 18. Proposed Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate:			
19. Local Agency Representative Name (Print) _____		11. Preparer's Signature _____	
		12. Preparer's Name (Print) _____	
20. Local Agency Representative Signature _____		13. Preparer's Title _____	
		14. Date _____	
22. Local Agency Representative Title _____		15. (Area Code) Tel. No. _____	
23. (Area Code) Tel. No. _____			

INSTRUCTIONS - CONSULTANT PROPOSAL DBE COMMITMENT

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc.).
4. **Consultant Name** - Enter the consultant's firm name.
5. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
6. **Description of Services to be Provided** - Enter item of work description of services 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.
7. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
8. **DBE Cert. Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
9. **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.
10. **Total % Claimed** – Enter the total DBE participation claimed. If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts* of the LAPM).
11. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
12. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
13. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
14. **Date** - Enter the date this section of the form is signed by the preparer.
15. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

PLEASE NOTE: A firm is only eligible to count towards DBE participation in the NAICS codes contained within its California Unified Certification Program (CUCP) DBE Profile. Proposers are to verify that listed subconsultants contain DBE certification in the NAICS codes that they are being proposed to perform.

Local Agency Section:

The Local Agency representative shall:

16. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
17. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
18. **Contract Execution Date** - Enter date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
19. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
20. **Local Agency Representative 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.
21. **Date** - Enter the date the Local Agency Representative signs the form.
22. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
23. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

EXHIBIT 10-O2 CONSULTANT CONTRACT DBE INFORMATION

(Inclusive of all DBEs listed at contract award. Refer to instructions on the reverse side of this form)

Consultant to Complete this Section			
1. Local Agency Name: _____			
2. Project Location: _____			
3. Project Description: _____			
4. Total Contract Award Amount: \$ _____			
5. Consultant Name: _____			
6. Contract DBE Goal %: _____			
7. Total Dollar Amount for <u>all</u> Subconsultants: \$ _____			
8. Total Number of <u>all</u> Subconsultants: _____			
Award DBE/DBE Information			
9. Description of Services to be Provided	10. DBE/DBE Firm Contact Information	11. DBE Cert. Number	12. DBE Dollar Amount
<div style="background-color: #d3d3d3; text-align: center; padding: 2px;">Local Agency to Complete this Section</div> <div style="padding: 5px;"> 20. Local Agency Contract Number: _____ 21. Federal-aid Project Number: _____ 22. Contract Execution Date: _____ Local Agency certifies that all DBE certifications are valid and the information on this form is complete and accurate: 23. Local Agency Representative Name (Print) _____ 24. Local Agency Representative Signature 25. Date _____ 26. Local Agency Representative Title 27. (Area Code) Tel. No. _____ </div>		13. Total Dollars Claimed <div style="text-align: right;">\$ _____</div>	14. Total % Claimed <div style="text-align: right;">_____ %</div>
<div style="background-color: #d3d3d3; text-align: center; padding: 2px;">Caltrans to Complete this Section</div> <div style="padding: 5px;"> Caltrans District Local Assistance Engineer (DLAE) certifies that this form has been reviewed for completeness: 28. DLAE Name (Print) 29. DLAE Signature 30. Date _____ </div>		15. Preparer's Signature 16. Preparer's Name (Print) 17. Preparer's Title 18. Date 19. (Area Code) Tel. No. _____	

Distribution: (1) Copy – Email a copy to the Caltrans District Local Assistance Engineer (DLAE) within 30 days of contract award. Failure to send a copy to the DLAE within 30 days of contract award may result in delay of payment.
(2) Copy – Include in award package sent to Caltrans DLAE

INSTRUCTIONS - CONSULTANT CONTRACT AWARD DBE INFORMATION

Consultant Section

The Consultant shall:

1. **Local Agency Name** – Enter the name of the local or regional agency that is funding the contract.
2. **Project Location** - Enter the project location as it appears on the project advertisement.
3. **Project Description** - Enter the project description as it appears on the project advertisement (Bridge Rehab, Seismic Rehab, Overlay, Widening, etc).
4. **Total Contract Award Amount** - Enter the total contract award dollar amount for the prime consultant.
5. **Consultant Name** - Enter the consultant's firm name.
6. **Contract DBE Goal %** - Enter the contract DBE goal percentage, as it was reported on the Exhibit 10-I *Notice to Proposers DBE Information* form. See LAPM Chapter 10.
7. **Total Dollar Amount for all Subconsultants** – Enter the total dollar amount for all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
8. **Total number of all subconsultants** – Enter the total number of all subcontracted consultants. SUM = (DBE's + all Non-DBE's). Do **not** include the prime consultant information in this count.
9. **Description of Services to be Provided** - Enter item of work description of services 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.
10. **DBE Firm Contact Information** - Enter the name and telephone number of all DBE subcontracted consultants. Also, enter the prime consultant's name and telephone number, if the prime is a DBE.
11. **DBE Cert. Number** - Enter the DBE's Certification Identification Number. All DBEs must be certified on the date bids are opened. (DBE subcontracted consultants should notify the prime consultant in writing with the date of the decertification if their status should change during the course of the contract.)
12. **DBE Dollar Amount** - Enter the subcontracted dollar amount of the work to be performed or service to be provided. Include the prime consultant if the prime is a DBE, and include DBEs that are not identified as subconsultants on the Exhibit 10-O1 *Consultant Proposal DBE Commitment* form. See LAPM Chapter 9 for how to count full/partial participation.
13. **Total Dollars Claimed** – Enter the total dollar amounts for column 13.
14. **Total % Claimed** – Enter the total DBE participation claimed for column 13. SUM = (item "14. Total Participation Dollars Claimed" divided by item "4. Total Contract Award Amount"). If the Total % Claimed is less than item "6. Contract DBE Goal", an adequately documented Good Faith Effort (GFE) is required (see Exhibit 15-H *DBE Information - Good Faith Efforts of the LAPM*).
15. **Preparer's Signature** – The person completing this section of the form for the consultant's firm must sign their name.
16. **Preparer's Name (Print)** – Clearly enter the name of the person signing this section of the form for the consultant.
17. **Preparer's Title** - Enter the position/title of the person signing this section of the form for the consultant.
18. **Date** - Enter the date this section of the form is signed by the preparer.
19. **(Area Code) Tel. No.** - Enter the area code and telephone number of the person signing this section of the form for the consultant.

Local Agency Section:

The Local Agency representative shall:

20. **Local Agency Contract Number** - Enter the Local Agency Contract Number.
21. **Federal-Aid Project Number** - Enter the Federal-Aid Project Number.
22. **Contract Execution Date** - Enter the date the contract was executed and Notice to Proceed issued. See LAPM Chapter 10, page 23.
23. **Local Agency Representative Name (Print)** - Clearly enter the name of the person completing this section.
24. **Local Agency Representative 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.
25. **Date** - Enter the date the Local Agency Representative signs the form.
26. **Local Agency Representative Title** - Enter the position/title of the person signing this section of the form.
27. **(Area Code) Tel. No.** - Enter the area code and telephone number of the Local Agency representative signing this section of the form.

PLEASE NOTE: A firm is only eligible to count towards DBE participation in the NAICS codes contained within its California Unified Certification Program (CUCP) DBE Profile. Proposers are to verify that listed subconsultants contain DBE certification in the NAICS codes that they are being proposed to perform.

Caltrans Section:

Caltrans District Local Assistance Engineer (DLAE) shall:

28. DLAE Name (Print) – Clearly enter the name of the DLAE.

29. DLAE Signature – DLAE must sign this section of the form to certify that it has been reviewed for completeness.

30. Date - Enter the date that the DLAE signs this section the form

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BIDDERS LIST

Bidder/Offeror: _____ **IFB/RFP No.:** _____

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

The Bidder/Offeror is to complete all requested information on **Exhibit __: "Bidders List"** for themselves and all subcontractors, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall annual DBE goal-setting process. ***The "Bidders List" content will not be considered in evaluating the bid/proposal or determining award of any contract.***

Prime Bidder's/Offeror's Information:

Name of Prime's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Name of Sub's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Provide the following information for every subcontractor (DBE and non-DBE) included in this bid, proposal or quote.

Name of Sub's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"): <input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Native American <input type="checkbox"/> Woman <input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other	<input type="checkbox"/> Less than \$1 million
	<input type="checkbox"/> Less than \$5 million
	<input type="checkbox"/> Less than \$10 million
	<input type="checkbox"/> Less than \$15 million
	<input type="checkbox"/> More than \$15 million

Provide the following information for every subcontractor (DBE and non-DBE) included in this bid, proposal or quote.

Name of Sub's Firm:	Phone: ()
Firm Address:	Fax: ()
	E-mail:
	Type of work/services/materials provided:
Number of years in business:	
Contact Person:	Title:
Is the firm currently certified as a DBE under 49 CFR Part 26? <input type="checkbox"/> Yes <input type="checkbox"/> No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):	<input type="checkbox"/> Less than \$1 million
<input type="checkbox"/> African American <input type="checkbox"/> Asian Pacific American	<input type="checkbox"/> Less than \$5 million
<input type="checkbox"/> Native American <input type="checkbox"/> Woman	<input type="checkbox"/> Less than \$10 million
<input type="checkbox"/> Hispanic American <input type="checkbox"/> Subcontinent Asian American	<input type="checkbox"/> Less than \$15 million
<input type="checkbox"/> Other	<input type="checkbox"/> More than \$15 million

If necessary, this "Bidders List" form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract. Failure of the Bidder/Offeror to submit the required "Bidders List" form will deem the Bidder/Offeror non-responsive.

DBE INFORMATION - GOOD FAITH EFFORTS

Federal-aid Project No. _____ Bid Opening Date _____

The Orange County Transportation Authority established a Disadvantaged Business Enterprise (DBE) goal of **17%** for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the "Local Agency Bidder DBE Commitment" form indicates that the bidder has met the DBE goal. This will protect the bidder's eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a DBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the "Local Agency Bidder DBE Commitment" form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled "Submission of DBE Commitment" of the Special Provisions:

- A. The names and dates of each publication in which a request for DBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>

- B. The names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of DBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>

- C. The items of work which the bidder made available to DBE firms including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate DBE participation was made available to DBE firms.

Items of Work	Bidder Performs (Y/N)	Normally Item	Breakdown of Items	Amount (\$)	Percentage Of Contract

- D. The names, addresses and phone numbers of rejected DBE firms, the reasons for the bidder's rejection of the DBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each DBE if the selected firm is not a DBE:

Names, addresses and phone numbers of rejected DBEs and the reasons for the bidder's rejection of the DBEs:

Names, addresses and phone numbers of firms selected for the work above:

- E. 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:

- F. Efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials or related assistance or services, excluding supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate:

- G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results

- H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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

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

CEM-2402F (REV 02/2008)

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

Copy Distribution-Caltrans contracts:

Original - District Construction

Copy- Business Enterprise Program

Copy- Contractor

Copy Resident Engineer

Copy Distribution-Local Agency contracts:

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

Copy- District Local Assistance Engineer

Copy- Local Agency file

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

July 1, 2012 LPP 09-02

DRAFT

MONTHLY RACE-CONSCIOUS DBE SUBCONTRACTORS PAID REPORT SUMMARY AND PAYMENT VERIFICATION (Form 103)

Reporting Period (month): _____, 20 ____

Contract/Project Number: _____ Report Number: _____ Report prepared by: _____
 Project Name: _____ Original Contract Award Amount: _____ Title: _____
 Contract Award Date: _____ Current Contract Value: _____ Report reviewed by: _____
 Prime Name: _____ % of Project Complete: _____ Signature: _____
 Address: _____ OCTA Payment This Month: _____ Title: _____
 Telephone Number: () _____ Total \$ Paid to Prime to date: _____ Date of Last Progress Payment rec'd from OCTA: _____
 Contract DBE Goal: ____% (% of total Contract) Total \$ Paid to DBEs this Reporting Period: _____
 Prime's DBE Commitment: ____% Total \$ Paid to DBEs to date: _____ DBE Goal Attainment to date: ____%

DBE SUB CONTRACTORS	Dollar Amount Paid This Month	Dollar Amount Paid to Date	Type of Work Performed (Scope)	Original Dollar Amount Committed to DBE at Contract Award	\$ +/- resulting from Change Order Activity	% of Work Completed	FOR AUTHORITY USE ONLY
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor ¹ Broker ¹ _____ Supplier: Regular Dealer ¹ or Manufacturer ¹ _____ Attach verification of payment							
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor ¹ Broker ¹ _____ Supplier: Regular Dealer ¹ or Manufacturer ¹ _____ Attach verification of payment							
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Subcontractor ¹ Broker ¹ _____ Supplier: Regular Dealer ¹ or Manufacturer ¹ _____ Attach verification of payment							

Comments/Issues and/or documented Good Faith Efforts performed during this reporting period: _____

If necessary, this form can be duplicated to list all DBE subcontractors paid in this reporting period.

Form 103 (rev. 07/12)

EXHIBIT F: REQUEST FOR DBE SUBCONTRACTOR SUBSTITUTION



ORANGE COUNTY TRANSPORTATION AUTHORITY

REQUEST FOR DBE SUBCONTRACTOR/SUPPLIER SUBSTITUTION

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

Project No.:	Project Name:
Prime Contractor:	
Business Address:	
Please Provide the Following Information for the Listed or Approved DBE Subcontractor:	
Subcontractor Name:	DBE Certification No:
Address:	
Contact Person:	Phone:
Email Address:	
Description of work:	
Original Contract Value:	Current Contract Value:
Reason for Substitution:	
Prime Contractor to select either Option A or B to meet substitution requirements:	
p A. Please provide the following information if Contractor elects to substitute a DBE subcontractor with another DBE subcontractor.	
Subcontractor Name:	DBE Certification No:

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

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

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

Contract Representative Signature	Title
Business Phone Number	Date

CONCURRENCE BY ORIGINALLY PROPOSED DBE FIRM:

Signature

Title

Print Name

Date

AUTHORITY APPROVAL:

Date Request Received: _____

Date Letter Sent to Original DBE Subcontractor: _____

Authority's Approval of Request for Substitution? ☐ Yes ☐ No

If no, please state reason:

Reviewed by: _____ Date: _____

EXHIBIT G: RESTRICTIONS ON LOBBYING

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

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

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**CERTIFICATION OF
RESTRICTIONS ON LOBBYING**

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

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

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

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

Executed this _____ day of _____, 20____

By _____
(Signature of authorized official)

(Title of authorized official)

DISCLOSURE OF LOBBYING ACTIVITIES

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

Approved by
OMB
003480045

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

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

Reporting Entity: _____ Page _____ of _____

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EXHIBIT H: SAFETY SPECIFICATIONS

LEVEL 1 SAFETY SPECIFICATIONS**Construction Management Services for RFP 8-1969, I-5 HOV Improvement****PART I – GENERAL****1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS**

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

G. INJURY AND ILLNESS PREVENTION PLAN

The Consultant shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP

shall be implemented and enforced by the Consultant and its sub-tier contractors, suppliers, and vendors.

- H. Consultant shall submit to the Authority a copy their company's substance abuse prevention policy.
- I. Consultant shall submit to the Authority a copy their company's Safety policy and procedures manual.

1.2 HAZARD COMMUNICATION

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

1.3 HEAT ILLNESS PREVENTION PROGRAM

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

1.4 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any damage to the Authority's property, or incidents involving third party property damage, or reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration) to Authority employees and agents; Consultant, contractor, vendor employees or visitors and members of the general public that occurs or arises from the performance of Authority's contract work. A comprehensive investigation and written report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- B. A serious injury or incident may 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. 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.

1.4 PERSONAL PROTECTIVE EQUIPMENT

- A. The Consultant, its sub-tier Consultants, suppliers, and employees are required to comply with the Authority's personal protective equipment (PPE) policy while performing work at any Authority facility, i.e. eye protection policy, hearing protection policy, head protection, safety vests, Work Shoe Policy.

- B. The Consultant, its sub-tier Consultants, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, class 3 high visibility reflective safety clothing, or other PPE required to perform their work safely on Authority projects. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.5 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Title 40, Code of Federal Regulations (40 CFR)
- E. USACE Construction Quality Management Manual (EM 385-1-1)
- F. Construction Industry Institute (CII)
- G. CalTrans Construction Management Procedures

END OF SECTION

EXHIBIT I: CERTIFICATION OF CONSULTANT COMMISSION AND FEES

CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

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

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

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this contract involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

(Date)

(Signature)

**EXHIBIT J: CONSULTANT CERTIFICATION OF CONTRACT COSTS AND
FINANCIAL MANAGEMENT SYSTEM**

**EXHIBIT 10-J CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL
MANAGEMENT SYSTEM**

*(Note: If requesting to utilize the Safe Harbor Indirect Cost Rate submit Attachment 1 of
DLA-OB 13-07 - Safe Harbor Indirect Cost Rate for Consultant Contracts found at
http://www.dot.ca.gov/hq/LocalPrograms/DLA_OB/DLA_OB.htm in lieu of this form.)*

Certification of Final Indirect Costs:

Consultant Firm Name: _____

Indirect Cost Rate: _____ Date of Proposal Preparation (mm/dd/yyyy): _____

Fiscal Period Covered for Indirect Cost Rate Developed (mm/dd/yyyy to mm/dd/yyyy): _____

Contract Number: _____ Project Number: _____

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$_____ and the number of States in which the firm does business is _____.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 –Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ _____

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

* Consultant Certification Signature: _____

Consultant Certifying (Print Name and Title):

Name: _____

Title: _____

Consultant Contact Information:

Email: _____

Phone number: _____

Date of Certification (mm/dd/yyyy): _____

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

Note: *Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.*

Distribution: 1) Original to Caltrans Audits and Investigations
2) Retained in Local Agency Project Files

EXHIBIT K: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

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

Offeror: _____

RFP No.: _____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

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

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

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:
