

REQUEST FOR PROPOSALS (RFP) 0-1609

**Consultant Services for the Development of
Orange County Subregional Sustainable
Communities Strategy (SCS)**



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

Key RFP Dates

Issue Date:	June 16, 2010
Pre-Proposal Conference	June 22, 2010
Question Submittal Date:	June 24, 2010
Proposal Submittal Date:	July 14, 2010

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June 16, 2010

SUBJECT: NOTICE OF REQUEST FOR PROPOSALS

**RFP 0-1609: Consultant Services for the Development of
Orange County Subregional Sustainable Communities
Strategy (SCS)**

Gentlemen/Ladies:

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to furnish services for the development of Orange County Subregional Sustainable Communities Strategy (SCS) as described in Exhibit A, entitled "Scope of Work."

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on July 14, 2010.

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

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Sue Ding, Sr. Contract Administrator**

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

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

A pre-proposal conference will be held on June 22, 2010, at 9:30 a.m. at the Authority's Administrative office, located at 600 South Main Street, Orange, CA 92863, in Conference Room 103/104.

Firms must obtain a visitor badge from the receptionist in the lobby of the 600 Building prior to attending this conference.

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

Firms interested in obtaining a copy of this Request For Proposals (RFP) 0-1609 may do so by faxing their request to (714) 560-5792, or e-mail your request to rfp_ifb_Requests@octa.net or calling (714) 560-5922. Please include the following information:

- Name of Firm
- Address
- Contact Person
- Telephone and Facsimile Number
- Request For Proposal (RFP) 0-1609

All firms interested in doing business with the Authority are required to register their business on-line at CAMMNet, the Authority's interactive website. The website can be found at www.octa.net. From the site menu, click on CAMMNet to register.

To receive all further information regarding this RFP 0-1609, firms must be registered on CAMMNet with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile. Commodities for this solicitation are:

<u>Category (s):</u>	<u>Commodity (s):</u>
Professional Consulting	Consultant Services – General
Professional Services	Government Relation Services
	Legislative Advocacy Services
	- California State

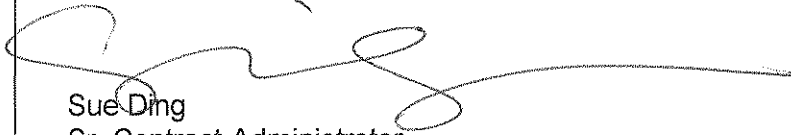
Offerors are encouraged to subcontract with small businesses to the maximum extent possible.

The Offeror will be required to comply with all applicable equal opportunity laws and regulations.

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

The budget amount for this project is \$240,000, for a term of 18 months.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sue Ding', with a long horizontal flourish extending to the right.

Sue Ding
Sr. Contract Administrator
Contracts Administration and Materials Management

SECTION I

INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS

A. PRE-PROPOSAL CONFERENCE

A pre-proposal conference will be held on June 22, 2010, at 9:30 a.m. at the Authority's Administrative office, located at 600 South Main Street, Orange, CA 92863, in Conference Room 103/104.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals.

D. AUTHORITY CONTACT

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

Sue Ding, Sr. Contract Administrator
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5631, Fax: 714.560.5792

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions must be put in writing and must be received by the Authority no later than 2:00 p.m., on June 24, 2010.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Courier: Contracts Administration and Materials Management Department, 600 South Main Street, 4th Floor, Orange, California 92868.
 - (3) Facsimile: The Authority's fax number is (714) 560-5792.
 - (4) E-Mail: Sue Ding, Sr. Contract Administrator e-mail address is *sding@octa.net*.

3. Authority Responses

Responses from the Authority will be posted on CAMMNet, the Authority's interactive website, no later than June 28, 2010. Offerors may download responses from CAMMNet at www.octa.net/cammnet, or request responses be sent via U.S. Mail by e-mailing or faxing the request to Sue Ding, Sr. Contract Administrator.

To receive e-mail notification of Authority responses when they are posted on CAMMNet, firms must be registered on CAMMNet with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile. Commodities for this solicitation are:

<u>Category (s):</u>	<u>Commodity (s):</u>
Professional Consulting	Consultant Services – General
Professional Services	Government Relation Services Legislative Advocacy Services - California State

Inquiries received after June 24, 2010, will not be responded to.

F. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on July 14, 2010.

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

2. Address

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

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Sue Ding, Sr. Contract Administrator**

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

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

Firms must obtain a visitor badge from the receptionist in the lobby of the 600 Building prior to delivering any information to CAMM.

3. Identification of Proposals

Offeror shall submit an **original and 4 copies** of its proposal in a sealed package, addressed as shown above, bearing the Offeror's name and address and clearly marked as follows:

"RFP 0-1609: Consultant Services for the Development of Orange County Subregional Sustainable Communities Strategy (SCS)"

4. Acceptance of Proposals

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.

- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to postpone proposal openings for its own convenience.
- d. Proposals received by Authority are public information and must be made available to any person upon request.
- e. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

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

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

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

L. CONFLICT OF INTEREST

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

M. CODE OF CONDUCT

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

N. DISADVANTAGES BUSINESS ENTERPRISE

This Contract is subject to Title 49 Code of Federal Regulations (CFR), Part 26, entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs" Regulations. The Regulation in their entirety are incorporated herein by this reference. Offerors are to be fully informed with respect to the DBE requirement delineated in Exhibit D of this RFP and the applicable Regulations.

SECTION II

PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

Proposals should be typed with a standard 12 point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Offers should not include any unnecessarily elaborate or promotional material. Lengthy narrative is discouraged and presentations should be brief and concise. Proposals should not exceed fifty (50) pages in length, excluding any appendices.

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to Sue Ding, Sr. Contract Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number. Include name, title, address, and telephone number of the contract person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact persons' name and address, phone number and fax number. Relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

a. Qualifications, Related Experience and References of Offeror

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

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project. Describe experience in working with the various government agencies identified in this RFP.
- (4) Identify subcontractors by company name, address, contact person, telephone number and project function. Describe Offeror's experience working with each subcontractor.
- (5) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address and telephone number of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.
- (6) Provide a list of all work performed for the Authority, either as a prime or subcontractor during the last 3 years contracted directly with the Authority.

b. Proposed Staffing and Project Organization

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

Offeror to:

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

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the services specified in the Scope of Work.
- (2) Outline sequentially the activities that would be undertaken in completing the services and specify who would perform them.
- (3) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.

- (4) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.
- (5) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

State any exceptions to or deviations from the requirements of this RFP, segregating "technical" exceptions from "contractual" exceptions. Where Offeror wishes to propose alternative approaches to meeting the Authority's technical or contractual requirements, these should be thoroughly explained. If no contractual exceptions are noted, Offeror will be deemed to have accepted the contract requirements as set forth in Exhibit C.

4. Cost and Price Proposal

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

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

5. Appendices

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

B. FORMS

DISADVANTAGED BUSINESS ENTERPRISE POLICY GUIDANCE AND IMPLEMENTATION – EXHIBIT D

Each Offeror shall complete EXHIBIT D-2, "DBE RACE-NEUTRAL PARTICIPATION LISTING" and EXHIBIT D-3, "BIDDERS LIST" per the instructions set forth in EXHIBIT D.

RESTRICTIONS ON LOBBYING FORM – EXHIBIT E

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

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

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

STATUS OF PAST AND PRESENT CONTRACTS FORM – EXHIBIT F

Offeror is required to complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of the proposal. Offeror shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years and the contract has ended or will end in a termination, settlement, or litigation. A separate form must be completed for each contract. Offeror shall provide a current contact name and telephone number for each contract and indicated the term of the contract and the original contract value. If the contract was terminated, Offeror must list the reason for termination. Offeror must identify and state the status of any litigation, claims or settlement agreements related to any of the contracts. Each form must be signed by the Offeror confirming that the information provided is true and accurate. Offeror is required to submit only **one** copy of the completed form(s) as part of its proposal and it should be included in only the **original** proposal.

SUBCONTRACTORS AND ASSIGNMENTS – EXHIBIT G

Offeror shall complete Exhibit G "List of Subcontractors" with the information requested and submit with the proposal.

If the Offeror fails to specify a subcontractor for any portion of the work to be performed under the contract in excess of one-half of one percent of the Offeror's total proposal, or if the Offeror specifies more than one (1) subcontractor for the same portion of the work to be performed under the contract in excess of

one-half of one percent of the Offeror's total proposal, the Offeror agrees to perform that portion. The Offeror shall not, without the express written consent of the Authority, either:

- a. Substitute any person, firm, or corporation as subcontractor in place of the subcontractor designed in the original proposal; or
- b. Permit any subcontract to be assigned or transferred; or
- c. Allow it to be performed by anyone other than the original subcontractor listed in the proposal.

SECTION III
EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

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

- 1. Qualifications of the Firm 30%**

Technical experience in performing work of a closely similar nature; experience working with public agencies; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 20%**

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 30%**

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

Reasonableness of the total price and competitiveness of this amount with other offers received; adequacy of data in support of figures quoted; reasonableness of individual task budgets.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's

proposal and qualifications.

At the conclusion of the proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

C. AWARD

The Authority will evaluate the proposals received and will submit the proposal considered to be the most competitive to the department manager of Contract Administration and Material Management for consideration and selection. The Authority may also negotiate contract terms with the selected Offeror prior to award, and expressly reserves the right to negotiate with several Offerors simultaneously and, thereafter, to award a contract to the Offeror offering the most favorable terms to the Authority.

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

Offerors who submit a proposal in response to this RFP shall be notified by electronic mail regarding the firm who was awarded the contract. Such notification shall be made within three (3) days of the date the contract is awarded.

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

EXHIBIT A

SCOPE OF WORK

EXHIBIT A

SCOPE OF WORK

Consultant Services for the Development of Orange County Subregional Sustainable Communities Strategy (SCS)

I. Project Overview

Introduction

The Orange County Council of Governments (OCCOG) is seeking support services for the development and preparation of a subregional Sustainable Communities Strategy (SCS) as required by SB 375 and per the terms of the Memorandum of Understanding between the Southern California Association of Governments (SCAG) and OCCOG and the Orange County Transportation Authority (Authority). The selected consultant (CONSULTANT) will accomplish this in accordance with the specifications below. Consultant must have the following expertise:

- Extensive, credible, well accepted research background in transportation, land use, economics, and demographic analysis and reporting;
- Relevant experience working with CSUF Center for Demographics Research;
- Experience in working with local, regional, and statewide stakeholder groups that will be an essential part of the process;
- Specific background and expertise working with state and federal regulations, processes, and standards related to the development of the County's Long Range Transportation Plan as well as the SCAG Regional Transportation Plan;
- Capability to produce interim and final reports that document in exhaustive detail both process, analysis, and outcomes consistent with the Milestones Schedule and Deliverables Template as part of the SCAG's Adopted Framework and Guidelines and outlined responsibilities of the OCCOG Memorandum of Understanding with SCAG for SB 375 planning requirements (Attachment A);
- Skill set to effectively communicate and present detailed process and outcomes to stakeholder groups, including the business community, and the general public in a simple, yet credible manner.
- Resources to conduct countywide, target setting workshops and outreach programs to all 34 Orange County cities, in addition to ability to facilitate meetings and discussions with SCAG to ensure all components of the subregional SCS are prepared consistent with the terms of SCAG's adopted Framework and Guidelines.

Background

The enactment of SB 375 (Chapter 728, Statutes of 2008) provided for subregional councils of governments in the SCAG region to work with their respective county transportation commissions to develop transportation and land use strategies that contribute toward meeting regional greenhouse gas reduction targets established by the California Air Resources Board (ARB) and in accordance with state law.

SB 375 authorizes a subregional council of governments and the county transportation commissions in the SCAG region to work together to conduct a subregional SCS and an alternative planning strategy (APS), if needed.

As of June of 2010, OCCOG and OCTA entered into a Memorandum of Understanding with SCAG to establish roles, responsibilities, and financial commitments associated with conducting an Orange County Subregional Sustainable Communities Strategy as permitted by SB 375.

The development of the Orange County Subregional SCS must be conducted in concert with the development of OCTA's 2010 Long Range Transportation Plan (LRTP), which will identify the future transportation network that will be included in the Orange County Subregional SCS. The coordination of land uses with the transportation network, in an effort to reduce GHG emissions from cars and light trucks, will be the goal of the Orange County Subregional SCS. The SCAG Regional SCS will ultimately incorporate the Orange County Subregional SCS, and strive to meet the targets set by ARB.

Project Description

Consultant shall work with the Project Manager to prepare the Orange County Subregional SCS per the terms of OCCOG and OCTA's MOU with SCAG and consistent with SCAG's adopted Framework and Guidelines, as attached hereto, to ensure that the region can successfully incorporate strategies within the Orange County SCS into the Regional SCS.

The Orange County Subregional SCS will consist of the following components:

1. Database (Orange County Projection dataset) that allocates population, housing, household, and employment to areas of the county. Geographic area should be the smallest level practicable for the Orange County Council of Governments to produce, preferably at the parcel level. The database must reflect the base year 2008 and each variable in the two green house gas (GHG) target years (2020 and 2035), in accordance with the Data Standards set forth below.

2. A map or series of maps that illustrates the growth distribution described above, and that further delineates uses, intensities, and residential densities, in accordance with the Data Standards set forth below.
3. A listing of transportation projects that are incorporated in the subregional SCS.
4. A listing and description of transportation policies e.g. Transportation Demand Management (TDM), Transportation System Management (TSM) and others to be employed.
5. Documentation that establishes the process, including the public participation and outreach process used to develop the SCS, and demonstrates the affected jurisdictions willingness to consider general plan changes.
6. A narrative description of the strategies employed to reduce greenhouse gas emissions. A further description of any other strategies that were considered and not ultimately included.

Data Standards

The following data standards will be used in the development of a subregional SCS:

1. Types of Variables

Variables are categorized into socio-economic variables and land use variables. The socio-economic variables include population, households, housing units, and employment. The land use variables may include land uses designations, building densities, building intensities, and applicable policies.

2. Geographical Levels

Socio-economic and land-use variables should be provided to SCAG at the smallest geographical level practicable for OCCOG to produce, preferably at the parcel level. At a minimum, such variables will be provided at the Census tract or Traffic Analysis Zone (TAZ) level.

3. Base Year and Forecast Years

The socio-economic data and land use variables will be required for the base year of 2008, and as feasible, for the target years of 2020 and 2035.

Timeline for delivery

The key milestones and related schedule required as part of the development of the Orange County Subregional SCS are as follows:

1. Status report on Preliminary Subregional SCS – Dec 2010
2. Adopted OCP 2010/Delivery to SCAG – Feb 2011
3. Preliminary SCS / for purposes of preparing Project Environmental Impact Report (PEIR) project description (intended to be narrative only project description that describes intended strategies or strategy options that are likely to be incorporated into the final Subregional SCS.) –Feb 2011
4. Status report on Draft Subregional SCS – Feb 2011
5. Draft Subregional SCS (containing all components described above) to be incorporated into draft Regional SCS – April 2011
6. Status report on final Subregional SCS – April 2011
7. Final Subregional SCS for incorporation into Regional SCS – June 2011
8. Iterative process, if necessary to meet target – June to November 2011
9. OCCOG to participate in regional outreach conducted in Orange County – June 2011 to February 2012
10. Regional SCS adoption – April 2012

Documentation

Subregions are expected to maintain full and complete records related to the development of the Subregional SCS, including utilizing the most recent planning assumptions considering local general plans and other factors. In particular, subregions must document the feasibility of the subregional strategy by demonstrating the willingness of local agencies to consider and adopt land use changes necessitated by the SCS.

The format for this documentation may include adopted resolutions from local jurisdictions and/or the subregion's governing board. Subregions shall include information regarding the status of the documentation as part of the required status reports to SCAG, and copies of the actual documentation shall be submitted to SCAG as part the final Orange County Subregional SCS.

II. General Conditions and Requirements

The CONSULTANT warrants that it shall comply with SB 375 and any applicable rules and regulations, including work programs, etc. related to this subregional SCS in preparing its work product.

The CONSULTANT shall carry out the instructions received from the Project Manager and OCCOG staff in a timely manner.

The CONSULTANT, Project Manager and OCCOG staff will meet twice per month (bi-monthly) throughout the revision process to discuss and facilitate contract objectives and any other related issues.

The CONSULTANT shall provide all meeting materials electronically and in hard copy to the Project Manager, allowing adequate time for review and approval. All comments provided to CONSULTANT shall be addressed prior to distribution of the materials.

The CONSULTANT shall electronically distribute all approved meeting materials to meeting attendees, allowing them adequate time to review the materials and prepare comments for discussion at the upcoming meeting.

The CONSULTANT shall provide action minutes within one week of each meeting and review the status of any outstanding action items at the bi-monthly meetings.

The CONSULTANT shall closely monitor the scope and schedule to ensure that costs associated with the development of the document are delivered within budget and on time.

The CONSULTANT will not proceed with any tasks that do not fit within this Scope of Work, without first receiving approval from the Project Manager.

The CONSULTANT will provide all materials in an electronic format that is compatible with software currently used within OCCOG and OCTA.

III. Services Required

Task 1: Project Management

Purpose: Coordinate and clearly communicate ongoing and future efforts with the project manager and others involved with the development of the Orange County subregional SCS. Ensure that the tasks and milestones are being completed on time and on budget.

Task 1 Objectives:

- Develop and maintain a schedule of detailed tasks and milestones;
- Submit a monthly Progress Report and Invoice, documenting progress to date, work for the upcoming period, and any critical issues;

- Organize and lead a kick-off meeting, and subsequent bi-monthly meetings, with the Project Manager and OCCOG staff to discuss the project approach, schedule, issues, progress, and upcoming tasks;
- Organize and lead a Workshop with OCCOG/OCTA SCS Joint Working Committee members with the objective of gaining policy direction on driving issues;
- Participate in meetings, as necessary with SCAG committees, the OCCOG and OCTA Board of Directors, Center for Demographic Research (CDR) staff, city staff and consultants for technical assistance; and
- Participate in outreach events with the public and local agencies, as required by the Deliverables Schedule and Milestones Template and consistent with the SCAG Framework and Guidelines;

Task 1 Deliverables:

- Attendance at required and requested meetings and workshops (estimate 30-40 meetings);
- Summaries/updates, as needed, of the development of the SCAG Regional SCS;
- Development and distribution of agendas and action minutes for all meetings and workshops attended;
- Prepare and supply any additional materials necessary for the meetings and workshops (i.e. handouts, displays, presentations, etc...);
- Schedule of tasks and milestones;
- Monthly progress report with signed invoice (hardcopy to Project Manager).

Task 2: Outline Development

Purpose: Layout the framework of the Orange County subregional SCS to demonstrate a clear, flowing discussion of the topics and issues. This will also serve as the foundation from which the Orange County SCS will be fully developed, and will provide an opportunity to identify and prioritize issues and needs.

Task 2 Objectives:

- Develop a detailed outline of each chapter consisting of section headers and short descriptions of subjects (building off the high-level outline provided later in this scope);
- Develop a message strategy and schedule for target setting workshops, other outreach and communications programs for purposes of generating full participation from Orange County cities in

the development of the Orange County SCS policies and issues to the public;

- Recommend and assist with identifying data needs that will be required to fully develop a draft document, as well as potential sources that can fulfill the needs;
- Suggest chapter sections that would require or benefit from graphics (charts, tables, maps, etc...);
- Discuss the outlines with Project Manager and OCCOG staff at the regular bi-monthly meetings to receive comments and direction for refinement of the chapter outlines; and
- Present updates at monthly OCCOG/OCTA Joint SCS Working Committee meetings and as needed to the OCCOG Technical Advisory Committee and full OCCOG Board of Directors meetings.

Task 2 Deliverables:

- Draft chapter outlines;
- Response to comments tracking;
- Listing of data needs and sources, prioritized by assumed lead time requirements;
- Listing of graphics to be developed for the draft document, prioritized by the assumed lead time requirements;
- Presentation of chapter outlines; and
- Final chapter outlines.

Task 3: Draft Orange County Subregional SCS

Purpose: Build upon the outline to create a complete document and executive summary that presents a clear plan for the future development of Orange County's SCS meeting the full scope and requirements specified in the county's MOU with SCAG and the requirements of state and federal law. This document will be used for discussion purposes and to obtain feedback to use in the development of a final draft of the county's SCS.

Task 3 Objectives:

- Use the final chapter outlines and message strategy, along with the project list alternatives and any input received from Project Manager and OCCOG staff to develop a draft SCS;
- Provide Project Manager and OCCOG staff with the Draft SCS and an Executive Summary for review;
- Provide updates and an overview of the Draft SCS and Executive Summary to Project Manager and OCCOG staff at the bi-monthly meetings;
- Present an overview of the Draft SCS at other technical meetings and workshops as necessary; and

- Assist Project Manager and OCCOG staff with development and presentation of a staff report requesting the release of the Draft SCS for review by the Joint OCCOG/OCTA SCS Working Committee and full OCCOG Board.

Task 3 Deliverables:

- Draft SCS and Executive Summary for internal review (15 hardcopies of each);
- Revised Draft SCS and Executive Summary for review (50 hardcopies of each);
- Presentation of the Draft SCS;
- Response to comments tracking; and
- Preparation, review, and presentation of materials to Authority committees and the Board of Directors to release the Draft SCS for review.

Task 4: Final Draft Orange County Subregional SCS

Purpose: Incorporate the comments received to develop a more polished document. This final draft will be presented to the Joint OCCOG/OCTA SCS Working Committee and full OCCOG and OCTA Board's for review and approval. Edits to the final draft may be required in order to receive approval of the plan.

Task 4 Objectives:

- Track comments received during the review period;
- Provide updates and a final overview to Project Manager and OCCOG staff at the bi-monthly meetings of comments received through the review period and proposed changes;
- Using input received during the review period, revise the Draft SCS and Executive Summary;
- Provide the revised Draft SCS and Executive Summary to Project Manager and OCCOG staff for a final internal review and incorporate any comments received through the internal review;
- Assist Project Manager and OCCOG staff with development and presentation of a staff report requesting the adoption of the Final Draft SCS; and
- Coordinate with Project Manager and OCCOG staff and any additional consultants hired to design the layout, print, and bind the Final Draft Orange County Subregional SCS and Executive Summary.

Task 4 Deliverables:

- Matrix of comments submitted through the review process, and proposed changes;

- Revised Draft SCS and Executive Summary that incorporates the proposed changes approved by Project Manager and OCCOG staff (15 hardcopies of each);
- Final Draft SCS and Executive Summary that incorporates any comments received during the final internal review (electronic files to Project Manager and pertinent consultant support); and
- Preparation, review, and presentation of materials to Joint OCCOG/OCTA SCS Working Committee and full OCCOG and OCTA Board's to adopt the final Orange County Subregional SCS.

Task 5: Finalize Orange County Subregional SCS

Purpose: Provide a final SCS document that incorporates edits provided by Project Manager and OCCOG staff, technical committees, and the OCCOG and OCTA Boards.

Task 5 Objectives:

- Track comments made by the Joint OCCOG/OCTA SCS Working Committee and the OCCOG and OCTA Board of Directors;
- Provide an overview to Project Manager and OCCOG staff at the bi-monthly meetings of comments made by the Joint OCCOG/OCTA SCS Working Committee and the OCCOG and OCTA Board of Directors, and propose any necessary changes;
- Finalize the Orange County Subregional SCS and Executive Summary, per direction from Project Manager and OCCOG staff; and
- Coordinate with Project Manager and OCCOG staff and any additional consultants hired by the Authority to design the layout, print, and bind the Final Orange County Subregional SCS.

Task 5 Deliverables:

- Matrix of comments made by the Joint OCCOG/OCTA SCS Working Committee and the OCCOG and OCTA Board of Directors;
- Final Orange County Subregional SCS and Executive Summary, incorporating direction from Project Manager and OCCOG staff (electronic files to Authority and pertinent consultant support); and
- Electronic files of all data and materials produced under this contract.

IV. Tentative outline of the Orange County Subregional SCS (subject to change)

Introduction

- OCCOG and OCTA as county organizations, with its functions and affiliated agencies.
- OCCOG and OCTA vision statement, purpose, goals, and strategic initiatives.

- Purpose of the Sustainable Communities Strategy and its parameters.
- The SCS development process (emphasis on outreach) and input sources (including a description of policy and project development processes).

Situation Analysis - Growth & Trends

- Overview of Orange County's historic growth and transportation trends,
- Growth trends and projections (population, employment, housing)—the “setting” for the SCS (as part of the LRTP), including ethnicity, age and density info and its relevance to transportation planning, and land use patterns,
- Provide an integrated multi-modal presentation of the existing transportation systems countywide (facilities, services, and travel patterns) ,
- Discussion of current environmental and financial conditions,
- Baseline analysis—define the baseline (no project) scenario (list of projects and modeling results),
- Baseline performance—how does the baseline scenario perform and identify the key challenges that must be addressed.

Visioning Strategy (addressing the challenges)

- Description and results of the outreach effort,
- Summary of policy direction from OCCOG/OCTA Joint SCS Working Committee, OCCOG Technical Advisory Committee and OCCOG and OCTA Boards.
- Transit service expansion strategy,
- Recommended financial approach/strategies,
- Sustainability strategy – reducing greenhouse gas emissions through expanded transit programs, best management practices to reduce GHG authorized by state law, CARB, and in consultation with SCAG.
- Options to maximize existing infrastructure through pavement management and congestion management (ITS, congestion pricing, and other TDM/TSM strategies),
- Description of the California High-Speed Rail project,
- Discussion of emerging technologies (Maglev, PRT, etc...),
- Strategies to maximize land-use planning to reduce green house gas emissions.

The Plan

- Analysis of available revenues over life of the plan (revenue side),
- Develop project lists: Constrained Plan and Unconstrained Plan,
- Database (OCP dataset) that allocates population, housing, household, and employment to areas of the county. Geographic area should be the smallest level practicable for the COG to produce, preferably at the parcel level. The database must reflect the base year 2008 and each variable in the two GHG target years (2020 and 2035), in accordance with the Data Standards specified in county's MOU with SCAG.

- A map or series of maps that illustrates the growth distribution described above, and that further delineates uses, intensities, and residential densities, in accordance with the Data Standards set forth below.
- A listing of transportation projects that are incorporated in the subregional SCS.
- A listing and description of transportation policies (e.g. TDM, TSM and others) to be employed.
- Documentation that establishes the process, including the public participation and outreach process used to develop the SCS, and demonstrates the affected jurisdictions willingness to consider general plan changes.
- A narrative description of the strategies employed to reduce greenhouse gas emissions. A further description of any other strategies that were considered and not ultimately included.

V. Safety Specifications

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

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

requirements. When the Consultant safety requirements exceed statutory standards, the more stringent requirements shall be achieved for the safeguard of public and workers.

1.2 HAZARD COMMUNICATION

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

1.3 ACCIDENT INVESTIGATION

- A. The Authority shall be promptly notified of any damage to the Authority's property, or incidents involving third party property damage, or reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration) to Authority employees and agents; Contractor, vendor employees or visitors and members of the general public that occurs or arises from the performance of Authority contract work. A comprehensive investigation and written report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- B. A serious injury or incident may require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within 7 calendar days of the incident. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1.4 PERSONAL PROTECTIVE EQUIPMENT

- A. The Consultant, its sub-tier Consultants, suppliers, and employees are required to comply with the Authority's personal protective equipment (PPE) policy while performing work at any Authority facility, i.e. eye protection policy, hearing protection policy, head protection, safety vests, work shoe policy.
- B. The Consultant, its sub-tier Consultants, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1 **MEMORANDUM OF UNDERSTANDING**
2 **BY AND BETWEEN**
3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**
4 **AND**
5 **ORANGE COUNTY COUNCIL OF GOVERNMENTS**
6 **AND**
7 **THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**
8 **FOR ORANGE COUNTY SUSTAINABLE COMMUNITIES STRATEGY**
9

10 **THIS MEMORANDUM OF UNDERSTANDING** (hereinafter referred to as “MOU”) is entered by
11 and between the Orange County Transportation Authority, (hereinafter referred to as “AUTHORITY”),
12 the Orange County Council of Governments, (hereinafter referred to as “OCCOG”), and the Southern
13 California Association of Governments, (hereinafter referred to as “SCAG”), collectively referred to as
14 the “Parties.”

15 **RECITALS:**

16 **WHEREAS**, Senate Bill 375 (Chapter 728, laws of 2008, “SB 375”) requires SCAG to prepare a
17 regional Sustainable Communities Strategy (hereinafter referred to as “SCS” or “Regional SCS”) as part
18 of SCAG’s Regional Transportation Plan (RTP) to achieve goals for the reduction of greenhouse gas
19 emissions from automobiles and light trucks in the SCAG region which comprises the counties of
20 Imperial, Los Angeles, Orange, Riverside, San Bernardino and Ventura;

21 **WHEREAS**, SB 375 allows AUTHORITY, as the county transportation commission for Orange
22 County, and OCCOG, as a subregional council of governments for Orange County, to develop and
23 submit to SCAG a subregional SCS for Orange County (hereinafter referred to as “Orange County
24 SCS”);

25 **WHEREAS**, as part of its implementation of SB 375, SCAG has developed and adopted a
26 certain “Framework and Guidelines for the Subregional Sustainable Communities Strategy” (hereinafter

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referred to as "Framework and Guidelines"), attached hereto as Exhibit "A" and incorporated herein by this reference.

WHEREAS, SCAG is required by SB 375 to include a subregional SCS in the regional SCS, to the extent consistent with state and federal law, including the SCS conducted by Orange County; and

WHEREAS, AUTHORITY, OCCOG and SCAG desire to enter into this MOU to demonstrate mutual commitments to prepare the Orange County SCS.

NOW, THEREFORE, the Parties enter into the following MOU with respect to the matters set forth herein:

1. This MOU establishes the roles, responsibilities, and requirements for AUTHORITY, OCCOG, and SCAG that are necessary to develop an Orange County SCS that shall be included in the regional SCS prepared by SCAG.

2. AUTHORITY and OCCOG shall prepare the Orange County SCS consistent with SCAG's adopted Framework and Guidelines, as attached hereto, to ensure that the region can successfully incorporate strategies within the Orange County SCS into the Regional SCS, and not inhibit the region from complying with SB 375.

3. AUTHORITY and OCCOG agree to comply with the Milestones Schedule, attached hereto as Exhibit "B" and incorporated by this reference, and work with SCAG and the other subregions to ensure the successful delivery of a regional SCS by using the Deliverables Template, attached hereto as Exhibit "C" and incorporated herein by this reference as the primary template for developing a subregional SCS workplan. The Deliverables Template may be subject to change, based on direction from the SCAG Regional Council or Community, Economic and Human Development Policy Committee, and approval by OCCOG.

4. AUTHORITY shall prepare the transportation element of the Orange County SCS through AUTHORITY'S Long-Range Transportation Plan (LRTP). Such transportation element shall, at a minimum, identify a transportation network (i.e., list of transportation projects) to service the

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1 transportation needs of Orange County, and describe transportation policies (e.g., Transportation
2 Demand Management and Transportation System Management strategies).

3 5. OCCOG shall prepare the Orange County SCS, and use AUTHORITY'S LRTP as the
4 transportation element of the Orange County SCS.

5 6. OCCOG and AUTHORITY are encouraged by SCAG to conduct a public participation
6 process in developing the Orange County SCS, above and beyond the process required for the
7 regional SCS required under Section 65080(b)(2)(D)-(E) of the California Government Code. Further,
8 SCAG encourages OCCOG to develop a public participation plan, similar to SCAG's Public
9 Participation Plan adopted in December 2009, for such purposes.

10 7. OCCOG and AUTHORITY agree to participate in all publicly noticed meetings,
11 workshops, hearings, and other outreach activities organized in Orange County by SCAG at which the
12 regional SCS or Orange County SCS is included on the agenda. All parties shall coordinate with one
13 another during implementation of SCAG's public participation process in order to ensure broad public
14 and stakeholder participation, and to avoid duplication of effort.

15 8. OCCOG and AUTHORITY shall retain and deliver to SCAG all documentation
16 pertaining to the Orange County SCS from publicly noticed meetings, workshops, and hearings at
17 which the Orange County SCS is included on the agenda. Such documentation shall include but is not
18 limited to meeting notices, agendas, minutes, comments and responses to comments, sign-up sheets,
19 handouts, and copies of power point presentations.

20 9. AUTHORITY, OCCOG, and SCAG acknowledge that population, housing, and employment
21 estimates are being prepared by the Center for Demographic Research at California State University
22 Fullerton through the Orange County Projection process and the 2012 RTP growth forecasting process
23 (hereinafter referred to as the "OCP dataset"). SCAG agrees to use the OCP dataset as reviewed and
24 approved by OCCOG, for the Regional SCS and the 2012 RTP; provided, that SCAG, in consultation
25 with OCCOG, may make adjustments to the OCP dataset in order to ensure consistency with SCAG's
26 2012 RTP growth forecast.

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1 10. AUTHORITY and Orange County local agencies shall provide SCAG with population,
2 employment, and housing estimates in transportation analysis zone (TAZ) format consistent with the
3 Orange County Transportation Analysis Model (OCTAM).

4 11. AUTHORITY agrees to incorporate new land use-transportation interactions into OCTAM,
5 and these shall include, at a minimum, net residential and employment densities, jobs/housing diversity,
6 design characteristics, and destination accessibility.

7 12. The Parties agree and acknowledge that population, housing, and employment data
8 submitted to SCAG by OCCOG and AUTHORITY shall be accurately reflected in all documentation
9 produced by SCAG that relates to the Orange County SCS and Regional SCS.

10 13. The Parties agree and acknowledge that RHNA responsibilities shall remain with SCAG,
11 and neither AUTHORITY nor OCCOG shall assume delegation responsibility for RHNA as part of the
12 Orange County SCS development. However, neither AUTHORITY nor OCCOG is precluded by this
13 MOU from assuming delegation responsibility for RHNA as part of a subsequent, separate agreement.

14 14. SCAG agrees to accept AUTHORITY's LRTP as Orange County's program of
15 transportation projects as input for the 2012 Regional Transportation Plan.

16 15. SCAG agrees to acknowledge that the Renewed Measure M program is exempt from SB
17 375 requirements, to the extent consistent with SB 375 and the final, adopted California Transportation
18 Commission RTP guidelines.

19 16. SCAG agrees that in addition to preparation of the Orange County SCS developed under
20 this MOU, development of an Alternative Planning Strategy (APS) by AUTHORITY and OCCOG is
21 optional. This understanding shall not preclude SCAG from preparing a regional APS pursuant to SB
22 375.

23 17. SCAG shall not develop SCS related targets that are attributable to the subregions.

24 18. SCAG agrees that it will not impose a penalty on the Orange County subregion if the
25 greenhouse gas targets, as established by the California Air Resources Board, are not met by the
26 Regional SCS.

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1 19. SCAG shall accept the Orange County SCS prepared in accordance with this MOU, as the
2 Orange County subregion's input into the Regional SCS prepared by SCAG.

3 20. AUTHORITY, OCCOG, and SCAG shall separately amend this MOU in writing or develop a
4 separate, mutual funding agreement addressing Orange County SCS costs should state or federal
5 funding become available that can be applied toward preparation of the Orange County SCS.

6 21. AUTHORITY, OCCOG, and SCAG agree to work closely together throughout the regional
7 SCS process and Orange County SCS process to provide technical input, applicable planning data,
8 and constructive feedback with respect to all documents, products and deliverables developed and
9 associated with the Orange County SCS.

10 22. The AUTHORITY, OCCOG, and SCAG agree to work together in good faith, using
11 reasonable efforts to resolve any unforeseen issues and disputes arising out of the performance of this
12 MOU.

13 23. The Parties agree in good faith to provide the resources necessary to implement the
14 provisions of the MOU.

15 24. AUTHORITY, OCCOG, and SCAG agree to defend, indemnify and hold harmless the other
16 parties, their Officers, agents, elected officials, and employees, from all liability, claims, losses and
17 demands, including defense costs and reasonable attorneys' fees, whether resulting from court action
18 or otherwise, arising out of the acts or omissions of the defending party, its officers, agents, or
19 employees, in the performance of the MOU. When acts or omissions of one party are directed by
20 another party, the party directing the acts or omission shall owe this defense and indemnity obligation to
21 the agencies following the directions. The provisions of this paragraph shall survive termination of this
22 MOU.

23 25. This MOU shall be governed by all applicable federal, state, and local laws. The
24 signatories warrant that in the performance of this MOU, each shall comply with all applicable federal,
25 state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated
26 there under.

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1 26. This MOU may only be modified or amended upon written mutual consent of all signatories.
2 All modifications, amendments, changes and revisions of this MOU in whole or part, and from time to
3 time, shall be binding upon the parties, so long as the same shall be in writing and executed by the
4 signatories.

5 27. This MOU, including all exhibits and documents incorporated herein and made applicable
6 by reference, constitutes the complete and exclusive statement of the term(s) and condition(s) of the
7 agreement between the parties and it supersedes all prior representations, understandings and
8 communications. The invalidity in whole or part of any term or condition of this MOU shall not affect the
9 validity of the other term(s) or condition(s).

10 28. Any party may withdraw from this MOU upon 30 days written notice to the other, until the
11 due date set forth in Exhibit "B" for submittal to SCAG of the preliminary Orange County SCS. After
12 such due date, any party may withdraw from this MOU only upon mutual written agreement by all
13 Parties.

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

21 30. Any notice sent by first class mail, postage paid, to the address and addressee, shall be
22 deemed to have been given when in the ordinary course it would be delivered. The representatives of
23 the parties who are primarily responsible for the administration of this MOU, and to whom notices,
24 demands and communications shall be given are as detailed in Exhibit "D". If there are any changes in
25 the names and/or addresses listed in Exhibit "D", the party desiring to make such changes shall give a
26 written notice to the other respective parties within five (5) days of such change.

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31. This MOU shall continue in full force and effect from the Effective Date up to and until the date that the Regional SCS is adopted by SCAG's Regional Council, unless otherwise terminated earlier in accordance with section 28 of this MOU. The Effective Date of this MOU shall mean the date (last date indicated below) that all parties have fully executed this MOU.

[Signature Page to follow.]

MEMORANDUM OF UNDERSTANDING NO. C-0-XXXX

1 **IN WITNESS WHEREOF**, the Parties hereto have caused this MOU No. 0-XXX to be executed
2 by their duly authorized representatives.

3
4 **ORANGE COUNTY TRANSPORTATION AUTHORITY (“Authority”)**

5
6 By _____ Date: _____
7 Will Kempton, Chief Executive Officer

8 **ORANGE COUNTY COUNCIL OF GOVERNMENTS (“OCCOG”)**

9
10 By _____ Date: _____
11 Kristine Murray, Executive Director

12
13 **SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (“SCAG”)**

14
15 By _____ Date: _____
16 Hasan Ikhrata, Executive Director

EXHIBIT B

COST AND PRICE FORMS

EXHIBIT B

PRICE SUMMARY SHEET

Enter below the proposed price for each of the task described in the Scope of Work, Exhibit A. Prices shall include direct costs, indirect costs, and profits.

Tasks	8/1/10-1/31/12
Task 1: Project Management	\$ _____
Task 2: Outline Development	\$ _____
Task 3: Draft Orange County subregional SCS	\$ _____
Task 4: Final Draft Orange County Subregional SCS	\$ _____
Task 5: Finalize Orange County Subregional SCS	\$ _____
Total Price:	\$ _____

The undersigned, upon acceptance, agrees to provide the services in accordance with the terms, conditions, and requirements as contained in RFP 0- 1609 and the support documents for all prices proposed.

1. I acknowledge receipt of RFP 0-1609 and Addenda No.(s) _____.
2. This offer shall remain firm for _____ days from the date of proposal.
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

EMAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

SIGNATURE'S NAME AND TITLE _____

DATE SIGNED _____

EXHIBIT C
PROPOSED AGREEMENT

1 **AGREEMENT NO. C-0-1609**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective as of this _____ day of _____, 2010, by and
7 between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange,
8 CA 92863-1584, a public corporation of the state of California (hereinafter referred to as
9 "AUTHORITY"), and (hereinafter referred to as "CONSULTANT")

10 **WITNESSETH:**

11 **WHEREAS,** AUTHORITY requires assistance from CONSULTANT to provide consultant
12 services for development of Orange County Subregional Sustainable Communities Strategy (SCS); and

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

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

16 **WHEREAS,** CONSULTANT wishes to perform these services;

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

19 **ARTICLE 1. COMPLETE AGREEMENT**

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

25 B. AUTHORITY's failure to insist in any one or more instances upon CONSULTANT's
26 performance of any terms or conditions of this Agreement shall not be construed as a waiver or

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

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

Names

Functions

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONSULTANT is not provided with such notice by the departing employee. AUTHORITY shall respond to CONSULTANT within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

This Agreement shall commence upon the effective date of this Agreement, and shall continue in full force and effect through January 31, 2012, unless earlier terminated or extended as provided in this Agreement.

ARTICLE 5. PAYMENT

A. For CONSULTANT's full and complete performance of its obligations under this Agreement, and subject to the maximum cumulative payment obligation provisions set forth in Article 7, AUTHORITY shall pay CONSULTANT on a firm fixed price basis in accordance with the following provisions.

B. The following schedule shall establish the firm fixed payment to CONSULTANT by AUTHORITY for each work task set forth in the Scope of Work. The schedule shall not include any CONSULTANT expenses not approved by AUTHORITY including but not limited to reimbursement for local meals.

<u>Task</u>	<u>Description</u>	<u>Firm Fixed Price</u>
1	Project Management	.00
2	Outline Development	.00
3	Draft Orange County Subregional SCS	.00
4	Final Draft Orange County Subregional SCS	.00
5	Finalize Orange County Subregional SCS	.00
TOTAL FIRM FIXED PRICE PAYMENT		<u>.00</u>

C. CONSULTANT shall invoice AUTHORITY on a monthly basis for payments corresponding to the work actually completed by CONSULTANT. CONSULTANT shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment for any services until such time as CONSULTANT has documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all services required. AUTHORITY's payment in full for any services completed shall not

constitute AUTHORITY's final acceptance of CONSULTANT's work.

D. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-0-1609;
2. Specify the task number for which payment is being requested;
3. The time period covered by the invoice;
4. Total monthly invoice; and
5. Certification signed by the CONSULTANT or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The invoice is a true, complete and correct statement of reimbursable costs; c) The backup information included with the invoice is true, complete and correct in all material respects; d) All payments due and owing to subCONSULTANTS and suppliers have been made; e) Timely payments will be made to subCONSULTANTS and suppliers from the proceeds of the payments covered by the certification and; f) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subCONSULTANT or supplier unless so identified on the invoice.

6. Any other information as agreed or requested by AUTHORITY to substantiate the validity of an invoice.

ARTICLE 6. PROMPT PAYMENT CLAUSE

A. CONSULTANT agrees to pay each subCONSULTANT for the satisfactory work preformed under this Agreement, no later than ten (10) calendar days from the receipt of each payment CONSULTANT receives from AUTHORITY. 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

1 delay or postponement of payment from the above referenced time frames may occur only for good
2 cause following written approval by AUTHORITY.

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

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

9 **ARTICLE 7. MAXIMUM OBLIGATION**

10 Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and
11 CONSULTANT mutually agree that AUTHORITY's maximum cumulative payment obligation (including
12 obligation for CONSULTANT's profit) shall be Dollars (\$0.00) which shall include all amounts payable to
13 CONSULTANT for its subcontracts, leases, materials and costs arising from, or due to termination of,
14 this Agreement.

15 **ARTICLE 8. NOTICES**

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

20 /

21 /

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24 /

25 /

26 /

To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Sue Ding

Sr. Contract Administrator

Tel:

Tel: (714) 560 – 5631

Email:

Email: sding@octa.net

ARTICLE 9. INDEPENDENT CONSULTANT

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

ARTICLE 10. INSURANCE

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

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

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

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

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

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

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

C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement Number C-0-1609; and, the Contract Administrator's Name, Sue Ding, Sr. Contract Administrator.

ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 0-1609; (3) CONSULTANT's proposal dated; and (4) all other documents, if any, cited herein or incorporated by reference.

ARTICLE 12. CHANGES

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

CONSULTANT from proceeding immediately with the agreement as changed.

ARTICLE 13. DISPUTES

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

B. The provisions of this Article shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged, provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this Article, CONSULTANT shall be afforded an opportunity to be heard and to offer evidence in support of its appeal.

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

ARTICLE 14. TERMINATION

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

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

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

ARTICLE 15. INDEMNIFICATION

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

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONSULTANT either voluntarily or by operation of law. CONSULTANT shall not have the right to make any substitutions of any subCONSULTANT listed in Exhibit H, entitled "List of Proposed SubCONSULTANTS," except in accordance with the provisions of the Subletting and SubCONSULTANTS Fair Practices Act, Public Contract Code section 4100 et. seq. AUTHORITY's

consent shall not be deemed to relieve CONSULTANT of its obligation to fully comply with the requirements of this Agreement.

B. CONSULTANT shall be fully responsible to AUTHORITY for all acts and omissions of its own employees, and of subCONSULTANTS and their employees. CONSULTANT shall coordinate the work performed by subCONSULTANT.

C. AUTHORITY shall have the right, but not the obligation, to review the form of subcontract used by CONSULTANT for the project and to require modifications thereto to conform to the requirements set forth herein.

ARTICLE 17. AUDIT AND INSPECTION OF RECORDS

CONSULTANT shall provide AUTHORITY, the U.S. Department of Transportation (DOT), the Comptroller General of the United States, or other agents of AUTHORITY, such access to CONSULTANT's project related documents only, as AUTHORITY deems necessary. CONSULTANT shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during CONSULTANT's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY. CONSULTANT shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

ARTICLE 18. CONFLICTS OF INTEREST

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

ARTICLE 19. CODE OF CONDUCT

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

ARTICLE 20. FEDERAL, STATE AND LOCAL LAWS

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

ARTICLE 21. EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 22. CIVIL RIGHTS ASSURANCE

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

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

B. Nondiscrimination: CONSULTANT, 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 subCONSULTANTS, including procurements of materials and leases of equipment. The CONSULTANT shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the 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 CONSULTANT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subCONSULTANT or supplier shall be notified by the CONSULTANT of the CONSULTANT's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

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

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

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

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

F. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A) through (F) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The CONSULTANT shall take such

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

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

16 H. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Section 12101
 17 *et seq.*, prohibits discrimination against qualified individuals with disabilities in all programs, activities,
 18 and services of public entities, as well as imposes specific requirements on public and private providers
 19 of transportation.

20 **ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISES**

21 (This paragraph is applicable when CONSULTANT has committed to utilize DBE (s) in the
 22 performance of this contract). At the time of contract execution, the CONSULTANT committed to utilize
 23 DBE (s) in the performance of this DOT-assisted contract, and further agrees to ensure that DBE
 24 subcontractors listed on the "DBE Race-Neutral Participation Listing" (Exhibit D-2) perform work and/or
 25 supply materials in accordance with original commitments, unless otherwise directed and/or approved
 26 by the Authority prior to the CONSULTANT effectuating any changes to its race-neutral DBE

participation commitment(s) (Refer to subsection H: "Performance of DBE subcontractors").

(This paragraph is applicable when CONSULTANT has not committed to utilize DBE (s) in the performance of this contract). At the time of contract execution, the CONSULTANT did not committed to utilize DBE (s) in the performance of this DOT-assisted contract. However, in the event DBE (s) are utilized in the performance of this contract, the CONSULTANT shall comply with reporting requirements delineated under Section E: "race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award)".

A. 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 project is subject to these stipulated regulations. 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 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:

1. 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.

2. Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.

3. Ensure non-discrimination in the award and administration of AUTHORITY's DOT-assisted contracts.

4. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.

5. Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.

6. Help remove barriers to the participation of DBEs in DOT-assisted contracts.

7. Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

B. CONSULTANT 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.

C. AUTHORITY's New Race-Neutral DBE Policy Implementation Directives: Pursuant to recently released Race-Neutral DBE policy directives issued by the U.S. DOT in response to the Ninth Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation*, the Authority has implemented a wholly Race-Neutral DBE Program. A Race-Neutral DBE Program is one that, while benefiting DBEs, is not solely focused on DBE firms. Therefore, under a Race-Neutral DBE Program, AUTHORITY does not establish numeric race-conscious DBE participation goals on its DOT-assisted contracts. CONSULTANT shall not be required to achieve a specific level of DBE participation as a condition of contract compliance in the performance of this DOT-assisted contract. However, CONSULTANT shall adhere to race-neutral DBE participation commitment(s) made at the time of contract award.

D. Definitions: The following definitions apply to the terms as 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 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. "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

7. 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.

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

a. Social Disadvantage: 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.

i. The individual must demonstrate that he/she has personally suffered social disadvantage.

ii. The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.

iii The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.

iv. The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.

v. A determination of social disadvantage must be made before proceeding to

make a determination of economic disadvantage.

b. Economic Disadvantage:

i. 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.

ii. 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

E. Race-Neutral DBE Submission and Ongoing Reporting Requirements (Post-Award)

CONSULTANT shall complete and submit the following DBE exhibits (forms) at the times specified:

"Monthly Race-Neutral DBE SubCONSULTANTS Paid Report Summary and Payment Verification"

(Form 103) (Attachment 1). If CONSULTANT is a DBE firm and/or has proposed to utilize DBE

firms, CONSULTANT will be required to complete and submit a Form 103 to AUTHORITY by the

10th of each month until completion of the contract to facilitate reporting of race-neutral DBE

participation, following the first month of contract activity. CONSULTANT shall report the total dollar

value paid to DBEs for the applicable reporting period. CONSULTANT shall also report the DBE's

scope of work and the total subcontract value of commitment for each DBE reported.

CONSULTANT is advised not to report the participation of DBEs toward CONSULTANT's race-

neutral DBE attainment until the amount being counted has been paid to the DBE. Upon completion of the contract, CONSULTANT will be required to prepare and submit to the Authority a "Race-Neutral DBE SubCONSULTANTS Paid Report Summary and Payment Verification" (Form 103) (Attachment 1) clearly marked "Final" to facilitate reporting and capturing actual DBE race-neutral attainments. CONSULTANT shall complete and submit a Final Form 103 whether or not DBEs were utilized in the performance of the contract.

F. DBE Eligibility and Commercially Useful Function Standards : A 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. 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. 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. 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. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources: 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>. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions : When a DBE is proposed to participate in the contract, either as a prime CONSULTANT or SubCONSULTANT, only the value of the work proposed to be performed

by the DBE with its own forces may be counted towards race-neutral DBE participation. If CONSULTANT is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted. 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 race-neutral DBE participation only if the DBE 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 race-neutral DBE attainment. CONSULTANT is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows: Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer. The following types of fees or commissions paid to DBE SubCONSULTANTS, Brokers, and Packagers may be credited toward the prime CONSULTANT's race-neutral 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: 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; 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; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. CONSULTANT may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. 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. The DBE may lease trucks from another DBE

1 firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another
 2 DBE receives credit for the total value of the transportation services the lessee DBE provides on the
 3 contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE
 4 who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a
 5 result of the lease arrangement. The DBE does not receive credit for the total value of the
 6 transportation services provided by the lessee, since these services are not provided by a DBE. For
 7 purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over
 8 the truck. This does not preclude the leased truck from working for others during the term of the lease
 9 with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased
 10 truck. Leased trucks must display the name and identification number of the DBE. If CONSULTANT
 11 listed a non-certified DBE 1st tier subCONSULTANT to perform work on this contract, and the non-
 12 certified DBE subCONSULTANT subcontracts a part of its work or purchases materials and/or supplies
 13 from a lower tier DBE certified SubCONSULTANT or Vendor, the value of work performed by the lower
 14 tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

15 H. Performance of DBE SubCONSULTANTS: DBE subCONSULTANTS listed by
 16 CONSULTANT in its "DBE Race-Neutral Participation Listing" (Exhibit D-2) submitted at the time of
 17 proposal submittal shall perform the work and supply the materials for which they are listed, unless the
 18 CONSULTANT has received prior written authorization from the Authority to perform the work with
 19 other forces or to obtain the materials from other sources. CONSULTANT shall provide written
 20 notification to the AUTHORITY in a timely manner of any changes to its anticipated DBE participation.
 21 This notice should be provided prior to the commencement of that portion of the work.

22 I. Additional DBE SubCONSULTANTS: In the event CONSULTANT identifies additional
 23 DBE subCONSULTANTS or suppliers not previously identified by CONSULTANT for race-neutral
 24 DBE participation under the contract, CONSULTANT shall notify the Authority by submitting
 25 Attachment 2: "Request for Additional DBE Firm" to enable CONSULTANT to capture all race-
 26 neutral DBE participation. CONSULTANT shall also submit, for each DBE identified after contract

1 execution, a written confirmation from the DBE acknowledging that it is participating in the contract
2 for a specified value, including the corresponding scope of work (a subcontract agreement can serve
3 in lieu of the written confirmation).

4 J. DBE Certification Status: If a listed DBE subCONSULTANT is decertified during the
5 life of the project, the decertified subCONSULTANT shall notify CONSULTANT in writing with the
6 date of decertification. If a non-DBE subCONSULTANT becomes a certified DBE during the life of
7 the project, the DBE subCONSULTANT shall notify CONSULTANT in writing with the date of
8 certification. CONSULTANT shall furnish the written documentation to AUTHORITY in a timely
9 manner.

10 K. CONSULTANT's Assurance Clause Regarding Non-Discrimination: In compliance
11 with State and Federal anti-discrimination laws, CONSULTANT shall affirm that they will not exclude
12 or discriminate on the basis of race, color, national origin, or sex in consideration of contract
13 award opportunities. Further, CONSULTANT shall affirm that they will consider, and utilize
14 subCONSULTANTS and vendors, in a manner consistent with non-discrimination objectives.

15 **ARTICLE 24. PROHIBITED INTERESTS**

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

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

21 **ARTICLE 25. OWNERSHIP OF REPORTS AND DOCUMENTS**

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

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

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

ARTICLE 26. PATENT AND COPYRIGHT INFRINGEMENT

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

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

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

ARTICLE 27. FINISHED AND PRELIMINARY DATA

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

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

ARTICLE 28. FORCE MAJEURE

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

ARTICLE 29. ALCOHOL AND DRUG POLICY

A. CONSULTANT agrees to establish and implement an alcohol and drug program that complies with 41 U.S.C. sections 701-707, (the Drug Free Workplace Act of 1988), which is attached to the Agreement as Attachment 3. CONSULTANT agrees to produce any documentation necessary to establish its compliance with sections 701-707.

B. Failure to comply with this Article may result in nonpayment or termination of this Agreement.

ARTICLE 30. PRIVACY ACT

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

ARTICLE 31. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular

4220.1E, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any requests, which would cause AUTHORITY to be in violation of the FTA terms and conditions.

ARTICLE 32. FEDERAL CHANGES

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

ARTICLE 33. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

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

ARTICLE 34. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

A. CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Accordingly, by signing this Agreement, CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement of the FTA assisted project for which this Agreement's work is being performed. CONSULTANT also

acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

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

ARTICLE 35. RECYCLED PRODUCTS

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

ARTICLE 36. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 37. CLEAN AIR

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

subcontracts.

ARTICLE 38. CLEAN WATER REQUIREMENTS

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

ARTICLE 39. DEBARMENT AND SUSPENSION

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-1609 to be executed on the date first above written.

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Carolina Coppolo
Manager, Contracts and Procurement

APPROVED AS TO FORM:

By _____

Kennard R. Smart, Jr.
General Counsel

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

Reporting Period (month): _____, 200 ____

Contract Number: _____	Form 103 Report No.: _____	Report prepared by: _____
Contract Award Date: _____	Original Contract Award Amount: _____	Title: _____
Prime Name: _____	Current Contract Value: _____ [B]	Report reviewed by: _____
Address: _____	% of Project Complete: _____	Signature: _____
Telephone No.: _____	[A] divided by [B] _____	Title: _____
	Total Dollars Paid to DBEs this Reporting Period: _____	Prime's Race-Neutral DBE Attainment to Date: _____
	Total Dollars Paid to DBEs to Date: _____	(Total Dollars Paid to DBEs divided by Total Dollars Paid to Prime)
	Total Dollars Paid to Prime to Date: _____ [A]	

APPROVED DBE SUBCONTRACTORS/SUBCONSULTANTS	Dollar Amount Paid This Month	Dollar Amount Paid To Date [C]	Type of Work Performed (Scope)	Original Dollar Amount Committed to DBE at Contract Award	\$ +/- Resulting from Change Order Activity	Current Subcontract Value [D]	% of Work Completed [C] divided by [D]	FOR AUTHORITY USE ONLY
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Prime ☐ Subconsultant ☐ Broker ☐ Supplier: Regular Dealer ☐ or Manufacturer ☐ Attach Verification of Payment: ☐ YES ☐ NO								
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Prime ☐ Subconsultant ☐ Broker ☐ Supplier: Regular Dealer ☐ or Manufacturer ☐ Attach Verification of Payment: ☐ YES ☐ NO								
Name: _____ Address: _____ City, State, Zip Code: _____ Telephone Number: () _____ Prime ☐ Subconsultant ☐ Broker ☐ Supplier: Regular Dealer ☐ or Manufacturer ☐ Attach Verification of Payment: ☐ YES ☐ NO								

Comments/Issues: _____



ORANGE COUNTY TRANSPORTATION AUTHORITY

REQUEST FOR ADDITIONAL DBE SUBCONTRACTOR/SUPPLIER

Request for additional DBE(s) shall be in accordance with the Contract specifications and is subject to approval by the Authority. The Prime Contractor/Consultant shall provide Authority with the information requested below upon identification of any DBE subcontractor/subconsultant/supplier firm not previously listed to perform under the Contract. The Prime Contractor/Consultant shall also provide a written confirmation from the DBE 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).

Contract No.:		Contract Name:	
Prime Contractor/Consultant:			
Business Address:			
Please provide the following information for the proposed additional DBE subcontractor/subconsultant/supplier firm:			
DBE Firm Name:		DBE Certification Number:	
Business Address:			
Contact Person:	Phone Number: ()	Email Address:	
Description of Work (Scope):			
Contract Item Number(s):		Proposed DBE Subcontract Value:	
Copy of DBE Certification Letter attached (Required)? ☐ Yes ☐ No			

 Prime Contractor/Consultant Representative Signature

 Title

 Business Phone Number

 Date

FOR AUTHORITY USE ONLY:

 Date Request Received: _____ Approve Request for Additional DBE? ☐ Yes ☐ No

If no, please state reason: _____

Reviewed by: _____ Title: _____

Signature: _____ Date: _____



ATTACHMENT 3

DRUG-FREE WORKPLACE ACT OF 1988

THE FEDERAL LAW

This law, enacted November 1988, with subsequent modification in 1994 by the Federal Acquisition Streamlining Act, (*raising the contractor amount from \$25,000 to \$100,000*), requires compliance by all organizations contracting with any U. S. Federal agency in the amount of \$100,000 or more that does not involve the acquisition of commercial goods via a procurement contract or purchase order, and is performed in whole in the United States. It also requires that *all* organizations receiving federal grants, regardless of amount granted, maintain a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988. The Law further requires that all *individual* contractors and grant recipients, regardless of dollar amount/value of the contract or grant, comply with the Law.

Certification that this requirement is being met must be done in the following manner:

By publishing a statement informing all covered employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the covered workplace, and what actions will be taken against employees in the event of violations of such statement.

By providing **ALL** covered employees with a copy of the above-described statement, including the information that as a condition of employment on the Federal contract or grant, the employee must abide by the terms and conditions of the policy statement.

For Federal contractors this encompasses employees involved in the performance of the contract. For Federal grantees all employees must come under this requirement as the act includes all "direct charge" employees (those whose services are directly & explicitly paid for by grant funds), and "indirect charge" employees (members of grantee's organization who perform support or overhead functions related to the grant and for which the Federal Government pays its share of expenses under the grant program).

Among "indirect charge" employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage. Any

other person, who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee. Temporary personnel and consultants who are on the grantee's payroll are covered. Similar workers, who are not on the grantee's payroll, but on the payroll of contractors working for the grantee, are not covered even if physical place of employment is in the grantee's workplace.

By establishing a continuing, drug-free awareness program to inform employees of the dangers of drug abuse; the company's drug-free workplace policy; the penalties for drug abuse violations occurring in the workplace; the availability of any drug counseling, rehabilitation, and/or employee assistance plans offered through the employer.

By requiring each employee directly involved in the work of the contract or grant to notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not less than five (5) calendar days after such conviction.

By notifying the Federal agency with which the employer has the contract or grant of any such conviction within ten (10) days after being notified by an employee or any other person with knowledge of a conviction.

By requiring the imposition of sanctions or remedial measures, including termination, for an employee convicted of a drug abuse violation in the workplace. These sanctions may be participation in a drug rehabilitation program if so stated in the company policy.

By continuing to make a "good-faith" effort to comply with all of the requirements as set forth in the Drug-Free Workplace Act.

All employers covered by the law are subject to suspension of payments, termination of the contract or grant, suspension or debarment if the head of the contracting or granting organization determines that the employer has made any type of false certification to the contracting or grant office, has not fulfilled the requirements of the law, or has excessive drug violation convictions in the workplace. Penalties may also be imposed upon those employing a number of individuals convicted of criminal drug offenses as this demonstrates a lack of good faith effort to provide a drug-free workplace. The contract or grant officer may determine the number on a case-by-case basis. Employers who are debarred are ineligible for other Federal contracts or grants for up to five (5) years. Compliance may be audited by the Federal agency administering the contract or grant.

The Drug-free Workplace Act does not require employers to establish an employee assistance program (EAP) or to implement drug testing as a part of the program.

ATTACHMENT 3

Source: Federal Registers April 11, 1988 & May 25, 1990 & the Federal Acquisition Streamlining Act of 1994 (FASA).

EXHIBIT D

**DISADVANTAGED BUSINESS ENTERPRISE
POLICY GUIDANCE AND IMPLEMENTATION**

EXHIBIT D

DISADVANTAGED BUSINESS ENTERPRISE POLICY GUIDANCE AND IMPLEMENTATION

RACE-NEUTRAL DBE POLICY GUIDANCE AND IMPLEMENTATION (FEDERAL REGISTER / VOL. 71, NO. 56)

The Authority is implementing a strictly Race-Neutral DBE Program in compliance with the Ninth Circuit U.S. Court of Appeals decision and subsequent directives issued by the U.S. DOT

Under a strictly race-neutral DBE Program, the Authority will not utilize race-conscious means (i.e., numeric contract-specific DBE goals) on any of its U.S. DOT-assisted contracts towards meeting its Overall Annual DBE goal.

The Authority will take affirmative steps to use as many of the race-neutral means (i.e., unbundling of contracts, providing technical assistance, establishing business development programs, etc.) as further delineated in its Program and Title 49 CFR, Part 26.51(b) as possible to meet its Overall Annual DBE goal

The Good Faith Effort requirements that apply when numeric DBE contract goals are established have no required application under a strictly race-neutral DBE Program.

DBE participation data collection and reporting, monitoring commercially useful function standards, prompt payment and retainage provisions and bidders list development and maintenance remain as required components of the Authority's DBE Program.

Other Pertinent Aspects of the Guidance

Since the Authority does not currently have sufficient (readily available) evidence of discrimination or its effects on its marketplace to sufficiently support the use of race-conscious measures in the implementation of its DBE Program, the Authority was required to submit a wholly race-neutral Overall Annual DBE Goal for FFY 2006.

The Guidance further affirmed the disparity study requirement or other appropriate evidence-gathering process to determine the existence of discrimination or its effects on the recipient's marketplace. The Authority was further required to submit an action plan describing the study/data-gathering process and timeline for completion that it would undertake with their respective Overall Annual DBE Goal for FFY 2006 submission to U.S. DOT.

The Authority's U.S. DOT-assisted contracts executed prior to the implementation date (April 24, 2006) will be unaffected by the Authority's strictly race-neutral DBE Program implementation procedures. The race-neutral DBE Program implementation procedures shall continue to be applied until such time that the Authority determines it has sufficient evidence of discrimination in its respective marketplace or receives

approval from the affected U.S. DOT Operating Administration to implement other procedures.

APPLICABILITY (§26.3; §26.21)

The Authority, as a direct recipient of federal funds from the U.S. DOT, and as a condition of Federal financial assistance, is required to submit for approval, to the U.S. DOT Operating Administration from which it receives the majority of its funding, a DBE Program developed in accordance with federal regulations published under Title 49 CFR Part 26 and subsequent Guidance. This Program sets forth the policies and procedures to be implemented by the Authority to ensure that DBEs have an equitable opportunity to participate in the Authority's U.S. DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, the Authority hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements;
2. Meet legal standards for unique and narrow-tailoring requirements;
3. Ensure non-discrimination in the award of U.S. DOT-assisted contracts; and
4. Reaffirm the Authority's commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR 26, the Authority will continue to carry out its DBE Program until all funds from U.S. DOT financial assistance have been expended.

In response to U.S. DOT's Western States Guidance (Docket No. FTA-2006-24063) Notice of New Policy Implementation , the Authority is currently utilizing strictly race-neutral measures to meet its overall annual DBE goals, and while race-conscious measures are incorporated within the Authority's DBE Program, the Authority is not currently implementing them at this time. In the event of any conflicts or inconsistencies between the applicable Regulations and the Authority's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

DBE Program Updates (§26.21)

The Authority will advise all applicable U.S. DOT Operating Administrations, of any significant updates and/or changes to the Authority's DBE Program with its Overall Annual DBE Goal(s) submission.

Design-Build Contracts (Federal Register / Vol. 68, No. 115¹)

The Authority recognizes that certain modifications are necessary to adapt the DBE Program for use in connection with Design-Build projects and will therefore follow the

¹ Dated Monday, June 16, 2003 / Rules and Regulations, IV. Clarification Regarding Multi-Year Projects and Other Revisions.

prescribed regulatory U.S. DOT requirements and subsequent Guidance as partially expressed in Exhibit A, "Supplemental DBE Program Requirements Specific to Design-Build Contracts with Established Overall Project DBE Goal" of the Authority's DBE Program.

DEFINITION OF TERMS (§26.5)

Any term used in this Program shall have the meaning set forth in the Regulations. Some of the most commonly used terms are defined below (for additional and more in-depth detail, please refer to 49 CFR, Part 26.5):

Bidders List: A list of all contractors (DBE and non-DBE), which have expressed an interest in bidding on prime contracts and subcontracts on the Authority's U.S. DOT-assisted projects.

California Unified Certification Program (CUCP): One-stop certification clearinghouse, which enables applicants to apply for DBE certification, accepted by all U.S. DOT recipients in the State of California, thereby eliminating the need for DBE firms to obtain certification from multiple agencies within the state. The CUCP was implemented on January 1, 2002.

Commercially Useful Function (CUF): Work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction (i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward goals). A DBE performs a commercially useful function when the DBE firm is responsible for the execution of the work of the contract and is carrying out its responsibility by actually performing, managing and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials and installing (where applicable) and paying for the material itself. If, in the Authority's judgment, the firm (even though an eligible DBE) does not perform a commercially useful function in the transaction, no credit toward the goal may be awarded.

Compliance: The Authority or a contractor has correctly implemented the requirements of the DBE Program.

Contract: A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor: One who participates, through a contract or subcontract (at any tier), in a U.S. DOT-assisted program.

CUCP Database of Certified DBE Firms (DBE Directory): List of certified firms, which is used by the Authority and its contractors to identify DBE potential prime contractors and subcontractors and suppliers.

DBELO: Disadvantaged Business Enterprise Liaison Officer. The DBELO shall be responsible for implementing all aspects of the Authority's DBE program and shall have direct, independent access to the Authority's Chief Executive Officer concerning DBE Program matters.

Department or DOT (or U.S. DOT): The U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE: A for-profit small business concern —

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals;
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
3. Has been certified as Disadvantaged in accordance with Title 49 CFR, Part 26 by a certifying member agency of the CUCP.

DBE Certification: A certification issued to a firm by a certifying member agency of the California Unified Certification Program (CUCP), which has been determined to meet all the requirements in accordance with Title 49 CFR, Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the certifying CUCP member agency.

DOT-Assisted Contract: A contract between a recipient and a contractor (at any tier) funded in whole or in part with U.S. DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land or improved real property.

Goal: A numerically expressed objective, which the Authority or its contractors are required to make Good Faith Efforts to achieve.

Good Faith Efforts: Efforts to achieve a DBE goal or other requirement of this Part, which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Joint Venture: An association between a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, in which the parties combine property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.

Manufacturer: A firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and which are of the general character as described by specifications.

North American Industrial Classification System (NAICS): The five to six-digit classification number that best describes the primary business of a firm. The basis for industry classification changed from the 1987 Standard Industrial Classification System (SIC) to the 2004 NAICS.

Noncompliance: The Authority or a contractor has not correctly implemented the requirements of the DBE program.

Personal Net Worth: The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participative DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets, jointly or as community property, with the individual's spouse.

Program: Any undertaking on the Authority's part to use U.S. DOT financial assistance as authorized by laws to which the DBE Program applies.

Race-Conscious Measure or Program: A program or portion thereof that focuses specifically on assisting only DBEs, including women-owned DBEs, by the development and inclusion of participation goals or Good Faith Effort activities.

Race-Neutral Measure or Program: A program or portion thereof that assists all small businesses, including DBEs, regardless of ownership status, in successfully participating in the Authority's procurement program. For the purposes of the DBE Program, "race-neutral" includes gender-neutrality.

Recipient: Any entity that receives U.S. DOT financial assistance, whether directly or through another recipient, from one or more U.S. DOT Operating Administrations.

Regular Dealer: A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character as described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract-by-contract basis.

Set-Aside: A contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms or on some other basis not related to qualifications or pricing.

Small Business Administration or SBA: The United States Small Business Administration.

Small Business Concern: With respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a business which meets the definition contained in Section 3 of the Small Business Act and all other applicable Small Business Administration implementing regulations (13 CFR, Part 121), which also does not exceed the cap on average annual gross receipts as specified in 49 CFR, Part 26.65(b).

Socially and Economically Disadvantaged Individual: Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Found by the Authority to be socially and economically disadvantaged on a case-by-case basis by a certifying agency pursuant to the standards of Title 49 CFR, Part 26.
2. A member of any one or more of the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - vi) Women; and
 - vii) Any additional group whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Subrecipient: Any entity that receives U.S. DOT financial assistance through a primary recipient.

Transit Vehicle: A vehicle used by the Authority (e.g. railcar, bus and/or van) for the primary program purpose of public mass transportation; this definition does not include locomotives or ferry boats.

Transit Vehicle Manufacturer or TVM: A manufacturer of vehicles used by the Authority for the primary program purpose of public mass transportation (e.g. railcars, buses and/or vans). The term does not apply to firms that rehabilitate old vehicles or to manufacturers or dealers of transit vehicles with respect to Section 26.49 of the Regulation.

RESPONSIBILITIES FOR DBE PROGRAM IMPLEMENTATION

A. DBE Liaison Officer (§26.25)

The Authority has designated the following individual as the Disadvantaged Business Enterprise Liaison Officer (DBELO):

Sue Zuhlke

Director, Motorist Services and Special Projects/DBE Liaison Officer

Orange County Transportation Authority

550 South Main Street

Orange, CA 92868

Telephone: (714) 560-5574; Fax: (714) 560-5796

Email: szuhlke@octa.net

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the Authority complies with all provisions of Title 49 CFR, Part 26 and subsequent U.S. DOT-issued guidance. The DBELO has direct, independent access to the Authority's Chief Executive Officer concerning DBE Program matters (Refer to Exhibit B, "DBE Program Organizational Chart"). The DBELO has sufficient support personnel who devote a portion of their time to implement the Program. The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials.

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

1. Gathers and reports statistical data and other information as required by the Program, including preparation of semi-annual DBE reports and overall annual DBE goals and related analysis for submission to the applicable U.S. DOT Operating Administration and management ad hoc reporting.
2. Reviews applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements.
3. Consults with all affected departments in developing overall annual DBE goals.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Reviews U.S. DOT-assisted contracts and procurements for purposes of applying contract-specific DBE goals and/or applicable race-neutral methods.
6. Analyzes the Authority's progress towards meeting overall annual DBE goal commitments by monitoring individual contract DBE attainments ("Monthly DBE Subcontractor Paid Report Summary [Form 103]").
7. Participates in pre-bid meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advises the CEO and/or the governing body on DBE matters and achievements.
9. Determines contractor compliance with race-conscious DBE Good Faith Efforts provisions as applicable in a race-conscious environment and conducts contract DBE responsiveness reviews, including assessing DBE participation eligibility towards the Authority's overall annual DBE goal, as applicable to both race-conscious and race-neutral methods.

Additionally, the DBELO and/or designee is charged with implementing the following race-neutral methods and measures to facilitate DBE participation, as appropriate:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors); provision of information in languages other than English, where appropriate;
5. Implementing a supportive services program to develop and improve the immediate and long-term business management, record keeping, and financial and accounting capability of DBEs and other small businesses (Refer to Section VI. E: “Business Development Programs”, which identifies the Authority’s various small business training programs);
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency (Refer to Section VI. E: “Business Development Programs”, which identifies the Authority’s various small business training programs);
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low (Refer to Section VI. E: “Business Development Programs”, which identifies the Authority’s various small business training programs);
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors (Interested parties are referred to the California Unified Certification Program Database of Certified DBE Firms which can be accessed at http://www.dot.ca.gov/hq/bep/find_certified.htm and the Authority’s on-line procurement website, “Camm NET”, which can be accessed at <http://www.octa.net/cammnet>); and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media (Refer to Section VI. E: “Business Development Programs”, which identifies the Authority’s various small business training programs).

B. Reconsideration Official (§26.53 (d))

The Program's administrative reconsideration process is facilitated by the Authority's Reconsideration Official (RO):

Virginia Abadessa

Director, Contracts Administration and Materials Management/

Reconsideration Official

Orange County Transportation Authority

550 South Main Street

Orange, CA 92868

Telephone: (714) 560-5623; Fax: (714) 560-5792

Email: vabadessa@octa.net

The Authority, at its discretion, may utilize another U.S. DOT recipient agency's DBE Liaison Officer or Reconsideration Official who is a member of the California Unified Certification Program as an independent, impartial party to serve in the capacity of Reconsideration Official.

In instances where race-conscious contract-specific DBE goals are established, and the bidder/offeror fails to satisfy the requirements for meeting the contract-specific goal or fails to document sufficient Good Faith Efforts to do so, in accordance with Section VII. D. 2: "Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals", the Authority will provide the bidder/offeror, prior to award of the contract, an opportunity for administrative reconsideration of the Authority's determination of non-responsiveness.

Unless otherwise specified, the bidder/offeror may, within two business days of being informed by the Authority of its non-responsiveness due to its failure to document and provide sufficient and adequate Good Faith Efforts in the subject procurement, request administrative reconsideration. Bidders/Offerors must make this request in writing to the Reconsideration Official as designated herein.

To ensure integrity in the process, the Reconsideration Official will not have played any role in the original determination that the bidder/offeror did not meet the established contract-specific DBE goal, or adequately document Good Faith Efforts as specified in the subject procurement.

As part of this reconsideration, the Offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so. Further, the bidder/offeror will have the

opportunity to meet with the Reconsideration Official in person to discuss the issue of whether it met the goal or made adequate Good Faith Efforts to do so. The Authority will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or made adequate Good Faith Efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. DOT.

Further, the Authority's Reconsideration Official and/or designee shall also perform oversight of the reconsideration process. The Reconsideration Official and/or designee's duties include, but are not limited to, the following activities:

1. Ensures that all DBE administrative reconsideration procedural actions are consistent with the requirements and standards specified in Title 49 CFR, Sections 26.53 and 26.87, and that the Program's integrity is maintained at all times.
2. Reviews bidder/offeror written documentation or argument concerning the issue of whether it met the goal or made adequate Good Faith Efforts to do so.
3. Upon review of the bidder's/offeror's request for consideration, the Reconsideration Official sends the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate Good Faith Efforts to do so.
4. Maintains verbatim records of conducted hearings.
5. Provides determinations in writing to the Authority's DBE Liaison Officer.

ADMINISTRATIVE REQUIREMENTS

A. Federal Financial Assistance Agreement Assurance (§26.13 (a))

Pursuant to the requirements of this Part, the Authority will sign the following assurance as a condition of financial assistance agreements with the U.S. DOT, and which is hereby made applicable to all of the Authority's U.S. DOT-assisted contracts:

"The Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of Title 49 CFR, Part 26. The Authority shall take all necessary and reasonable steps under Title 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The Authority's DBE Program, as required by Title 49 CFR, Part 26 and as approved by U.S. DOT Operating Administrations, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Authority of its failure to carry out its approved Program, the Department may impose sanctions as provided under Title 49 CFR, Part 26 and may, in appropriate cases, refer the matter for

enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).”

B. DBE Financial Institutions (§26.27)

It is the policy of the Authority to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on the Authority’s U.S. DOT-assisted contracts to make use of these institutions.

C. DBE Directory (§26.31)

The Authority refers interested parties to the California Unified Certification Program (CUCP) Database of Certified DBE Firms (DBE Directory) to assist in identifying certified DBEs. The DBE Directory is published in the California Department of Transportation’s (Caltrans) “Civil Rights” website, which can be accessed at www.dot.ca.gov/hq/bep.

D. Overconcentration (§26.33)

The Authority will develop policies and procedures to address overconcentration of DBE utilization by work classification. This is to be accomplished through regular tracking of contract awards and through compliance monitoring efforts. The Authority will identify and directly respond to identified overconcentration of DBEs within specific trades or specialty areas and modify and/or exempt such areas from the Overall Annual DBE Goal and contract-specific goal-setting process as necessary to ensure compliance with regulatory overconcentration provisions. Currently, the Authority has not identified any types of work that have a burdensome overconcentration of DBE participation. However, should the Authority determine that overconcentration exists in a work classification, the Authority will obtain the approval of the concerned U.S. DOT Operating Administration of its overconcentration determination and the measures devised to address it. Once these measures are approved, they will become part of the Authority’s DBE Program.

E. Business Development Programs (§26.35, Appendix C and Appendix D to 49 CFR 26)

The Authority has implemented race and gender-neutral efforts to promote small business concerns, including DBEs. Each year the DBELO (Disadvantaged Business Enterprise Liaison Officer) will facilitate and/or participate in at least two small business events, which may be coordinated with other U.S. DOT recipients to promote DBE outreach programs. Small businesses will be invited to meet with the Authority’s DBE Program, purchasing and project management staff and learn about the Authority’s contracting program. The Authority staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to the Authority. In addition, the DBELO will provide information on DBE certification and

DBE program requirements and procedures. These events will include procedures explaining how to do business with the Authority and explore best business practices, which may be used to market small businesses with the Authority.

Additionally, the Authority has several programs in place, which are aimed at increasing competition in its procurement process. These programs provide procurement information, as well as training for interested vendors, on various aspects of the Authority's procurement process.

1. Small Business Conference & Vendor Fair Expo

The Small Business Conference and Vendor Fair is an instrumental training medium designed by the Authority's Contracts Administration and Materials Management Department to provide a direct link between private vendors and various public agencies. The conference program provides small businesses the valuable tools and resources needed to promote and strengthen competitiveness, marketability and participation of small businesses, minority and women-owned firms within OCTA and other public transit industry and governmental agencies' contracting programs.

2. Vendor Orientation/Protocol Meetings

Another key measure of any firm's success is how well they network with other vendors, including prime and subcontractors. The Authority has implemented a monthly program where vendors come together with the Authority staff to learn about the procurement process and share information about their firm's services and products with other vendors. The Orientation/Protocol session includes a Power Point Presentation detailing the Authority's procurement process.

The Vendor Orientation/Protocol sessions are unique in that they are designed to bring together both small and large vendors who may ultimately combine resources in response to contract solicitations from the Authority. The Orientation/Protocol sessions are, additionally, a valuable tool for vendors to receive a comprehensive snapshot of the Authority's procurement process.

3. CAMM NET

The Authority has incorporated the use of the Internet into its procurement process. CAMM NET is a web-enabled procurement system that is moving the Authority's semi-manual purchasing process to an Internet environment. Businesses register their companies on-line in order to access the system. By making businesses responsible for inputting this information, a more efficient, effective listing of qualified vendors will be achieved.

CAMM NET also contains bidding information available to all interested vendors. Businesses are able to obtain, view and download information regarding upcoming solicitations, update their business profile, acquire information about "How to do Business with the Authority", and in certain instances, submit a bid on-line.

4. Vendor Bid List Database

Vendor registration is handled through CAMM's on-line procurement system. Database registration guarantees that a vendor will be notified of all solicitations within the specific commodity that the vendor has selected for notification.

IV. DETERMINING, MEETING AND COUNTING DBE PARTICIPATION TOWARDS THE OVERALL ANNUAL DBE GOAL (§26.45; §26.51; §26.55)

A. Methodology for Setting Overall Annual DBE Goals (§26.45; §26.49)

The DBE Liaison Officer shall establish an overall annual goal on an annual basis for the participation of DBEs based upon all budgeted contracts anticipated to utilize U.S. DOT federal financial assistance, provided that the anticipated expenditures (subsequent contract opportunities) have viable subcontractable possibilities and corresponding DBE availability. Overall annual DBE goals are expressed as a percentage of the total amount of U.S. DOT funds the Authority anticipates expending within a given fiscal year. The overall DBE goal is reflective of the amount of DBE participation the Authority would expect on its U.S. DOT-defined contracting program, absent the effects of discrimination.

Although the Authority is required, as a condition of receiving U.S. DOT financial assistance, which exceed established funding thresholds, to establish an overall annual DBE goal; the Authority will strictly utilize race-neutral measures towards meeting its overall annual DBE goal in response to U.S. DOT Race-Neutral policy implementation directives for FFY 2006/07 and 2007/08.

In conjunction with the preparation and adoption of the Authority's budget for each fiscal year, the DBE Liaison Officer, in consultation with departments anticipating releasing U.S. DOT-assisted contracts within the given fiscal year, will conduct a thorough analysis of the contract scopes of work for purposes of identifying industries impacted to facilitate the goal-setting process.

The Authority will submit an overall annual DBE goal to the following U.S. DOT Operating Administration(s), as applicable:

- Federal Transit Administration (FTA) – by August 1 of each year; and
- Federal Highway Administration (FHWA/Caltrans) – by June 1 of each year.

While transit vehicle purchases are excluded from the Authority's overall annual DBE goal-setting process, the Authority shall require Transit Vehicle Manufacturers (TVM) to certify that they have fully complied with this section and that they have established an overall annual DBE participation goal that has been approved by the FTA before they can bid or propose on any of the Authority's U.S. DOT-assisted transit vehicle procurements (Refer to Section VII. B: "Transit Vehicle Manufacturers (TVM) Certifications").

The following delineates the federally prescribed goal-setting methodology (Step 1 and Step 2) and other required components, as follows:

A. Step One: Base Figure

Once the Authority defines its U.S. DOT-assisted contracting program and corresponding market area for a given federal fiscal year, the Authority will establish a Base Figure (Step 1) of ready, willing, and able DBEs in contrast to all firms available to participate in the Authority's U.S. DOT-assisted contracts, in accordance with Title 49 CFR, Part 26.45 provisions.

The Authority may survey the relative availability of DBEs by:

- Utilizing the most readily available data, which may include the California Unified Certification Program (CUCP) DBE Database and other certifying agencies' databases, to assess the number of ready, willing and able DBEs, and the U.S. Census Bureau's County Business Patterns (CBP) database to determine the corresponding number of all firms available to bid on the Authority's contracting opportunities by work classification.
- Utilizing the Authority's Bidders List.
- Utilizing data from disparity studies, as available.
- Utilizing another U.S. DOT-recipient's DBE Goal in the same, or substantially similar market.

Further, to determine the relative availability of DBEs, the Authority will divide the numerator representing the ratio of ready, willing and able DBE firms within its defined market area by the denominator representing all firms (DBEs and non-DBEs) available by each work category within the defined market area. Application of this formula will yield the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (Including DBEs and non-DBEs)}} = \text{BASE FIGURE}$$

The Base Figure will be adjusted by weighting the relative availability of DBEs grouped within the major work categories, giving more weight to the work categories in which the Authority projects to spend more U.S. DOT-assisted dollars.

1. Step Two: Adjusting the Base Figure

Upon establishing the Base Figure, the Authority will review and assess other known evidence potentially impacting the relative availability of DBEs within the Authority's

market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45, which may include, but is not limited to:

- Demonstrated evidence of DBE capacity to perform work in the Authority's U.S. DOT-assisted contracting program.
- The Authority's Bidders List, if not utilized in Step I.
- Real market conditions.
- Disparity studies conducted within the Authority's jurisdiction to the extent that they are not already accounted for in the Step 1 Base Figure; and
- Other relevant factors may include:
 - i. Other recipients' goal results in similar contracting opportunities and markets, and the reasons for the level of those results.
 - ii. The methods used by the Authority to increase DBE participation in federally assisted contracts.
 - iii. The demographics and business activity of the market area in which the Authority will solicit bids and/or proposals.
 - iv. The ability of DBEs to obtain financing, bonding, and insurance requirements to participate in the Authority's DBE Program.
 - v. The data from studies of employment and self-employment, education, training and union apprenticeship programs, to the extent that the Authority can relate it to the opportunities for DBEs to perform in the Authority's DBE Program.

In accordance with 49 CFR 26.45, the Authority's overall annual DBE goals will be expressed as a percentage of all Federal-aid funds the Authority will expend in U.S. DOT-assisted contracts in the forthcoming fiscal year.

2. Race-Neutral and Race-Conscious DBE Goal Projections (§26.51(c))

The Authority is required to submit its projection of the portion of the overall annual DBE goal that the Authority expects to meet through race-neutral and race-conscious means and its basis for that projection. However, in response to U.S. DOT Race-Neutral Implementation directives, the Authority will strictly implement race-neutral measures to meet its overall annual DBE goal objectives until such time that the Authority determines it has sufficient evidence of discrimination or its effects in its respective marketplace to support the use of race-conscious measures in administering its DBE Program pursuant to the evidentiary standards established by the 9th Circuit Court ruling in *Western States Paving Co. v. United States & Washington State Department of Transportation*.

3. Public Participation and Outreach Efforts (§26.45; §26.51)

i. Publication of Proposed Overall Annual Goals

Prior to submission of the overall annual DBE goal for a given Federal Fiscal Year to the appropriate U.S. Department of Transportation Operating Administration(s), the Authority will publish the proposed overall annual DBE goal in general circulation, trade associations, and available minority-focused media. Said publications shall include:

- A statement that the methodology and proposed annual overall goal for DBE participation in the Authority's federally-assisted contracts are available for public inspection for a period of 30 days from the date of publication.
- Notification that the Authority will accept public comments on the proposed goal and rationale for a period of 45 days from the date of publication. Instructions for the submission of comments will also be included.
- Instructions for the submission of comments.
- The address of the Authority and U.S. DOT, to which comments may be sent.

Upon receipt of any and all responses from the general public, the Authority's DBE Liaison Officer will analyze the comments, summarize the results, and determine its impact on the proposed overall annual DBE goal or methodology. The proposed overall annual goal may be adjusted as necessary and will be forwarded to the Chief Executive Officer for submission to the affected U.S. DOT Operating Administration.

ii. Outreach and DBE Program Consultation

In addition to the provision of public notice regarding the overall annual DBE goal, the Authority will undertake specific efforts to foster public participation and to consult with and to solicit input from a variety of constituent groups reasonably expected to possess information regarding the availability of disadvantaged and non-disadvantaged businesses, the impacts and effects of discrimination on opportunities for DBEs, and the Authority's efforts to promote fair competition for DBEs.

B. Transit Vehicle Manufacturers (TVM) Certifications (§26.49)

The Authority shall require Transit Vehicle Manufacturers to certify that they have fully complied with this section and that they have established an overall annual DBE participation goal that has been approved by the FTA before they can bid or propose on any Authority FTA-assisted transit vehicle procurements. Expenditures for U.S. DOT-assisted transit vehicle procurements are not included in the funding base used to calculate the Authority's goal for DBE participation.

C. Race-Neutral Measures (§26.51)

Although numeric contract-specific DBE goals will not be used to drive DBE participation, the Authority will, as part of its race-neutral measures, track race-neutral DBE participation on all of its U.S. DOT-assisted contracts and accordingly report participation commitments and attainments on the Authority's semi-annual report to the affected U.S. DOT Operating Administration(s). The DBELO will, as part of the Authority's contract solicitation process, evaluate DBE participation commitments gained race-neutrally to determine eligibility in accordance with 49 CFR 26 requirements in crediting participation toward the Authority's overall annual DBE goal by verifying DBE certifications and reviewing the respective scopes of work proposed to be performed to ensure it meets commercially useful function standards of 49 CFR 26. The DBELO will subsequently prepare a report summarizing the race-neutral DBE participation obtained on applicable U.S. DOT-assisted contracts.

D. Race-Conscious Measures

Pursuant to Race-Neutral DBE policy directives issued by the U.S. DOT and FTA in response to the 9th Circuit U.S. Court of Appeals decision in *Western States Paving Co. v. United States & Washington State Department of Transportation*, the Authority has suspended its use of race-conscious measures such as applying numeric contract-specific DBE goals to drive DBE participation to meet its overall annual DBE goal objectives due to the absence of adequate evidence of discrimination and its effects on the Authority's relevant marketplace. In accordance with U.S. DOT directives, the Authority has committed to actively participate in disparity studies to determine the existence of discrimination or its effects in its respective marketplace and utilize all relevant results in future goal-setting analysis applications.



1. Contract-Specific DBE Participation Goals

i. Methodology for Setting Contract-Specific Goals (§26.51)

The DBE Liaison Officer shall establish contract-specific DBE participation goals to meet any portion of the overall goal the Authority does not project being able to meet by utilizing race-neutral means. Contract goals are established over the period to which the overall goal applies and will cumulatively result in meeting any portion of the Authority's overall goal that is not projected to be met through the use of race-neutral means.

The Authority will establish contract-specific goals only on those U.S. DOT-assisted contracts for which subcontracting possibilities have been identified with corresponding availability of DBEs. The Authority will not establish a contract-specific goal on every U.S. DOT-assisted contract based on individual assessments and previous attainments. Further, contract-specific goals may be adapted to the circumstances of each contract (e.g. type and location of work, subcontracting opportunities, and availability of DBEs to

perform) and will be expressed as a percentage of the total amount of a U.S. DOT-assisted contract.

ii. Evaluation of Bids or Proposals for Contracts with Established Contract-Specific Goals (§26.53 (b))

The DBE Liaison Officer or designee shall review all related DBE information for completeness and accuracy, and the DBELO shall evaluate the three (3) apparent lowest bids and/or the top three (3) ranked proposals to determine whether the bidders/offers submitted all of the DBE-related information required by the solicitation, including evaluating their respective DBE goal commitments and Good Faith Efforts documentation as necessary to determine responsiveness in meeting the DBE requirements of the solicitation. Additionally, the bidder's/offers' DBE goal commitments and/or Good Faith Efforts documentation shall be evaluated by the DBELO to determine responsiveness to the DBE requirements set forth in the solicitation and/or contract.

iii. Evaluation of DBE Eligibility Status for Contracts with Established Contract-Specific Goals

The Authority requires that the DBEs listed by bidders/offers for participation in contracts with goals be certified as eligible DBEs at the time of bid/proposal submission in order for their participation to be counted towards meeting the established contract-specific DBE goal. The DBELO will assess such as a part of the evaluation process utilizing the CUCP DBE Database and/or other valid proof of DBE certification.

iv. Pre-Award DBE Responsiveness Evaluation for Contracts with Established Contract-Specific Goals

Following the determination of the bidder's/offers' responsiveness and responsibility to DBE requirements set forth in the solicitation, the DBE Liaison Officer shall prepare a report relative to contract-specific DBE requirements, to be submitted for presentation to the Board of Directors at the time the contract award is considered.

v. Bidder's/Offers' Right to Administrative Reconsideration

In the event the DBE Liaison Officer determines that the apparent successful bidder/offers has not met the contract-specific goal and has not demonstrated adequate Good Faith Efforts to do so, the DBE Liaison Officer will notify the bidder/offers in writing. The notification shall include the reasons for the determination and that the bidder/offers has the right to submit written documentation or appear before the Reconsideration Official or designee for reconsideration prior to the time that a recommendation for award of contract is presented to the Board of Directors. The Reconsideration Official or designee shall provide the bidder/offers with a written decision on reconsideration, including the basis for the determination.

In the event that the Reconsideration Official or designee determines that the said bidder/offeror has not met the contract-specific DBE goal nor demonstrated adequate Good Faith Efforts to do so, the bidder/offeror will no longer be eligible to be considered for contract award.

The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation (Refer to Section V.B: "Reconsideration Official").

2. Guidance Concerning Good Faith Efforts in Meeting Established Contract-Specific DBE Goals (§26.53; Appendix A to 49 CFR 26)

EXHIBIT D-2

DBE RACE-NEUTRAL PARTICIPATION LISTING

DBE RACE-NEUTRAL PARTICIPATION LISTING

Bidder/Offeror shall complete and submit **Exhibit D-2: “DBE Race-Neutral Participation Listing”** in a **sealed envelope** with the bid/proposal, but no later than 48 hours following bid opening or proposal due date and timeline. (NOTE: In the event of no race-neutral DBE participation, Bidder/Offeror shall mark “None” under the column entitled “DBE Firm Name”.) The Bidder/Offeror shall refer to **RFP Exhibit C, Article 23: “Disadvantage Business Enterprises”** for guidelines relative to DBE participation crediting. (Additional sheets may be duplicated as necessary.)

The DBE information and content provided under Exhibit D-2: “DBE Race-Neutral Participation Listing” will not be considered in evaluating the bid/proposal or determining award of any contract.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:				

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:				

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: _____ _____ _____ _____		
Business Address:		Check Appropriate Box Describing Subcontractor/Supplier Activity:		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:				

*DBE certification letter must be attached for each listed DBE firm. DBEs must be certified on the date bids/proposals are opened.

Bidder/Offeror:

Business Address:	
Contact Name:	Title:
Phone: ()	Fax: ()

Total Contract Amount:		\$	
DBE Race-Neutral Participation Value (% of Total Contract Value): <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	%	DBE Race-Neutral Participation Dollar (\$) Value: <i>(NOTE: Mark "NONE" if no DBEs will be utilized.)</i>	\$

Signature of Authorized Representative	Printed Name
Date	Title

EXHIBIT D-3

BIDDERS LIST



Project Name: _____

BIDDERS LIST
[EXHIBIT D-3]

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

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

The Bidder/Offeror is to complete all requested information on **Exhibit D-3: Bidders List** for themselves and all subcontractors, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, Bidders/Offerors must submit such information at the request of the Authority within the prescribed timeline set forth in the solicitation. The AUTHORITY will utilize this information to assist in the AUTHORITY's overall annual DBE goal-setting process. **The Bidders List content will not be considered in evaluating the bid/proposal or determining award of any contract.**

Prime Bidder's/Offeror's Information:

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

Project Name: _____

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

Name of Subcontractor'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 ☐ No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million
☐ African American ☐ Asian Pacific American ☐ Native American ☐ Woman ☐ Hispanic American ☐ Subcontinent Asian American ☐ Other	

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

Name of Subcontractor'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 ☐ No	Check the box below for your firm's annual gross receipts last year:
DBE Certification Eligibility (place an "X"):	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million
☐ African American ☐ Asian Pacific American ☐ Native American ☐ Woman ☐ Hispanic American ☐ Subcontinent Asian American ☐ Other	

Project Name: _____

Provide the following information for every subcontractor (DBE and non-DBE) included in this bid, proposal or quote.	
Name of Subcontractor'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 ☐ No	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	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million

If necessary, this Bidders List form can be duplicated to include all firms (DBE and non-DBE) that have submitted a bid, proposal or quote on this DOT-assisted project, whether successful or unsuccessful in their attempt to obtain a contract.

Failure of the Bidder/Offeror to submit this required Bidders List form will deem the Bidder/Offeror non-responsive.

EXHIBIT E

RESTRICTIONS ON LOBBYING FORM

EXHIBIT E
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 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 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.

Executed this _____ day of _____, 200__

By _____
(Signature of authorized official)

(Title of authorized official)

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

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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 _____

EXHIBIT F

STATUS OF PAST AND PRESENT CONTRACTS FORM

EXHIBIT F**STATUS OF PAST AND PRESENT CONTRACTS FORM**

On the form provided below, Offeror shall list the status of past and present contracts where the firm has either provided services as a prime contractor or a subcontractor during the past five (5) years in which the contract has ended or will end in a termination, settlement or in legal action. A separate form must be completed for each contract. Offeror shall provide an accurate contact name and telephone number for each contract and indicate the term of the contract and the original contract value.

If the contract was terminated, list the reason for termination. Offeror must also identify and state the status of any litigation, claims or settlement agreements related to any of the identified contracts. Each form must be signed by an officer of the Offeror confirming that the information provided is true and accurate.

Project city/agency/other:	
Contact name:	Phone:
Project award date:	Original Contract Value:
Term of Contract:	
1) Status of Contract:	
2) Identify claims/litigation or settlements associated with the contract:	

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

Signature

Date

Name _____

Title _____

EXHIBIT G

LIST OF PROPOSED SUBCONTRACTORS

EXHIBIT G**List of Proposed Subcontractors**

NAME OF FIRM	ADDRESS	WORK TO BE PERFORMED	ESTIMATED DOLLAR PARTICIPATION	PERCENT OF TOTAL CONTRACT VALUE