

1 previous bond for ten percent (10%) of each option term amount. In the event the corporate surety elects  
2 not to renew the bond, CONTRACTOR shall provide AUTHORITY an irrevocable letter of credit in the  
3 same amount as the bond;

4 (4) Upon written notice by AUTHORITY that CONTRACTOR has defaulted under this  
5 Agreement, the corporate surety will have ten (10) business days to make a determination on the claim  
6 and to notify AUTHORITY accordingly.

## 7 **ARTICLE 12. INSURANCE**

8 A. CONTRACTOR shall purchase and maintain with an insurer or insurers acceptable to  
9 AUTHORITY policies of insurance, which will protect CONTRACTOR, AUTHORITY, and any other party  
10 having an interest deriving from this Agreement, from claims that may arise from CONTRACTOR's acts  
11 or omissions or from the acts or omissions of CONTRACTOR's subcontractors or other agents.

12 B. During performance hereunder, and throughout the term of this Agreement,  
13 CONTRACTOR shall maintain the following insurance, which shall be full-coverage insurance not subject  
14 to self-insurance conditions (except as permitted in writing by AUTHORITY), and CONTRACTOR shall  
15 not, of its own initiative, cause such insurance to be canceled or materially changed during the term of  
16 this Agreement. CONTRACTOR may purchase an excess liability policy to comply with the minimum  
17 liability requirements of this Agreement.

18 (1) Workers' Compensation insurance with the limits established and required by the  
19 State of California with a waiver of subrogation favorable to the AUTHORITY during all phases of the  
20 Agreement.

21 (2) Employers' Liability insurance with minimum limits of One Million Dollars  
22 (\$1,000,000) per occurrence during all phases of the Agreement.

23 (3a) Commercial General Liability insurance, to include Premises, Completed  
24 Operations, Independent Contractors'. Contractual Liability, Bodily Injury, Property Damage and Personal  
25 Injury liability, with minimum limits of One Million Dollars (\$1,000,000) per occurrence with an annual  
26 aggregate of Two Million Dollars (\$2,000,000) for this coverage during the pre-revenue (non-testing)

1 phase of the Agreement.

2 (3b) Commercial General Liability insurance, to include Premises, Completed  
3 Operations, Independent Contractors'. Contractual Liability, Bodily Injury, Property Damage and Personal  
4 Injury Liability, with minimum limits of Twenty-Five Million Dollars (\$25,000,000) per occurrence and  
5 annual aggregate for this coverage during the pre-revenue (testing) phase of the Agreement.

6 (3c) Commercial General Liability insurance, to include Premises, Completed  
7 Operations, Independent Contractors'. Contractual Liability, Bodily Injury, Property Damage and Personal  
8 Injury Liability, with minimum limits of Sixty Million Dollars (\$60,000,000) per occurrence and annual  
9 aggregate for this coverage during the revenue phase of the Agreement.

10 (4) Commercial Automobile insurance coverage to include owned, non-owned and  
11 hired vehicles, with a minimum combined single limit of liability for Bodily Injury and Property Damage of  
12 One Million Dollars (\$1,000,000) per occurrence and annual aggregate to include collision and  
13 comprehensive coverage of not less than the actual cash value of the vehicle with a limited deductible  
14 not to exceed \$1,000. AUTHORITY requires this coverage during all phases of the Agreement.

15 (5) Employment Practices Liability with Third Party coverage to protect against  
16 discrimination and harassment with minimum limits of Three Million Dollars (\$3,000,000) per occurrence  
17 and annual aggregate during all phases of the Agreement.

18 (6) All Risk Property coverage to protect rolling stock at full replacement cost subject  
19 to no more than a Fifty Thousand Dollar (\$50,000) deductible naming AUTHORITY as loss payee. All  
20 loss adjustments shall include AUTHORITY. This coverage will be in place immediately upon delivery of  
21 OC Streetcar vehicles.

22 (7) All Risk Property coverage to protect business personal property of  
23 CONTRACTOR at replacement cost subject to a not to exceed a Ten Thousand Dollar (\$10,000)  
24 deductible during all phases of the Agreement.

25 C. Not less than ten (10) working days prior to commencement of this Agreement,  
26 CONTRACTOR shall furnish to AUTHORITY's Contract Administrator a broker-issued certificate of

1 insurance showing the required insurance coverages for CONTRACTOR and further providing that:

2 (1) AUTHORITY, its Officers, Directors, Employees and Agents are named as additional  
3 insured(s) on the Commercial General Liability and Commercial Automobile insurance policies with  
4 respect to performance hereunder; and

5 (2) The coverage shall be primary and noncontributory as to any other insurance with  
6 respect to performance hereunder; and

7 (3) Thirty (30) days prior written notice of cancellation or material change in insurance  
8 coverage to be given to AUTHORITY.

9 D. Within ninety (90) days from the effective date of this Agreement, CONTRACTOR shall  
10 furnish to AUTHORITY's Contract Administrator a copy of the actual policy endorsement(s) naming  
11 AUTHORITY as an additional insured as specified in paragraph C, subparagraph 1 of this Article. Each  
12 endorsement shall state the insurance policy number, the policy term and the insurance coverages for  
13 which AUTHORITY is an additional insured.

14 E. "Occurrence," as used in this Article, means any event or related exposure to conditions  
15 that result in bodily injury, property damage or other types of losses resulting from the performance of this  
16 contract.

17 F. Contractor has the sole responsibility for determining the limits of coverage required to be  
18 obtained by subcontractors. Subcontractors will be required to include Authority and other project  
19 stakeholders as additional insureds on the Commercial General Liability, auto, and excess liability  
20 policies.

21 G. CONTRACTOR, in the case of an accident, shall immediately notify AUTHORITY of the  
22 accident and act on AUTHORITY's behalf in the following manner:

23 (1) conduct an investigation according to the OC Streetcar Accident Investigation  
24 procedures of the accident and provide copies of reports and photographs to AUTHORITY;

25 (2) secure all evidence, including the AUTHORITY's-owned vehicle(s);

26 (3) provide for towing and storage of AUTHORITY vehicles if needed;

1 (4) defend and indemnify AUTHORITY in any and all claims or lawsuits resulting from  
2 the accident and pursue claims on behalf of AUTHORITY for damage to AUTHORITY-owned vehicles or  
3 property and any resulting loss of revenue. CONTRACTOR shall periodically communicate with  
4 AUTHORITY's Risk Management Department on the status of accident-related events and claims  
5 activities.

6 **ARTICLE 13. WARRANTY**

7 A. CONTRACTOR represents that it is fully experienced and properly qualified to perform  
8 the class of service required for this Agreement and that it is properly licensed, equipped, organized, and  
9 financed to perform all services stated in Exhibit A: Scope of Work.

10 B. CONTRACTOR warrants that all services shall be in accordance with this Agreement and  
11 shall comply with the performance standards stated in Exhibit A: Scope of Work. In the event of a breach  
12 of this warranty, CONTRACTOR shall take the necessary actions to correct the breach and  
13 consequences thereof, at the CONTRACTOR's sole expense, in the most expeditious manner as  
14 permitted by existing circumstances. If the CONTRACTOR does not promptly take steps to correct the  
15 breach upon notification by AUTHORITY, the AUTHORITY, without waiving any other rights or remedies  
16 it may have at law or otherwise, may do so or cause others to do so and the CONTRACTOR shall  
17 promptly reimburse the AUTHORITY for all expenses and costs incurred in connection therewith.

18 **ARTICLE 14. AUTHORITY-FURNISHED FACILITIES, VEHICLES, AND EQUIPMENT**

19 A. CONTRACTOR shall be liable to AUTHORITY for any damage to or loss of AUTHORITY  
20 facilities, vehicles, radios, digital communications equipment, and other components of said vehicles, and  
21 shall also be liable to AUTHORITY or such other parties who are under contract to AUTHORITY for  
22 damage to or loss of other office equipment or property furnished by AUTHORITY to CONTRACTOR for  
23 CONTRACTOR's possession and use under this Agreement, unless such damage or loss results from  
24 the negligence, misconduct, or breach of an agreement by such other party who is under contract to  
25 AUTHORITY except as specified in Section C below. CONTRACTOR's liability in this regard shall  
26 include, but not be limited to, damage or loss caused by collision, negligence, abuse, vandalism, fire or

1 theft, but in no event shall such liability exceed the replacement cost of the vehicle(s), equipment, or other  
2 property so damaged or lost.

3 B. AUTHORITY shall provide some computer software applications identified as  
4 AUTHORITY responsibilities in Exhibit A. CONTRACTOR shall have no ownership rights to the software  
5 license, records, and software maintenance. CONTRACTOR shall return all copies of the software,  
6 technical documentation, and other materials provided by AUTHORITY at the expiration or termination  
7 of this Agreement or upon request by AUTHORITY. CONTRACTOR acknowledges that all software,  
8 documentation and other materials provided may include trade secrets and other confidential and  
9 proprietary information. CONTRACTOR shall maintain such information in confidence and not disclose  
10 the information directly or indirectly to any third party. CONTRACTOR shall make no attempt to reverse  
11 compile, disassemble, or otherwise reverse engineer the software or any portion thereof. AUTHORITY  
12 shall provide all maintenance for the software applications it provides.

13 C. Unless otherwise provided in this Agreement, upon delivery to CONTRACTOR or  
14 manufacture or acquisition by it of any materials, parts, tooling or other property to which AUTHORITY  
15 possesses title, or which AUTHORITY has rented or leased and furnished to CONTRACTOR,  
16 CONTRACTOR assumes the risk of, and shall be responsible for, any damage to or loss of such property.  
17 In any event, upon the conclusion of this Agreement or upon demand by AUTHORITY, CONTRACTOR  
18 shall return such property to AUTHORITY in the condition in which it was received, except for reasonable  
19 wear and tear, and except for such property as has been reasonably consumed in performance of work  
20 under this Agreement.

## 21 **ARTICLE 15. NOTICES**

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

26 /

1 To CONTRACTOR:

To AUTHORITY:

2 Orange County Transportation Authority

3 550 South Main Street

4 P.O. Box 14184

5 Orange, CA 92863-1584

6 ATTENTION: Irene Green

7 Senior Contract Administrator

8 (714) 560-5317

9 e-mail: [igreen@octa.net](mailto:igreen@octa.net)

10 Cc: OC Streetcar Project Manager

11 (714) 560-5535

12 e-mail: [ccleveland@octa.net](mailto:ccleveland@octa.net)

13 **ARTICLE 16. AUTHORITY OVERSIGHT AND MANAGEMENT**

14 A. AUTHORITY's OC Streetcar Project Manager ("Project Manager"), or designee, shall be  
15 the single point of contact for CONTRACTOR and be responsible for performance management.  
16 AUTHORITY shall assign personnel from various departments to monitor different aspects of  
17 CONTRACTOR's performance to assist the Project Manager in ensuring compliance with Exhibit A:  
18 Scope of Work. All formal communications regarding technical performance under this Agreement shall  
19 be between the Project Manager and CONTRACTOR. Communications for all contractual issues arising  
20 out of CONTRACTOR's performance under this Agreement shall be between the Manager of Contracts  
21 Administration and Materials Management, or designee, and CONTRACTOR and shall be subject to  
22 Article 1 herein.

23 B. Any verbal additions, deletions, or modifications of any kind made to the Agreement,  
24 including changes to the Scope of Work and/or other Exhibits or Attachments by any personnel not  
25 specified in paragraph A, shall be considered unauthorized and invalid. Valid modifications to the  
26 Agreement, Scope of Work, other Exhibits and Attachments shall be in the form of a written amendment,

1 signed by either AUTHORITY's Chief Executive Officer or Manager of Contracts Administration and  
2 Materials Management.

### 3 **ARTICLE 17. INDEPENDENT CONTRACTOR**

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

### 11 **ARTICLE 18. CHANGES**

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

### 20 **ARTICLE 19. DISPUTES**

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

26 B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently

1 with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director,  
2 CAMM. This Disputes clause does not preclude consideration of questions of law in connection with  
3 decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the  
4 decision of any AUTHORITY official or representative on a question of law, which questions shall be  
5 settled in accordance with the laws of the state of California.

6 **ARTICLE 20. TERMINATION**

7 A. AUTHORITY may terminate this Agreement for its convenience at any time, in whole or  
8 part, by giving CONTRACTOR written notice thereof. Upon termination, AUTHORITY shall pay  
9 CONTRACTOR its allowable costs incurred to date of that portion terminated. Said termination shall be  
10 construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal Acquisition  
11 Regulation (FAR) and specific subparts and other provisions thereof applicable to termination for  
12 convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said notice shall be  
13 given to CONTRACTOR in accordance with the provisions of the FAR referenced above and ARTICLE  
14 15 herein. Upon receipt of said notification, CONTRACTOR agrees to comply with all applicable  
15 provisions of the FAR pertaining to termination for convenience.

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

26 /



1                   **ARTICLE 21. INDEMNIFICATION**

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

8                   **ARTICLE 22. ASSIGNMENTS AND SUBCONTRACTS**

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

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

20

Subcontractor Name and Address	Function

21  
22  
23  
24

25                   **ARTICLE 23. ACCESS TO RECORDS AND REPORTS**

26                   CONTRACTOR shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the

1 Comptroller General of the United States, or other agents of AUTHORITY, such access to  
2 CONTRACTOR's accounting books, records, payroll documents, and facilities of the CONTRACTOR  
3 that are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all  
4 accounting books, records, work data, documents, and activities related hereto. CONTRACTOR shall  
5 maintain such books, records, data, and documents in accordance with generally accepted accounting  
6 principles and shall clearly identify and make such items readily accessible to such parties during  
7 CONTRACTOR's performance hereunder and for a period of four (4) years from the date of final payment  
8 by AUTHORITY. AUTHORITY's right to audit books and records directly related to this Agreement shall  
9 also extend to all first-tier subcontractors identified in **Error! Reference source not found.** of this  
10 Agreement. CONTRACTOR shall permit any of the foregoing parties to reproduce documents by any  
11 means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

#### 12 **ARTICLE 24. CONFLICT OF INTEREST**

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

#### 21 **ARTICLE 25. CODE OF CONDUCT**

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

#### 25 **ARTICLE 26. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

26 CONTRACTOR and all subcontractors performing work under this Agreement shall be prohibited

1 from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY,  
2 either as a prime contractor or subcontractor. Failure to refrain from such representation may result in  
3 termination of this Agreement.

4 **ARTICLE 27. PROHIBITION ON COMMERCIAL ACTIVITIES**

5 Neither CONTRACTOR nor any CONTRACTOR Personnel shall establish any commercial  
6 activity, issue concessions, or permits of any kind to third Parties for establishing any activities on  
7 AUTHORITY property.

8 **ARTICLE 28. FEDERAL, STATE, AND LOCAL LAWS**

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

12 **ARTICLE 29. GENERAL WAGE RATES AND DAVIS-BACON AND COPELAND ANTI-**  
13 **KICKBACK ACTS**

14 A. State Prevailing Wage and Labor Code Requirements. Notice is hereby given that, in  
15 accordance with the provisions of California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2,  
16 CONTRACTOR is required to pay not less than the general prevailing rate of per diem wages for work of  
17 a similar character in the locality in which the public works is performed, and not less than the general  
18 prevailing rate of per diem wages for holiday and overtime work. In that regard, the Director of the  
19 Department of Industrial Relations of the State of California (DIR) is required to and has determined such  
20 general prevailing rates of per diem wages. CONTRACTOR agrees to comply with the provisions of  
21 California Labor Code Sections 1771, 1774 and 1775 concerning the payment of prevailing rates of  
22 wages to workers and the penalties for failure to pay prevailing wages. Copies of such prevailing rates  
23 of per diem wages may be obtained online at (<http://www.dir.ca.gov/>), are on file at the Authority's office,  
24 and will be available to any interested party upon request. In accordance with the Labor Code, no  
25 workman employed upon work under this Agreement shall be paid less than the above referenced  
26 prevailing wage rate. A copy of said rates shall be posted at each job site during the course of

1 construction.

2 1. This Agreement is subject to compliance monitoring and enforcement by the DIR.  
3 The DIR shall monitor and enforce compliance with applicable prevailing wage requirements for this  
4 Agreement. The reporting requirements may be found at [https://www.dir.ca.gov/Public-](https://www.dir.ca.gov/Public-Works/Contractors.html)  
5 [Works/Contractors.html](https://www.dir.ca.gov/Public-Works/Contractors.html). CONTRACTOR is responsible for complying with all requirements of the DIR,  
6 including filing electronic payroll reports.

7 2. Pursuant to Labor Code Section 1771.1, CONTRACTOR and any subcontractor  
8 shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of  
9 the Public Contract Code, or engage in the performance of any contract for public work on a public works  
10 project unless registered with the DIR and qualified to perform public work pursuant to Labor Code  
11 Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit  
12 a bid that is authorized by Business and Professions Code Section 7029.1 or by Public Contract Code  
13 Section 10164 or 20103.5, provided the contractor is registered to perform public work pursuant to  
14 Section 1725.5 at the time the contract is awarded. CONTRACTOR shall not perform any work under  
15 this Agreement with any subcontractor who is ineligible to perform work on the public works project  
16 pursuant to Section 1777.1 or 1777.7 of the Labor Code.

17 3. Pursuant to Labor Code Section 1771.4, CONTRACTOR will post all job site  
18 notices, as prescribed by regulation.

19 4. CONTRACTOR, and all subcontractors, shall comply with the provisions of Labor  
20 Code Sections 1777.5 and 1777.6 concerning the employment of apprentices. CONTRACTOR shall  
21 have full responsibility for compliance with such Labor Code sections for all apprenticeable occupations,  
22 regardless of any other contractual or employment relationships alleged to exist.

23 5. CONTRACTOR agrees to comply with the provisions of Labor Code Section  
24 1776, including the keeping of payroll records and furnishing certified copies thereof in accordance with  
25 said. CONTRACTOR is responsible for compliance with Section 1776 by all subcontractors.

26 /

1           6.       CONTRACTOR agrees to comply with all applicable Labor Code provisions  
2 governing legal working hours and shall forfeit, as a penalty to AUTHORITY, twenty-five dollars (\$25.00)  
3 for each laborer, workman or mechanic employed in the execution of the contract, by him or any sub-  
4 contractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which  
5 the laborer, workman or mechanic is required or permitted to labor more than eight (8) hours in any one  
6 calendar day and forty (40) hours in any one calendar week in violation of the Labor Code.

7           7.       In accordance with the provisions of Labor Code Section 3700, CONTRACTOR  
8 will be required to secure the payment of compensation to his or her employees.

9           B.       Federal Prevailing Wage Rates and Anti-Kickback.

10          (1)       CONTRACTOR shall comply with the Davis-Bacon Act, 40 U.S.C. Sections 3141-  
11 3144 and Sections 3146-3148, as supplemented by U.S. DOL regulations at 29 CFR part 5, "Labor  
12 Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."  
13 Under 49 U.S.C. Section 5333(a), prevailing wage protections apply to laborers and mechanics employed  
14 on FTA-assisted construction, alteration, or repair projects. In accordance with the statute,  
15 CONTRACTOR shall pay wages to laborers and mechanics at a rate not less than the prevailing wages  
16 specified in a wage determination made by the Secretary of Labor. CONTRACTOR agrees to pay wages  
17 not less than once per week. CONTRACTOR shall comply with the Davis-Bacon Labor Provisions of 2  
18 CFR Section 5.5, as set forth in Exhibit A, "General Provisions."

19          (2)       CONTRACTOR shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C.  
20 Section 3145), as supplemented by U.S. DOL regulations at 29 CFR part 3, "Contractors and  
21 Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from  
22 the United States." CONTRACTOR is prohibited from inducing, by any means, any person employed in  
23 the construction, completion, or repair of public work, to give up any part of the compensation to which  
24 he or she is otherwise entitled.

25           **ARTICLE 30. EQUAL EMPLOYMENT OPPORTUNITY**

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

1 against any employee or applicant for employment because of race, religion, color, sex, age, or national  
2 origin. CONTRACTOR 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 31. NOTICE OF LABOR DISPUTE**

8 A. CONTRACTOR shall give AUTHORITY notice of any union organizing activity when  
9 CONTRACTOR is aware of such activity. In the event that an election is held, the results of the election  
10 shall be communicated to AUTHORITY within eight (8) hours after the voting results are known to  
11 CONTRACTOR.

12 B. Whenever CONTRACTOR has knowledge that any actual or potential labor dispute may  
13 delay performance of this Agreement, CONTRACTOR shall immediately notify and submit all relevant  
14 information to AUTHORITY, including its plan for continuing to provide transportation services.  
15 CONTRACTOR shall insert the substance of this entire clause in all, if any, subcontracts hereunder.

16 C. If a labor dispute results in a work slowdown or labor strike whereby CONTRACTOR does  
17 not have sufficient labor force to provide the transportation services specified in this Agreement,  
18 AUTHORITY may withhold payments to CONTRACTOR related to the percentage of the variable costs  
19 reimbursement equivalent to the percentage of transportation service not being provided until the work  
20 slowdown or labor strike has ended.

21 D. As provided under 61, Force Majeure, CONTRACTOR may be excused from operating  
22 service interrupted as a result of a strike but is encouraged to work with AUTHORITY to establish a  
23 contingency plan in order to ensure continued service to the public. Within 180 days after the date of this  
24 Agreement, CONTRACTOR shall work with AUTHORITY to develop a contingency plan to be used in  
25 the event of a strike or work slowdown, which will provide for plans to hire temporary or replacement  
26 workers as well as use subcontractors and other internal resources. In the event subcontractors are

recommended by CONTRACTOR to provide the service, AUTHORITY shall approve such recommendation prior to CONTRACTOR actually hiring the subcontractor.

**ARTICLE 32. CALIFORNIA LABOR CODE CHAPTER 4.6**

CONTRACTOR shall adhere to the requirements stipulated in the California Labor Code, Chapter 4.6 (Sections 1070 through Section 1072), (Subdivision (c) (1) of Section 1072, for the use of existing drivers and staff to support all of the services as noted in Exhibit A: Scope of Work.

**ARTICLE 33. CIVIL RIGHTS ASSURANCE**

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

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

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

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

1 D. Information and Reports: CONTRACTOR shall provide all information and reports  
2 required by the Regulations or directives issued pursuant thereto, and shall permit access to its books,  
3 records, accounts, other sources of information, and its facilities as may be determined by the  
4 AUTHORITY to be pertinent to ascertain compliance with such Regulations, orders, and instructions.  
5 Where any information required of a CONTRACTOR is in the exclusive possession of another who fails  
6 or refuses to furnish this information, the CONTRACTOR shall so certify to the AUTHORITY as  
7 appropriate and shall set forth what efforts it has made to obtain the information.

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

11 (1) Withholding of payments to the CONTRACTOR under the Agreement until the  
12 CONTRACTOR complies; and/or

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

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

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



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

10 **ARTICLE 34. RACE-CONSCIOUS DBE CONTRACT PROVISIONS FOR DOT-ASSISTED**  
11 **CONTRACTS**

12 At the time of contract execution, the CONTRACTOR committed to utilize DBE(s) in the  
13 performance of this DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed  
14 on the "DBE Participation Commitment Form," included in Exhibit A-1, perform work and/or supply  
15 materials in accordance with original commitments, unless otherwise directed and/or approved by the  
16 AUTHORITY prior to the CONTRACTOR effectuating any changes to its race-conscious DBE  
17 participation commitment(s). CONTRACTOR shall comply with all the requirements set forth in  
18 Attachment A titled, "DISADVANTAGED BUSINESS ENTERPRISE (DBE) CONTRACT PROVISIONS  
19 FEDERALLY FUNDED CONTRACTS WITH DBE GOALS", which is attached to and, by this reference,  
20 incorporated into and made a part of this Agreement.

21 **ARTICLE 35. PROHIBITED INTERESTS**

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

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

1                   **ARTICLE 36. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

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

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

22                   **ARTICLE 37. PATENT AND COPYRIGHT INFRINGEMENT**

23           A.       In lieu of any other warranty by AUTHORITY or CONTRACTOR against patent or  
24 copyright infringement, statutory or otherwise, it is agreed that CONTRACTOR shall defend at its expense  
25 any claim or suit against AUTHORITY on account of any allegation that any item furnished under this  
26 Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes

1 upon any presently existing U. S. letters patent or copyright and CONTRACTOR shall pay all costs and  
2 damages finally awarded in any such suit or claim, provided that CONTRACTOR is promptly notified in  
3 writing of the suit or claim and given authority, information, and assistance at CONTRACTOR's expense  
4 for the defense of same. However, CONTRACTOR will not indemnify AUTHORITY if the suit or claim  
5 results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form  
6 infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in  
7 combination with other material not provided by CONTRACTOR when such use in combination infringes  
8 upon an existing U.S. letters patent or copyright.

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

#### 17 **ARTICLE 38. FINISHED AND PRELIMINARY DATA**

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

26 B. It is expressly understood that any title to preliminary technical data is not passed to

1 AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations,  
2 software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the  
3 purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given  
4 for preparation of finished artwork. Preliminary data title and right thereto shall be made available to  
5 AUTHORITY if CONTRACTOR causes AUTHORITY to exercise **Error! Reference source not found.**,  
6 and a price shall be negotiated for all preliminary data.

7 **ARTICLE 39. COVENANT AGAINST CONTINGENT FEES**

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

16 **ARTICLE 40. CONTRACT WORK HOURS AND SAFETY STANDARDS**

17 If this Agreement exceeds \$100,000, CONTRACTOR agrees to comply with the Federal Contract  
18 Work Hours and Safety Standards (40 U.S.C. Sections 3701, et seq. as supplemented by 29 CFR  
19 Part 5).

20 A. Overtime Requirements: CONTRACTOR, and any subcontractor contracting for any part  
21 of the contract work that may require or involve the employment of laborers or mechanics, shall not require  
22 or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to  
23 work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation  
24 at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty  
25 hours in such workweek.

26 B. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of

1 the clause set forth in paragraph A of this Article CONTRACTOR and any subcontractor responsible  
2 therefor shall be liable for the unpaid wages. In addition, CONTRACTOR and subcontractor shall be liable  
3 to the United States for liquidated damages. Such liquidated damages shall be computed with respect to  
4 each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause  
5 set forth in paragraph A of this Article, in the sum of \$10 for each calendar day on which such individual  
6 was required or permitted to work in excess of the standard workweek of forty hours without payment of  
7 the overtime wages required by the clause set forth in paragraph A of this Article.

8 C. Withholding for Unpaid Wages and Liquidated Damages: AUTHORITY shall upon its own  
9 action or upon written request of an authorized representative of the Department of Labor withhold or  
10 cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or  
11 subcontractor under any such contract or any other Federal contract with CONTRACTOR, or any other  
12 federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held  
13 by CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of  
14 CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set  
15 forth in paragraph B of this Article.

16 D. Subcontracts: CONTRACTOR or subcontractor shall insert in any subcontracts the  
17 clauses set forth in paragraphs A through D of this Article and also a clause requiring the subcontractors  
18 to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for  
19 compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A  
20 through D of this Article.

## 21 **ARTICLE 41. LOBBYING**

22 CONTRACTORS who apply or bid for an award of \$100,000 or more shall file the certification  
23 required by 49 CFR part 20, "New Restrictions on Lobbying". Each tier certifies to the above that it will  
24 not or has not used Federal appropriated funds to pay any person or organization for influencing or  
25 attempting to influence an officer or employee of any agency, a member of Congress, officer or employee  
26 of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract,

1 grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any  
2 registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on  
3 its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31  
4 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

5 **ARTICLE 42. HEALTH, SAFETY, AND ENVIRONMENTAL (HSE) REQUIREMENTS**

6 CONTRACTOR shall comply with all the requirements set forth in Exhibit H, titled "ENHANCED  
7 LEVEL 2 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS FOR THE OC STREEETCAR  
8 OPERATIONS AND MAINTENANCE AGREEMENT".

9 **ARTICLE 43. CONTRACTOR PURCHASED EQUIPMENT**

10 A. If, during the course of this Agreement, additional equipment is required, which will be  
11 paid for by the AUTHORITY, CONTRACTOR must request prior written authorization from the  
12 AUTHORITY's Project Manager before making any purchase. As part of this purchase request,  
13 CONTRACTOR shall provide a justification for the necessity of the equipment or supply and submit  
14 copies of three (3) competitive quotations. If competitive quotations are not obtained, CONTRACTOR  
15 must provide the justification for the sole source.

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

21 C. At the expiration or termination of this Agreement, CONTRACTOR may keep the  
22 equipment and credit AUTHORITY in an amount equal to its fair market value. Fair market value shall be  
23 determined, at CONTRACTOR's expense, on the basis of an independent appraisal. CONTRACTOR  
24 may sell the equipment at the best price obtainable and credit AUTHORITY in an amount equal to the  
25 sales price. If the equipment is to be sold, then the terms and conditions of the sale must be approved in  
26 advance by AUTHORITY'S project manager.

1 D. Any subcontractor agreement entered into as a result of this Agreement shall contain all  
2 provisions of this clause.

3 **ARTICLE 44. ALCOHOL AND DRUG POLICY**

4 A. CONTRACTOR agrees to establish and implement an alcohol and drug program that  
5 complies with 49 Code of Federal Regulations Part 655, produce any documentation necessary to  
6 establish its compliance with Part 655, and permit any authorized representative of the United States  
7 Department of Transportation or its operating administrations, the State Oversight Agency of California,  
8 or AUTHORITY, to inspect the facilities and records associated with the implementation of the alcohol  
9 and drug testing program as required under 49 CFR Part 655 and review the testing process.

10 B. CONTRACTOR agrees further to certify annually its compliance with Part 655 and to  
11 submit the Management Information System reports to, and when requested by, AUTHORITY's Project  
12 Manager and AUTHORITY's Alcohol and Drug Program Manager. To certify compliance,  
13 CONTRACTOR shall use the "Substance Abuse Certifications" and the "Annual List of Certifications and  
14 Assurances for Federal Transit Administration (FTA) Grants and Cooperative Agreements," which is  
15 published annually in the Federal Register.

16 C. On an annual basis, and no later than February 15 of each year, CONTRACTOR shall  
17 submit to AUTHORITY's Department of Health, Safety, and Environmental Compliance (HSE), and  
18 electronically to the Department of Transportation, annual drug and alcohol testing data using the  
19 appropriate FTA prescribed forms. The report shall cover testing conducted during the previous calendar  
20 year. It shall be addressed as follows:

21 OCTA HSE

22 Attn: Department Manager

23 550 S. Main Street

24 P. O. Box 14184

25 Orange, CA 92863-1584

26 D. Using the EZ format prescribed by the FTA for the annual report, CONTRACTOR shall

1 send a quarterly drug and alcohol testing report to the Project Manager, with a copy to the Alcohol and  
2 Drug Program Manager in Human Resources. The quarterly report must be submitted no later than the  
3 15<sup>th</sup> of the month following the close of each quarter (April, July, October, January).

4 E. CONTRACTOR agrees further to submit upon request a copy of the Policy Statement  
5 developed to implement its alcohol and drug testing program.

6 F. Failure to comply with this Article may result in nonpayment or termination of this  
7 Agreement.

#### 8 **ARTICLE 45. PRIVACY ACT**

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

#### 16 **ARTICLE 46. INCORPORATION OF FTA TERMS**

17 All contractual provisions required by Department of Transportation (DOT), whether or not  
18 expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F,  
19 as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all  
20 FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained  
21 in this Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply  
22 with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

#### 23 **ARTICLE 47. FEDERAL CHANGES**

24 CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures,  
25 and directives, including without limitation those listed directly or by reference in the agreement between  
26 the AUTHORITY and FTA, as they may be amended or promulgated from time to time during this



1 Agreement. CONTRACTOR's failure to comply shall constitute a material breach of contract.

2 **ARTICLE 48. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES**

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

10 **ARTICLE 49. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND**  
11 **RELATED ACTS**

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

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

1 its subcontracts.

2 **ARTICLE 50. RECYCLED PRODUCTS**

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

8 **ARTICLE 51. ENERGY CONSERVATION REQUIREMENTS**

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

12 **ARTICLE 52. CLEAN AIR**

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

18 **ARTICLE 53. CLEAN WATER REQUIREMENTS**

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

24 **ARTICLE 54. FLY AMERICA REQUIREMENT**

25 CONTRACTOR agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance  
26 with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that

1 recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air  
2 carriers for the U.S. Government-financed international air travel and transportation of their personal  
3 effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter  
4 of necessity, as defined by the Fly America Act. CONTRACTOR shall submit, if a foreign air carrier was  
5 used, an appropriate certification or memorandum adequately explaining why service by a U.S. carrier  
6 was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a  
7 certificate of compliance with the Fly America requirements. CONTRACTOR agrees to include the  
8 requirements of this Article in all subcontracts that may involve international air transportation.

9 **ARTICLE 55. BUY AMERICA REQUIREMENT**

10 If the Agreement exceeds \$150,000, CONTRACTOR shall comply with the Buy America  
11 requirements of 49 U.S.C. Section 5323(j) and 49 CFR Part 661, which provide that Federal funds may  
12 not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are  
13 produced in the United States, unless a waiver has been granted by FTA or the product is subject to a  
14 general waiver. CONTRACTOR shall ensure that all subcontractors, at any tier, comply with the Buy  
15 America requirements.

16 **ARTICLE 56. TRANSPORTATION OF EQUIPMENT, MATERIALS, OR COMMODITIES BY**  
17 **OCEAN VESSEL**

18 A. CONTRACTOR shall utilize privately owned United States-flag commercial vessels to  
19 ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and  
20 tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this Article,  
21 to the extent such vessels are available at fair and reasonable rates for United States-flag commercial  
22 vessels.

23 B. CONTRACTOR shall furnish within twenty (20) working days following the date of loading  
24 for shipments originating within the United States, or within thirty (30) working days following the date of  
25 loading for shipping originating outside the United States, a legible copy of a rated, "on-board" commercial  
26 ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this Article to

1 AUTHORITY (through the prime CONTRACTOR in the case of subcontractor bills-of-lading) and to the  
2 Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC  
3 20590, marked with appropriate identification of the project.

4 C. CONTRACTOR shall ensure all subcontractors comply with these requirements.

5 **ARTICLE 57. DEBARMENT AND SUSPENSION**

6 A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such,  
7 CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 49 CFR  
8 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR  
9 29.940 and 29.945.

10 B. CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the  
11 requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

12 **ARTICLE 58. ELECTRONIC DEVICES**

13 CONTRACTOR shall comply with all regulatory, State Safety Oversight and AUTHORITY  
14 policies, procedures, and General Orders regarding the use and prohibition of electronic devices for  
15 operators and maintenance workers.

16 **ARTICLE 59. SEAT BELTS**

17 CONTRACTOR shall comply with all regulatory, State Safety Oversight and AUTHORITY  
18 policies, procedures, and General Orders regarding the use of seat belts for all personnel operating or  
19 riding in a motor vehicle, and for all for streetcar operators operating a streetcar.

20 **ARTICLE 60. OPTIONS**

21 AUTHORITY may require CONTRACTOR to perform the services identified in Exhibit A: Scope  
22 of Work at the prices as stated in Exhibit B: Price Summary Form(s). AUTHORITY may exercise the  
23 option(s) by written notice to CONTRACTOR within one year of the final year of the Agreement.

24 **ARTICLE 61. FORCE MAJEURE**

25 Either party shall be excused from performing its obligations under this Agreement during the time  
26 and to the extent that it is prevented from performing by an unforeseeable cause beyond its control,

1 including but not limited to: any incidence of fire, flood; acts of God; commandeering of material, products,  
2 plants, or facilities by the federal, state, or local government; national fuel shortage: electricity disruption;  
3 or a material act or omission by the other party; when satisfactory evidence of such cause is presented  
4 to the other party; and provided further that such nonperformance is unforeseeable, beyond the control  
5 and is not due to the fault or negligence of the party not performing.

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

7 **IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. 8-2039 to be  
8 executed on the date first above written.

9  
10 **CONTRACTOR**

11 By \_\_\_\_\_

**ORANGE COUNTY TRANSPORTATION  
AUTHORITY**

12 By \_\_\_\_\_  
13 Darrell E. Johnson  
14 Chief Executive Officer

15 APPROVED AS TO FORM:

16 By \_\_\_\_\_  
17 James M. Donich  
18 General Counsel

19 APPROVED:

20 By \_\_\_\_\_  
21 Jennifer Bergener  
22 Chief Operating Officer  
23  
24  
25  
26

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

**I. DBE Participation**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### A. Definitions

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

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



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

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

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

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

**B. "Social Disadvantage"**

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

**C. "Economic Disadvantage"**

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

2. The following criteria will be considered when determining the degree of diminished credit and capital opportunities of a person claiming social and economic disadvantage:

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

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

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

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

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

The Form 103 must include the following information:

1. General Contract Information – Including Contract Number and Name, Prime Consultant and the following:
  - a) Original Contract Amount
  - b) Running Total of Change Order Amount

- c) Current Contract Amount
  - a) Amount Paid to Consultant during Month
  - b) Amount Paid to Consultant from Inception to Date
  - c) DBE Contract Goal
  - d) Total Dollar Amount of DBE Commitment
  - e) DBE Commitment as Percentage of Current Contract Amount
2. Listed and/Proposed Consultant/Subconsultant Information – For All DBE participation being claimed either Race Neutrally or Race Consciously, regardless of tier:
- a) DBE Firm Name, Address, Phone Number, DBE Type of Operation, Certification Type and Certification Number.
  - b) DBE Firm Contract Value Information:  
Original contract amount, running total of change order amount, Current contract amount, Amount paid to Consultant during month and Amount paid to Consultant to date.
3. Consultant Assurance of Full Compliance with Prompt Payment Provisions

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

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

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

4. DBE Subcontract Agreements

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

5. "Monthly DBE Trucking Verification" Form

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

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

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

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

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

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

Upon completion of the contract, the "Disadvantaged Business Enterprises (DBE) Certification Status Change" must be signed and certified correct by the Consultant indicating the DBEs' existing certification status. If there are no changes, please

indicate "No Changes". The certified form must be furnished to the Authority within 90 days from the date of contract acceptance.

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

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

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

**VI. DBE Crediting Provisions**

- A. When a DBE is proposed to participate in the contract, either as a Prime Consultant or Subconsultant, at any tier, only the value of the work proposed to be performed by the DBE with its own forces may be counted towards DBE participation. If the Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture must be counted.
  1. If a DBE intends to subcontract part of the work of its subcontract to a lower-tier

Subconsultant, the value of the subcontracted work may be counted toward DBE participation only if the Subconsultant is a certified DBE and actually performs the work with their own forces. Services subcontracted to a Non-DBE firm may not be credited toward the Prime Consultant's DBE attainment.

2. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward DBE attainment, as follows:
  - a) Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
  - b) One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
3. The following types of fees or commissions paid to DBE Subconsultants, Brokers, and 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 1<sup>st</sup> tier Subconsultant to perform work on this contract, and the non-certified Subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward DBE participation on the contract. If a DBE Consultant performs the installation of purchased materials and supplies they are eligible for full credit of the cost of the materials.

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

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

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

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



- E. Listed DBE's work is unsatisfactory and not in compliance with the contract.
- F. Listed DBE delays or disrupts the progress of the work.
- G. Listed DBE becomes bankrupt or insolvent.

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

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

**VIII. Additional DBE Subconsultants**

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

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

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

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

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

**XI. Prompt Payment Clause**

Upon receipt of payment by Authority, Consultant agrees to promptly pay each Subconsultant for the satisfactory work performed under this Agreement, no later than seven (7) calendar days. Consultant agrees further to return retainage payments to each Subconsultant within thirty (30) calendar days after the Subconsultant's work is satisfactorily completed. Authority reserves the right to request the appropriate documentation from Consultant showing payment has been made to the Subconsultants. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by Authority.

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

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

Failure to comply with this provision or delay in payment without prior written approval from Authority will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two percent (2%) 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 percent (2%) of the invoice amount due per month for every month that the identified non-compliance matter(s) is not remedied. Upon satisfactory compliance the Authority will release all withholdings.

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

**EXHIBIT D: CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM****Information Sheet****ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**IMPORTANT NOTICE****Basic Provisions of Government Code Section 84308**

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY  
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: \_\_\_\_\_ RFP Title: \_\_\_\_\_

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

**If no**, please sign and date below.

**If yes**, please provide the following information:

Prime Contractor Firm Name: \_\_\_\_\_

Contributor or Contributor Firm's Name: \_\_\_\_\_

Contributor or Contributor Firm's Address: \_\_\_\_\_

Is Contributor:

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

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

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

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

Name of Board Member: \_\_\_\_\_

Name of Contributor: \_\_\_\_\_

Date(s) of Contribution(s): \_\_\_\_\_

Amount(s): \_\_\_\_\_

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

Signature of Contributor \_\_\_\_\_

Print Firm Name \_\_\_\_\_

Print Name of Contributor \_\_\_\_\_

**ORANGE COUNTY TRANSPORTATION AUTHORITY  
AND AFFILIATED AGENCIES**

**Board of Directors**

**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 E: STATUS OF PAST AND PRESENT CONTRACTS**

**STATUS OF PAST AND PRESENT CONTRACTS FORM**

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

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

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

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT F: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM  
AND FORMS**

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PROGRAM AND FORMS**

### **1.0 DBE Goal**

To assist Proposers in ascertaining DBE availability based on the specific items of work associated with this procurement, the Authority has determined that DBEs could reasonably be expected to compete for subcontracting opportunities on this project based on their likely availability for work. The DBE Goal for this contract is **4%**.

### **2.0 DBE Policy and Applicability**

In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (Authority) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs." The contract is subject to the following stipulated regulations. Pursuant to the intent of these Regulations, it is the policy of the Authority to:

- 2.1** Implement strategies that promote 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 and opportunities to participate in all of Authority's DOT-assisted contracting opportunities.
- 2.2** Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- 2.3** Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- 2.4** Ensure that only firms that meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- 2.5** Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- 2.6** Provide training and other assistance through our resource partners to address capital, bonding and insurance needs.
- 2.7** Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

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

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

**Race-Neutral/Race-Conscious DBE Program Measures**

The Authority will utilize both Race-Neutral and Race-Conscious means to meet its overall DBE Program goals.

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

In conjunction with the Race-Neutral measures listed above the Authority will implement Race-Conscious measures through the reinstatement of contract goals and good faith efforts. The Authority reinstates the use of meeting the contract-specific goal by committing to utilize DBEs or documenting a bona fide good faith effort to do so, as a condition of award. Contract-specific goals are 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.

### 3.0 **Definitions**

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

- 3.1 "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.
- 3.2 "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 shall 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.
- 3.3 "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:
- 3.3.1 "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - 3.3.2 "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;
  - 3.3.3 "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - 3.3.4 "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;

3.3.5 "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh; and

3.3.6 Women, regardless of ethnicity or race.

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

### 3.8.1 Social Disadvantage

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

### 3.8.2 Economic Disadvantage

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

With respect to the individual:

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



- available markets

With respect to the individual and the business concern:

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

#### **4.0 DBE Proposal Submission Requirements**

Proposer shall complete and submit the following DBE Exhibits (forms) at the times specified with their Proposal:

- “DBE Participation Commitment(s) Form” (Exhibit F-1)
- “Bidders List” (Exhibit F-2)
- “DBE Information - Good Faith Efforts” (Exhibit F-3)

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

- 4.1.1 The complete name and address of each DBE who will participate in the contract;
- 4.1.2 A description of the work that each DBE will perform or provide;
- 4.1.3 The dollar amount of the work to be performed or provided by the DBE;
- 4.1.4 Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26;
- 4.1.5 The Proposer shall also submit, for each DBE to perform under this contract, 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 proposal can serve in lieu of the written confirmation).

#### **4.2 “Bidders List” (Exhibit F-2)**

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

The “Bidders List” shall be included with the proposal submission.

#### **4.3 “DBE Information - Good Faith Efforts” (Exhibit F-3)**

A Proposer must, in order to be a responsible and/or responsive proposer, make good faith efforts to meet the goal. The Proposer can meet this requirement in either of two ways. First, the Proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn’t meet the established DBE goal, the proposer took all necessary and reasonable steps to achieve the DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

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

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

Good Faith Efforts documentation must be submitted with the proposal.

Good Faith Efforts documentation must include the following information and supporting documents, as necessary:

- 4.3.1 Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.
- 4.3.2 Names of certified DBEs and dates on which they were solicited to propose on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
- 4.3.3 Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection and rejection of the DBE.
- 4.3.4 Name and date of each publication in which you solicited DBE participation for the project. Attach copies of the published advertisements (In the event the RFP submission due date is extended, proposer's are to re-advertise the new proposal due date).
- 4.3.5 Names of agencies and organizations, and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. Proposer to provide copies of supporting documents of this effort.
- 4.3.6 List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.

4.3.7 List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, and other technical assistance afforded. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.

4.3.8 Any additional data to support demonstration of good faith efforts undertaken prior to proposal submission shall be provided.

For further guidance refer to the United States Department of Transportation's (USDOT) DBE Program, Appendix A of Title 49 CFR Part 26- "Guidance Concerning Good Faith Efforts."

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**DBE PARTICIPATION COMMITMENT(S) FORM**

NOTE: Please refer to instructions on the reverse side of this form.

**Proposer to Complete this Section**

1. RFP No.: \_\_\_\_\_
2. Project Name/Description: \_\_\_\_\_
3. Prime Proposer Name: \_\_\_\_\_
4. Contract DBE Goal %: \_\_\_\_\_

**DBE Commitment Information**

5. Proposed DBE Firm (Name and Address)	6. DBE Certification Number	7. Description of Scope of Services/Work to be Provided	8. Dollar Value (\$) and/or Percentage (%) Of Contract	9. Percentage (%) of Work to be Performed by DBE Firm(s)

**Note: The proposer shall also submit, for each DBE to perform under this contract 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 proposal can serve in lieu of the written confirmation).**

**10. Total Value Claimed (\$)**  
\$ \_\_\_\_\_

**11. Total DBE (%) Claimed towards Goal:**  
\_\_\_\_\_ %

**Proposer Assurance:** The information on this form is complete and accurate and the proposer certifies that all DBE certifications and written confirmation documentation has been submitted to support the proposed DBE Commitment.

12. Preparer's Name (Print)

13. Preparer's Signature

14. Preparer's Title

15. Date

16. (Area Code) Tel. No.

17. Email Address

## INSTRUCTIONS - DBE Participation Commitment(s) Form

### Consultant Section

*The Consultant shall:*

1. **RFP No.-** Enter the RFP Number.
2. **Project Name/Description** - Enter the name and/or description of the project.
3. **Prime Proposer Name** - Enter the consultant's firm name.
4. **Contract DBE Goal %** - Enter the contract DBE goal percentage.
5. **Proposed DBE Firm** - Enter name and address of the proposed DBE Firm.
6. **DBE Certification Number** - Enter the DBEs Certification Identification Number. All DBEs must be certified on the date proposals 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).
7. **Description of Scope of Services/Work to be Provided** - Enter the scope of services/work that the proposed DBE Firm will be performing for this project and is eligible to perform the scope of services/work.
8. **Dollar Value (\$) and/or Percentage of Contract-** Enter the proposed dollar value and/or percentage of commitment each listed DBE firm.
9. **Percentage (%) of Work to be Performed by DBE Firm(s)** - Percent of participation listed in column 8 of work to be performed or services to be provided by DBE firms. This percentage should include work to be self-performed by the listed DBE as well as work that will be performed by lower-tier subconsultants to the listed DBE. DBE credit will only be credited for work performed by DBE firms, non-DBE subconsultants should not be reflected in the percentage (%).
10. **Total Value Claimed (\$)**-Enter the total dollar value of DBE credit claimed.
11. **Total DBE % Claimed towards Goal** - Enter the total participation claimed. If the Total % Claimed is less than item "4. Contract DBE Goal", a Good Faith Effort (GFE) is required.
12. **Preparer's Name (Print)** - Clearly enter the name of the authorized person signing the form for the consultant.
13. **Preparer's Signature** - The person completing this section of the form for the consultant's firm must sign their name.
14. **Preparer's Title** - Enter the position/title of the authorized person signing the form for the consultant.
15. **Date** - Enter the date the form is signed by the proposer.
16. **(Area Code) Tel. No.** - Enter the area code and telephone number of the authorized person signing the form for the consultant.
17. **Email Address-** Enter the email address of the authorized person signing 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 listed to perform.

**BIDDERS LIST****Proposer:** \_\_\_\_\_**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 Proposer is to complete all requested information for every firm who submitted a bid, proposal or quote, including the primary Proposer, and submit this information at the time of proposal submission, or as otherwise specified in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall DBE goal-setting process.

**Prime Proposer'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? Yes <input type="checkbox"/> No <input type="checkbox"/>	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
__ African American    __ Asian Pacific American	<input type="checkbox"/> Less than \$5 million
__ Native American    __ Woman	<input type="checkbox"/> Less than \$10 million
__ Hispanic American    __ Subcontinent Asian American	<input type="checkbox"/> Less than \$15 million
__ Other	<input type="checkbox"/> More than \$15 million

**Provide the following information for every firm (DBE and non-DBE) that submitted proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract:**

Firm Name:	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? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):  __ African American    __ Asian Pacific American __ Native American    __ Woman __ Hispanic American    __ Subcontinent Asian American __ 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

Firm Name:	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? Yes <input type="checkbox"/> No <input type="checkbox"/>	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):  __ African American    __ Asian Pacific American __ Native American    __ Woman __ Hispanic American    __ Subcontinent Asian American __ 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

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 Proposer to submit the required "Bidders List" form may deem the Proposer non-responsive.**





- B. Solicitation Effort Documentation; the names and dates of written notices sent to certified DBEs soliciting bids for this project and the dates and methods used to following up initial solicitations to determine with certainty whether the DBEs were interested (please attach all copies of solicitation, telephone records, fax confirmations, etc.), amount of DBEs to repond, the DBE firms were provided information about the contract (location of project, contract number, bid date, items of work made available and contact information) in the Invitation to bid from the Bidder, the Bidder solicited through all reasonable means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract, Bidder to provide proof of aforementioned items, and DBE's in the market area for the work identified in 'Item A' as follows:

Names of DBEs Solicited Methods and Dates	Date of Initial Solicitation	Follow Up

- C. Rejected DBE Bid Documentation; the names, addresses, phone numbers, and amount of rejected DBE firms, the reasons for the Bidder's rejection of the DBE firms, the firms selected and accepted for that work (please attach all copies of quotes from the firms involved) and the price difference for each DBE if the selected firms is not a DBE, include an explanation of quote(s) rejected.

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


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


- D. Publication Efforts Made to Advertise the Projects to Solicit DBE Participation; names and dates of each publication in which a request for DBE participation for this project was placed by the Bidder (please attach copies of advertisements or proof of publications). (Please note: If IFB due date is extended, Bidder is to re-advertise new bid due date.)

Publications	Dates of Advertisement

- E. Agencies, Organizations, or Groups contacted to provide assistance in Contracting, Recruiting, and Using DBEs; the names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using DBE firms (please attach copies of requests to agencies and any responses received), as follows:


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


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


- H. Additional Data to Support a Demonstration of Good Faith Efforts; (for additional data please use additional sheets as necessary):


**NOTE:** USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

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**EXHIBIT G: RESTRICTIONS ON LOBBYING**

**CERTIFICATION**  
**LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN**  
**FEDERAL TRANSACTIONS**

A. DEFINITIONS

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

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

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Standard Form - LLLApproved by  
OMB  
003480045

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

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee e.g., the first subawardee of the prime is the first tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address city, state, and zip code of the prime Federal recipient. Include Congressional District.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency, name if known. For example, Department of Transportation, United State Coast Guard.
7. Enter the Federal program name for description of the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g. Request for Proposal (RFP) number, Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/ proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a.). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box (es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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

**DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET**

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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**EXHIBIT H: SAFETY SPECIFICATIONS**

**ENHANCED LEVEL 2 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS  
FOR THE OC STREETCAR OPERATIONS AND MAINTENANCE AGREEMENT**

**PART I – GENERAL**

**1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with these safety specifications, as well as all federal, state, and local regulations pertaining to the scope of work or agreements with the Authority, the California Public Utilities Commission requirements and any noted special provisions. Additionally, manufacturer requirements are considered incorporated by reference, as applicable, to this scope of work.
- B. Observance of unsafe acts or conditions, serious violation of health and safety standards, non-conformance of Authority HSEC or Cal/OSHA requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.
- C. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope by the Contractor.
- D. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all security, health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards or security concerns and request the Contractor to evaluate and, as necessary, to eliminate those hazards or concerns.
- E. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the Authority's HSEC requirements, CPUC, CCR Title 8 Standards, and recognized safe work practices.
- F. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who works on Authority projects in the following; recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its scope of work.

- G. OCTA reserves the right to issue stop work notices, notify regulatory agencies of violations, require any person or position to be removed from the project and replaced as necessary at the sole discretion of Authority.
- H. The Contractor must comply with the California Public Utilities Commission (CPUC) General Orders applicable to railroad and streetcar railroads.

**I. CONTRACTOR REQUIRED SUBMITTALS**

1. Contractor shall provide a copy of their Company's Injury Illness Prevention Program (IIPP) in accordance with CCR Title 8, Section 3203.
2. Contractor shall provide a copy of their Company HSE Standard Operation Procedures and Policies/Rail Operations & Maintenance Procedure Plan.
3. Contractor shall provide a copy of their company Substance Abuse Prevention Program compliant with the drug free workplace act of 1990 and/or FTA safety sensitive substance abuse prevention program.
4. Contractor shall provide a copy of their company Hazard Communication Program and Safety Data Sheets Management Program in compliance with CCR Title 8, Section 5194, Hazard Communication Standard.
5. Contractor shall provide a copy of their Company Heat Illness Prevention Program in accordance with CCR Title 8 Standards, Section 3395, Heat Illness Prevention.
6. Contractor shall provide a copy of NFPA 70-E training certificates for employees assigned to electrical activities and a compliant Lock-Out/Tag-Out (LOTO) Procedure.
7. Safety and Security Manager: The Contractor shall submit a resume of the designated on-site Safety and Security Manager.

The Contractor's On-Site Safety and Security Manager shall have a current Transportation Safety Institute (TSI) Transit Safety and Security Program (TSSP) Certification and be knowledgeable of all state and federal laws and regulations and proactive accident prevention safe work practices. This position shall also possess a certification from the Board of Certified Safety Professionals (BCSP), and have a minimum of seven (7) years administering Health, Safety, Environmental and Security programs on rail operation and maintenance facility projects, the last two years of which have been administering compliance in a similar type of scope for which Contractor is contracting with the Authority.

The Authority reserves the right to allow for an exception and to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.

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

#### **J. OPERATION & MAINTENANCE REGULAR AND THIRD-PARTY INSPECTIONS**

1. Frequent and regular HSE inspections of the project jobsite shall be made by the Contractor's On-site HSE Representative, and/or another Competent Individuals designated by the Contractor. Unsafe acts and/or conditions noted during inspections shall be corrected immediately. Safety walks and or HSE inspection reports shall include detailed explanations of the corrective actions and photographs as applicable to properly document the corrections of the observations noted.
2. The Contractor is advised that representatives of regulatory agencies (i.e., CAL-OSHA, CPUC, FTA, EPA, SCAQMD, etc.), upon proper identification, are entitled to access onto Authority property and projects. The Authority Project Manager shall be notified of their arrival as soon as possible.
3. On scheduled safety walks representatives of the Contractor management shall participate including but not limited to the onsite Project Manager, and the HSE Representative. The Contractor's executive managers are encouraged to participate.

#### **K. ENVIRONMENTAL REQUIREMENTS**

1. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological

significance. Expense of compliance with these laws and regulations is considered included in the agreement.

2. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.
3. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.
4. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.

#### **L. ORIENTATION**

1. The Contractor shall conduct and document a safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the facility prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 reflective vests, proper footwear, designated smoking, eating, and motor vehicle parking areas, cell phone safety policy, barricade requirements, fall protection, energy isolation/lock-out/tag-out (LOTO), Red Flag Track Safety, confined space, hot work permit, security requirements, and similar project safety requirements.
2. Copies of orientation documents shall be provided to the Authority Project Manager within 72 hours upon request.

**M. TRAFFIC & PARKING**

1. The Contractor shall ensure that all Contractor vehicles, including those of their subcontractors, suppliers, vendors and employees are parked in designated parking areas, personal vehicles shall be parked in the employee parking lot, work vehicles required in the maintenance area of a rail facility shall be identified by company name and/or logo, covered by the company insurance, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots. Vehicles without appropriate company name and logo are considered personal vehicles and not allowed in the maintenance area.

**N. GENERAL PROVISIONS**

1. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices. The Contractor shall ensure that all equipment and safety devices include certification and calibration stickers that conform to all relevant regulations and standards as required.
2. The Contractor shall immediately notify the Authority's Project Manager whenever local, state or federal regulatory agency personnel are identified as being onsite.
3. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
4. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
5. The Contractor shall instruct all its employees, and all associated subcontractors under contract with the Contractor who work on Authority property in the recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
6. California Code of Regulations (CCR) Title 8 Standards are minimum requirements, and each Contractor is encouraged to exceed minimum requirements. When the Contractor safety requirements exceed statutory

standards, the more stringent requirements shall be achieved for the safeguard of the public and workers.

7. On maintenance programs and projects that have the potential to impact the Public, a Public Hazard Control Plan shall be developed in accordance with ANSI/ASSE A10.34 (Protection of the Public on or Adjacent to Construction Sites) standards. This plan shall be reviewed and approved by the Contractor's Project Manager or Company Officer and submitted to OCTA for acceptance.

## 1.2 INCIDENT NOTIFICATION AND INVESTIGATION

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

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

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

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

- C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a senior executive from the Contractors' organization to participate in the presentation. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement.
2. Serious Incident: includes property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, CPUC, EPA, AQMD, DTSC, etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.
5. Third Party Investigations: Incidents involving any serious injury or illness, or death, of an employee required to be reported to the California Division of Occupational Safety and Health shall require an impartial third party investigation in addition to any other agency involvement (i.e., Cal/OSHA, Fed/OSHA, CPUC, EPA, DTSC, SCAQMD, FTA, NTSB, etc.). The Contractor shall arrange for an independent investigation from a professional company or organization that specializes in accident reconstruction and investigations that is acceptable to OCTA. A comprehensive report shall be completed that identifies findings and factors, potential cause, and recommendations to avoid recurrence and provide an original copy to OCTA. The associated costs for this service shall be covered by the Contractor at no additional expense to OCTA.

### 1.3 PERSONAL PROTECTIVE EQUIPMENT

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

### 1.4 LANGUAGE REQUIREMENTS

The Contractor for safety reasons shall ensure employees that do not read, or understand English, shall have a bilingual supervisor or foreman when on the Authority property or projects.



## **1.5 WARNING SIGNS AND DEVICES**

The Contractor shall provide signs, signals, and/or warning devices to be visible at all times when and where a hazard exists. Signs, signals, and/or warning devices shall be removed when the hazard no longer exists.

## **1.6 CRANES**

A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. In addition, Contractor shall comply with the following requirements: Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items 1, 2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.

1. Cranes require a submittal of the annual certification, and copy of the cranes most recent quarterly inspection.
2. A copy of each crane operator's qualification (NCCCO or equivalent) of company-authorized crane operators that have been properly trained in the equipment's use and limitations. Operator certification as required by CCR Title 8, Section 5006.1.
3. A rigging plan is required for all lifts. Critical lifts require an engineered plan designed by a registered professional engineer licensed in the State of California.
4. Contractor shall provide the name and qualifications of each "Qualified Rigger" as defined by OSHA.
5. Rigging scope activity shall comply with 29 CFR Subparts 1926.250, 1929.753 and CCR Title 8 Standards.
6. All rigging equipment shall be free from defects, in good operating condition and maintained in a safe condition.
7. Rigging equipment shall be inspected by a designated, competent employee prior to initial use on the project, prior to each use, and documented inspections performed regularly. Records shall be kept on jobsite of each of these inspections by contractor and be made available to the Authority upon request within 72 hours.
8. Only one (1) sling eye should be in a hook, for multiple slings a shackle shall be used to prevent separation of slings, and prevent stress on weak points of the hook.
9. Crane and hoisting task activities shall be halted when wind meets or exceeds 25 MPH.
10. Contractor shall prepare a documented daily crane inspection report.

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

C. Engineered Critical Lifts

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

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.
4. A single lift where two or more cranes are used, including tandem lifts and tailing cranes.
5. Lifts made in close proximity of power lines, as defined by CCR Title 8 voltage clearance specifications.
6. Lifts involving helicopters, and specialized or unique and complex rigging equipment.
7. Hoisting of suspended work platforms.
8. Static tower crane erection and dismantlement.
9. Making lifts below the ground level where the crane is positioned.  
Note: Where the below the ground lift is minimal (evaluated by California registered professional engineer), a critical lift plan may not be required.

D. Critical Lift Plan

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

1. Crane manufacturer, capacity, and all specifications for the configuration to be used for the lift.
2. Load chart data for the crane to be used to make the lift. Total calculated weight of the load to be lifted including all rigging and other deductions consistent with the manufacturer's load chart.

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

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

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

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

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

#### E. Overhead Canes

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

### 1.7 ELECTRICAL OPERATIONS

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

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

- A. A list of the name(s) of the company-designated high voltage Qualified Electrical Worker(s) shall be provided to the OCTA Project Manager.

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

Only qualified persons shall work on electrical equipment or systems.

- A. Electrical Certification of Training: Contractor employees working on or around electrical panels, wiring, motors, electrical energy sources or similar electrical devices shall have attended a NFPA 70E, Electrical Safety Course

and provide to the OCTA Project Manager a copy of employees' NFPA 70E qualification certificate of training for each employee assigned to electrical tasks with the potential to shock, electrocute or cause an explosion on OCTA property or projects. Appropriate PPE shall be used as per NFPA 70-E requirements.

#### **1.8 OPEN FLAME AND SPARK PRODUCING ACTIVITIES**

1. A hot work permit system shall be implemented for all tasks that have the potential to produce an ignition source. These activities may include but are not limited to; Open flames, welding, cutting, grinding, and similar tasks. Evaluation of heated and motorized exhaust systems shall be considered in areas of flammable and or combustible fuels with the potential of ignition.

#### **1.9 FALL PROTECTION (CCR Title 8, Sections 1669-1671)**

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

Fall protection is required for workers exposed to falls in excess of six (6) feet.

When conventional fall protections methods are impractical or create a greater hazard, a written plan in conformance with CCR Title 8, Article 24, shall be submitted to the Authority a minimum of seven (7) days in advance of the scheduled activity.

#### **1.10 AUDITS**

1. The Authority may make periodic inspections of the site as a part of System & Security Management Plan (SSMP). The Contractor shall not be relieved of its aforesaid responsibilities and the Authority shall not assume same, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor, as a result of safety inspections by the Authority.
2. The Authority may audit the Contractor's safety program for HSE compliance at various intervals, at the sole discretion of the Authority. Elements may include, but are not limited to: OSHA injury & illness records and logs, Job Hazard Analysis and safety plans, equipment operator licenses and training records, incident reports, meeting minutes, engineered plans, safety meeting records, crane and rigging plans, equipment inspection records, qualifications of and interviews with key Contractor management personnel, and other similar information. The Contractor shall support and cooperate with these audits at no additional compensation or schedule impacts with this contract.
3. The Authority reserves the right to perform audits and inspections to confirm that the Contractor is following health and safety rules and procedures.

A qualified safety representative from the Authority will perform audits/inspections on a periodic basis.

#### **1.11 RAILWAY SAFETY PRECAUTIONS**

1. Work on operating railways shall be in compliance with the CPUC, 49 CFR, Part 214, CCR Title 8 Standards, and other applicable standards, rules and regulations.
2. Minimum PPE for rail track workers include hard hat, safety glasses, orange class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 (lace-up type over the ankle) and hearing protection (on person and worn as necessary).

#### **1.12 FINES**

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

#### **1.13 COMPLIANCE COSTS**

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

#### **1.14 REFERENCES**

- A. CCR Title 8 Standards (Cal/OSHA)
- B. CFR 1910 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. California Public Utilities Commission (CPUC) General Orders
- E. 49 CFR, Code of Federal Regulations (CFR)

**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: BUY AMERICA**

**BIDDER'S CERTIFICATE**  
**REGARDING**  
**"BUY AMERICA" REQUIREMENTS**  
**FOR**  
**STEEL, IRON, OR MANUFACTURED PRODUCTS**

In order to demonstrate compliance with the Buy America Requirements, if the bid is for a contract greater than one hundred and fifty thousand dollars (\$150,000),

The	
	Firm name/principal
hereby certifies that it <b>will comply</b> with the requirements of 49 U.S.C. Section 5323(j)(1), and the applicable regulations in 49 CFR Part 661.	
	Signature
	Name
	Title
	Date

**Bidder shall complete only one of the two statements below:**

**Or:**

The	
	Firm name/principal
hereby certifies that it <b>cannot comply</b> with the requirements of 49 U.S.C. Section 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. Section 5323(j)(2), as amended, and the applicable regulations in 49 CFR Part 661.7.	
	Signature
	Name
	Title
	Date

Revised: 10/31/2018

**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:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Rationale for Requesting Deviation or Exception:

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Area Below Reserved for Authority Use Only:
