

REQUEST FOR PROPOSALS (RFP) 0-1916

**Emergency Response Training for Frontline
Personnel**



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

Key RFP Dates

Issue Date:	December 8, 2010
Pre-Proposal Conference	December 14, 2010
Question Submittal Date:	December 15, 2010
Proposal Submittal Date:	January 12, 2011
Interview Date:	February 7, 2011

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December 8, 2010

SUBJECT: NOTICE OF REQUEST FOR PROPOSALS

RFP 0-1916: "Emergency Response Training for Frontline Personnel"

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Gentlemen/Ladies:

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to develop a training and exercise program to enhance preparedness, response and recovery capabilities in the event of an attack on one of its facilities or systems. The budget for this project is \$400,000.

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on January 12, 2011.

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: Yvette Crowder, Senior Contract Administrator**

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

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

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

Firms interested in obtaining a copy of this Request For Proposals (RFP) 0-1916 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) 0-1916

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

To receive all further information regarding this RFP 0-1916, firms must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Commodities for this solicitation are:

<u>Category(s):</u>	<u>Commodity(s):</u>
Security, Safety & Health	Disaster Preparedness
Professional Consulting	Education and Training Consulting

A pre-proposal conference will be held on December 14, 2010, at 9:00 a.m. at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 154. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established Monday, February 7, 2011 as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

Yvette Crowder
Senior 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 December 14, 2010, at 9:00 a.m., at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 154. All prospective Offerors are encouraged to attend the pre-proposal conference.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

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

D. AUTHORITY CONTACT

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

Yvette Crowder
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5616, 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 CAMM NET under the commodity codes specified in this RFP.

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 3:00 p.m., on December 15, 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: Yvette Crowder, Senior Contract Administrator e-mail address is ycrowder@octa.net.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, the Authority's interactive website, no later than, December 20, 2010. Offerors may download responses from CAMM NET at www.octa.net/cammnet, or request responses be sent via U.S. Mail by e-mailing the request to Yvette Crowder, Senior Contract Administrator.

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

Commodities for this solicitation are:

Category(s)	Commodity(s)
Professional Consulting	Education and Training Consulting
Security, Safety & Health	Disaster Preparedness, Safety Training

Inquiries received after 3:00 p.m., December 15, 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 January 12, 2011.

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: Yvette Crowder, Senior 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: Yvette Crowder, Senior 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 6 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 0-1916: Emergency Response Training for Frontline Personnel"

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 specifying firm-fixed prices for individual tasks specified in the Scope of Work, included in this RFP as Exhibit A.

L. CONFLICT OF INTEREST

All Offerors responding to this 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

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

N. DEBARMENT & SUSPENSION:

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

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

Authority, acting on behalf of the District, may not enter into any transaction with such debarred, suspended, or voluntarily excluded persons or firms during such period.

A certification process has been established by 49 CFR Part 29, as a means to ensure that debarred suspended or voluntarily excluded persons or firms do not participate in Federally assisted projects. The inability to provide the required certification will not necessarily result in denial of participation in a covered transaction. A person or firm that is unable to provide a positive certification as required by this solicitation must submit a complete explanation attached to the certification. FTA will consider the certification and any accompanying explanation in determining whether or not to provide assistance for the project. Failure to furnish a certification or an explanation may disqualify that person or firm from participating in the project.

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 Yvette Crowder, Senior Contract Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number. 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 person's 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.

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) Indicate adequacy of labor resources utilizing a table projecting the labor-hour allocation to the project by individual task.
- (4) 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.
- (5) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (6) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work. The work plan shall be of such detail to demonstrate the Offerors ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.
- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks from the project commencement date.
- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.
- (5) Identify any special issues or problems that are likely to be encountered in this project and how the Offeror would propose to address them.

- (6) Offeror is encouraged to propose enhancements or procedural or technical innovations to the Scope of Work that do not materially deviate from the objectives or required content of the project.

d. Exceptions/Deviations

State any 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 for each work task 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. As noted earlier in these instructions, the Authority will issue a firm-fixed-price contract specifying firm-fixed-prices for individual tasks.

5. Appendices

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

B. FORMS

1. STATUS OF PAST AND PRESENT CONTRACTS FORM – EXHIBIT D

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 an accurate name and telephone number for each contract and indicate 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 the information that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

2. RACE-NEUTRAL SOLICITATION PROVISIONS – EXHIBIT E

LIST OF SUBCONTRACTORS FORM - EXHIBIT E-1

DBE RACE NEUTRAL PARTICIPATION LISTING FORM - EXHIBIT E-2

OFFERORS LIST- EXHIBIT E-3

Offeror shall complete Exhibit E-1, Exhibit E-2 and Exhibit E-3 per the instructions set forth in Exhibit E, entitled “Disadvantaged Business Enterprise – Race Neutral Solicitation Provisions.”

3. RESTRICTIONS ON LOBBYING FORM – EXHIBIT F

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 \$100,000.00 that must be disclosed pursuant to section 1352, Title 31, U.S. Code.

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

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

4. PARTY AND PARTICIPANT DISCLOSURE FORMS - G

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

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. The prime consultant and subcontractors must complete the form entitled "Party Disclosure Form". The form entitled "Participant Disclosure Form" must be completed by lobbyists or agents representing the prime consultant. Therefore, the prime consultant, subcontractors and agents will be required to report all campaign contributions from the proposal submittal date up and until the Board of Directors makes a selection.

5. LEVEL 2 SAFETY SPECIFICATIONS - H

Consultant shall comply with all the Authority's safety specifications.

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 Authority has established February 7, 2011, as the date to conduct interviews. All prospective Offerors will be asked to keep this date

available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

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

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

C. AWARD

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

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

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

EXHIBIT A
SCOPE OF WORK

EXHIBIT A

SCOPE OF WORK

Emergency Response Training for Frontline Personnel

BACKGROUND

The Orange County Transportation Authority (OCTA) manages the county's bus and paratransit networks and funds the construction and maintenance of local streets, highways and freeways; regulates taxicab services; maintains express toll lanes through the median of the Riverside Freeway (SR 91); and provides Metrolink commuter rail service within the county. The service area includes 34 Orange County cities and service into Los Angeles and Riverside counties. OCTA operates several fixed facilities and operates twenty-four hours a day.

OCTA is categorized as a Tier 1 transit agency by the Transportation Security Administration and is in itself a critical infrastructure component. This requires careful planning to maintain essential operations during and after incidents. Because transit systems also play a significant role in mass evacuations, OCTA also must coordinate effectively with the Operational Area emergency operations center during incidents having local or regional impact.

The Orange County Transportation Authority (OCTA) requests assistance in developing a training and exercise program to enhance preparedness, response and recovery capabilities in the event of an attack on one of its facilities or systems.

The purpose of this effort is to develop and implement protocols and provide training and exercises for frontline transit staff and for all local response agencies and personnel that would be called upon to respond to incidents, including but not limited to attacks on its traditional (gasoline and diesel) and alternative (liquefied natural gas and compressed natural gas) fueling systems or any other component that is critical to the ongoing and safe operations of the transit system.

This effort will promote local and regional cooperation and collaboration, increase awareness and information sharing, and enhance the capabilities of OCTA, vehicle and equipment manufacturers and local emergency response agencies to respond safely and effectively to an incident at any OCTA location. The results will ensure the continuity of operations and swift recovery of a critical infrastructure asset which is relied upon by all of Orange County and its citizens.

This project will support these capabilities within the Target Capabilities List:

Mission: Common:

Planning

Risk Management

Mission: Prevent:

- Information Gathering
- Recognition of Indicators and Warnings
- CBRNE Detection

Mission: Protect:

- Critical Infrastructure Protection

Mission: Respond:

- Onsite Incident Command
- Responder Safety and Health
- Emergency Public Safety and Security Response
- Explosive Device Response Operations
- Fire Incident Response Support
- WMD and Hazardous Materials Response and Decontamination

Mission: Recover:

- Restoration of Lifelines

OCTA's emergency management programs are within the purview of OCTA's Manager, Security and Emergency Preparedness. That individual will be OCTA's contract manager for this project.

TASKS

Task 1: Develop expertise in OCTA's facilities, systems, plans and procedures.

Consultant shall visit OCTA sites, review site-specific plans and protocols and meet with OCTA personnel, contractors and vendors to gain a thorough understanding of the unique attributes of this transit system, its threats and vulnerabilities, its resources and all necessary information to allow Consultant to expertly conduct the tasks below.

Task 2: Stakeholder Meetings.

Consultant shall develop a list of stakeholders and response agencies that could potentially be called upon to respond to an attack at any OCTA property, including its headquarters campus in Orange, operating bases in Anaheim, Garden Grove, Santa Ana and Irvine, and transportation centers throughout the county.

Consultant shall coordinate and facilitate a project kickoff meeting with parties identified above, OCTA representatives and contractors/vendors. The goals of this meeting will be to confirm interest in the project, identify any needed participants who are missing from the group, conduct a training needs assessment, solicit suggestions for training and

exercising, and establish a calendar of future meetings and training and exercise activities.

Consultant shall coordinate and facilitate such additional stakeholder meetings as are necessary to maintain close communication, chart project progress and ensure continued interest and participation.

Task 3: Training.

Consultant shall develop and conduct training sessions at six OCTA locations for cognizant response agencies. It is anticipated that in order to accommodate multiple shifts and coverage within those response agencies, multiple sessions will be required at each training site.

Task 4: Training Video.

Consultant shall script and produce a training video that can be furnished in DVD format to agencies in order to provide orientation training for new personnel and refresher training for others.

Task 5: Tabletop Exercises.

Upon completion of the training cycle, Consultant shall develop and administer six tabletop exercises (TTXs)—one at OCTA headquarters and each of OCTA's five operating bases. These TTXs are intended to validate the training program and identify any remaining response issues. Participants will include the same stakeholders—response agencies, OCTA personnel and OCTA contractors and vendors—that were involved in the training cycle. All exercises will be developed, conducted and evaluated using Homeland Security Exercise and Evaluation Program (HSEEP) protocols.

Task 6: Full Scale Exercise.

Following the series of tabletop exercises, Consultant shall develop and administer one Full Scale Exercise (FSE) at a location chosen by OCTA. This exercise will simulate an attack on an OCTA facility and will require field response from cognizant agencies. Again, exercises will be developed, conducted and evaluated using Homeland Security Exercise and Evaluation Program (HSEEP) protocols.

Task 7: Final Report.

At the conclusion of the training and exercise cycle, Consultant shall prepare a Final Report for submission to OCTA. This report shall list the goals and objectives of the project, review activities and accomplishments, summarize the notable items from After Action Reports/Improvement Plans (AAR/IPs) and make recommendations to continue the high state of readiness that is expected to be achieved from this project. The report shall include an executive summary.

DELIVERABLES

Task 2:

- Correspondence, rosters, worksheets, project plan and detailed minutes of all stakeholder meetings and recommendations.

Task 3:

- Calendar of training, agendas, announcements, rosters, tests, evaluation forms and other documentation of all training events.
- Hard and electronic copies of all training materials produced and used in the training sessions, minimum three (3) copies in each format.

Task 4:

- Training video in DVD format, thirty (3) copies minimum.

Task 5:

- Detailed minutes of exercise design, conduct and evaluation meetings for each exercise per HSEEP protocols.
- Hard and electronic copies of Situation Manual, After Action Reports and Improvement Plans, evaluation forms and all other documents developed for each exercise.
- Rosters, hot wash notes and all other documentation of each exercise.

Task 6:

- Detailed minutes of exercise design, conduct and evaluation meetings for the full scale exercise per HSEEP protocols.
- Hard and electronic copies of Situation Manual, After Action Reports and Improvement Plans, evaluation forms and all other documents developed for the full scale exercise.
- Rosters, hot wash notes and all other documentation of the full scale exercise.
- Photographic and videographic documentation of the exercise activities.

Task 7:

- Hard and electronic copies of the Final Report, minimum forty (40) copies in each format.

PERFORMANCE PERIOD

All activities and deliverables under this agreement must be completed no later than April 15, 2012.

EXHIBIT B

COST AND PRICE FORMS

PRICE SUMMARY SHEET

REQUEST FOR PROPOSALS (RFP) 0-1916

EMERGENCY RESPONSE TRAINING FOR FRONTLINE PERSONNEL

Enter below the proposed price for each of the work phases described in the Scope of Work, Exhibit A. Prices shall include direct costs, indirect costs, and profits. The Authority's intention is to award a firm-fixed price contract. Please denote the basis on which the prices are quoted.

Task 1 -	Develop expertise in OCTA's facilities, systems, plans and procedures	\$ _____
Task 2 -	Stakeholder Meetings	\$ _____
Task 3 -	Training	\$ _____
Task 4 -	Training Video	\$ _____
Task 5 -	Tabletop Exercises	\$ _____
Task 6 -	Full Scale Exercise	\$ _____
Task 7 -	Final Report	\$ _____

Total Firm-Fixed Price Amount: \$ _____

1. I acknowledge receipt of RFP 0-1916 and Addenda No.(s) _____
2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

SIGNATURE'S NAME AND TITLE _____

DATE SIGNED _____

E-MAIL ADDRESS _____

EXHIBIT C
PROPOSED AGREEMENT

1 **AGREEMENT NO. C-0-1916**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective as of this ____ day of _____, 2011, by
7 and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184,
8 Orange, California 92863-1584, a public corporation of the state of California (hereinafter referred to as
9 "AUTHORITY"), , (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to develop a training and
12 exercise program to enhance preparedness, response and recovery capabilities in the event of an
13 attack on one of its facilities or systems; and

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

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

17 **WHEREAS**, CONSULTANT wishes to perform these services; and

18 Board language

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

21 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

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 , 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.	Develop expertise in OCTA's facilities, systems, plans and procedures	.00
2.	Stakeholder Meetings	.00
3.	Training	.00
4.	Training Video	.00
5.	Tabletop Exercise	.00
6	Full Scale Exercise	.00
7.	Final Report	<u>.00</u>
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. Percentage of work completed shall be documented

in a monthly progress report prepared by CONSULTANT, which shall accompany each invoice submitted 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 task listed in paragraph B of this Article until such time as CONSULTANT has documented to AUTHORITY's satisfaction, that CONSULTANT has fully completed all work required under the task. AUTHORITY's payment in full for any task completed shall not constitute AUTHORITY's final acceptance of CONSULTANT's work under such task.

D. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. Each invoice shall be accompanied by the monthly progress report specified in paragraph C of this Article. 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-0-1916;
2. Specify the task number for which payment is being requested;
3. The time period covered by the invoice;
4. Total monthly invoice (including project-to-date cumulative invoice amount) and retention;
5. Monthly Progress Report;
6. 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 backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which CONSULTANT intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.
7. 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 subcontractor 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 subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. AUTHORITY reserves the right to request the appropriate documentation from CONSULTANT showing payment has been made to the subcontractors. Any delay or postponement of payment from the above referenced time frames may occur only for good cause following written approval by AUTHORITY.

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

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

ARTICLE 7. MAXIMUM OBLIGATION

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

ARTICLE 8. NOTICES

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

To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Yvette Crowder, Senior Contract
Administrator

(714) 560 - 5616

ARTICLE 9. INDEPENDENT CONTRACTOR

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

ARTICLE 10. INSURANCE

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

1. Commercial General Liability, to include Products/Completed Operations, Independent Contractors', Contractual Liability, and Personal Injury, and Property Damage 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

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

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

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

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

11 C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement
12 Number C-0-1916; and, the Contract Administrator's Name, Yvette Crowder.

13 D. CONSULTANT shall also include in each subcontract the stipulation that subcontractors
14 shall maintain insurance coverage in the amounts required from CONSULTANT as provided in this
15 Agreement.

16 **ARTICLE 11. ORDER OF PRECEDENCE**

17 Conflicting provisions hereof, if any, shall prevail in the following descending order of
18 precedence: (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 0-
19 1916, (3) CONSULTANT's proposal dated ; and (4) all other documents, if any, cited herein or
20 incorporated by reference.

21 **ARTICLE 12. CHANGES**

22 By written notice or order, AUTHORITY may, from time to time, order work suspension and/or
23 make changes in the general scope of this Agreement, including, but not limited to, the services
24 furnished to AUTHORITY by CONSULTANT as described in the Scope of Work. If any such work
25 suspension or change causes an increase or decrease in the price of this Agreement or in the time
26 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 (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONSULTANT. The decision of the Director, CAMP, 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, CAMP. 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. Said termination shall be

1 construed in accordance with the provisions of CFR Title 48, Chapter 1, Part 49, of the Federal
2 Acquisition Regulation (FAR) and specific subparts and other provisions thereof applicable to
3 termination for convenience. If AUTHORITY sees fit to terminate this Agreement for convenience, said
4 notice shall be given to CONSULTANT in accordance with the provisions of the FAR referenced above
5 and Article 8, herein. Upon receipt of said notification, CONSULTANT agrees to comply with all
6 applicable provisions of the FAR pertaining to termination for convenience.

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

16 **ARTICLE 15. INDEMNIFICATION**

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

23 **ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS**

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

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

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

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

ARTICLE 17. ACCESS TO RECORDS AND REPORTS

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 accounting books, records, payroll documents and facilities of the CONSULTANT which are directly pertinent to this Agreement for the purposes of examining, auditing and inspecting all accounting books, records, work data, documents and activities related hereto. 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. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 16 of this Agreement. 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. CONFLICT OF INTEREST

CONSULTANT agrees to avoid organizational conflicts of interest. An organizational conflict

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

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

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

H. Incorporation of Provisions: CONSULTANT shall include the provisions of paragraphs (A) through (H) 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 action with respect to any subcontract or procurement as the AUTHORITY may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or supplier

as a result of such direction, the CONSULTANT may request the AUTHORITY to enter into such litigation to protect the interests of the AUTHORITY, and, in addition, the CONSULTANT may request the United States to enter into such litigation to protect the interests of the United States.

ARTICLE 23. DISADVANTAGED BUSINESS ENTERPRISES

Race-Neutral DBE Participation

[INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS PROPOSED TO UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.]

At the time of contract execution, the CONSULTANT committed to utilize DBE(s) in the performance of this DOT-assisted contract, and further agrees to ensure that DBE subcontractors listed on the ***“DBE Race-Neutral Participation Listing” (Exhibit D-2)*** perform work and/or supply materials in accordance with original commitments, unless otherwise directed and/or approved by the Authority prior to the CONSULTANT effectuating any changes to its race-neutral DBE participation commitment(s) (*Refer to Subsection H: “Performance of DBE Subcontractors”*).

[INTERNAL NOTE: USE THE FOLLOWING LANGUAGE IF CONSULTANT HAS NOT PROPOSED TO UTILIZE DBES IN THE PERFORMANCE OF THE CONTRACT.]

At the time of contract execution, the CONSULTANT did not commit 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;

1 c. "Native Americans," which includes persons who are American Indians, Eskimos,
2 Aleuts, or Native Hawaiians;

3 d. "Asian-Pacific Americans," which includes persons whose origins are from Japan,
4 China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust
5 Territories of the Pacific, and the Northern Marianas;

6 e. "Asian-Indian Americans," which includes persons whose origins are from India,
7 Pakistan, and Bangladesh; and

8 f. Women, regardless of ethnicity or race.

9 4. "Owned and Controlled" means a business: (a) which is at least 51 percent owned by
10 one or more "Socially and Economically Disadvantaged Individuals" or, in the case of a publicly-owned
11 business, at least 51 percent of the stock of which is owned by one or more "Socially and Economically
12 Disadvantaged Individuals"; and (b) whose management and daily business operations are controlled
13 by one or more such individuals.

14 5. "Manufacturer" means a firm that operates or maintains a factory or establishment that
15 produces on the premises the materials or supplies obtained by the CONSULTANT.

16 6. "Regular Dealer" means a firm that owns, operates or maintains a store, warehouse, or
17 other establishment in which the materials or supplies required for the performance of the contract are
18 bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must
19 engage in, as its principal business, and in its own name, the purchase and sale of the product in
20 question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products
21 need not keep such products in stock if it owns or operates distribution equipment.

22 7. "Other Socially and Economically Disadvantaged Individuals" means those individuals
23 who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-
24 case basis, are determined by Small Business Administration or AUTHORITY to meet the social and
25 economic disadvantage criteria described below.
26

1 a. Social Disadvantage: The individual's social disadvantage must stem from his/her
2 color, national origin, gender, physical handicap, long-term residence in an environment isolated from
3 the mainstream of American society, or other similar cause beyond the individual's control.

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

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

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

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

12 v. A determination of social disadvantage must be made before proceeding to
13 make a determination of economic disadvantage.

14 b. Economic Disadvantage

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

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

20 With respect to the individual:

- 21 • availability of financing
- 22 • bonding capability
- 23 • availability of outside equity capital
- 24 • available markets

25 With respect to the individual and the business concern:

- 26 • 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 Subcontractors Paid Report Summary and Payment Verification” (Form 103) (Exhibit [INTERNAL NOTE: INSERT FORM NUMBER]). 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 Subcontractors Paid Report Summary and Payment Verification” (Form 103) (Exhibit [INTERNAL NOTE: INSERT FORM NUMBER]) 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 contractor, subcontractor, joint venture partner with a prime or subcontractor, 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, 1916 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 Subcontractor, 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 Subcontractor, the value of the subcontracted work may be counted toward race-neutral DBE participation only if the DBE Subcontractor 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 Contractor'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 Subcontractors, 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

1 allowed for similar work, including: Fees and commissions charged for providing bona fide professional
 2 or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies
 3 required in the performance of the Contract; Fees charged for delivery of material and supplies
 4 (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery
 5 service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and
 6 commissions charged for providing any insurance specifically required in the performance of the
 7 Contract. CONSULTANT may count the participation of DBE trucking companies toward race-neutral
 8 DBE attainment, as follows: The DBE must be responsible for the management and supervision of the
 9 entire trucking operation for which it is responsible on a particular contract. The DBE must itself own
 10 and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE
 11 receives credit for the total value of the transportation services it provides on the contract using trucks it
 12 owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE
 13 firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another
 14 DBE receives credit for the total value of the transportation services the lessee DBE provides on the
 15 contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE
 16 who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a
 17 result of the lease arrangement. The DBE does not receive credit for the total value of the
 18 transportation services provided by the lessee, since these services are not provided by a DBE. For
 19 purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over
 20 the truck. This does not preclude the leased truck from working for others during the term of the lease
 21 with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased
 22 truck. Leased trucks must display the name and identification number of the DBE. If CONSULTANT
 23 listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified
 24 DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower
 25 tier DBE certified Subcontractor or Vendor, the value of work performed by the lower tier DBE firm's
 26 own forces can be counted toward race-neutral DBE participation on the contract.

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

I. Additional DBE Subcontractors: In the event CONSULTANT identifies additional DBE subcontractors or suppliers not previously identified by CONSULTANT for race-neutral DBE participation under the contract, CONSULTANT shall notify the Authority by submitting Exhibit [INSERT FORM REF. NO.]: “Request for Additional DBE Firm” to enable CONSULTANT to capture all race-neutral DBE participation. CONSULTANT shall also submit, for each DBE identified after contract execution, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

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

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

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ARTICLE 24. PROHIBITED INTERESTS

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

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

ARTICLE 25. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein 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. 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 30. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, as amended, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. 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 31. 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 32. NO FEDERAL 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. FLY AMERICA REQUIREMENT

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

ARTICLE 39. BUY AMERICA REQUIREMENTS

CONSULTANT agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron and manufactured products used in FTA-

funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States, for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software and small purchases (currently less than \$100,000) made with capital, operating or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)© and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

ARTICLE 40. SEISMIC SAFETY REQUIREMENTS

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

ARTICLE 41. DEBARMENT AND SUSPENSION

A. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, CONSULTANT is required to verify that none of the contractor, 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.

B. 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.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-1916 to be executed on the date first above written.

CONSULTANT

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Will Kempton
Chief Executive Officer

APPROVED AS TO FORM:

By _____

Kennard R. Smart, Jr.
General Counsel

APPROVED:

By _____

Beth McCormick
General Manager, Transit

SECTION IV

FORMS

EXHIBIT D

STATUS OF PAST AND PRESENT FORMS

STATUS OF PAST AND PRESENT CONTRACTS FORMS- EXHIBIT D

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.

Name _____
 Title _____

_____ Date

EXHIBIT E

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
RACE NEUTRAL SOLICITATION PROVISIONS**

RACE-NEUTRAL SOLICITATION PROVISIONS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PROVISIONS

A. DBE Policy and Applicability

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

This DOT-assisted 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 small businesses, including 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:

- 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.
- Ensure that DBEs can fairly compete for and perform on all DOT-assisted contracts and subcontracts.
- Ensure non-discrimination in the award and administration of Authority's DOT-assisted contracts.
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts.
- Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in DOT-assisted contracts.
- Assist in the development of firms that can compete successfully in the marketplace outside the DBE Program.

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

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

B. 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. A Race-Neutral Program utilizes measures that can assist a wide variety of small businesses including DBEs, such as arranging solicitations, times for the presentation of proposals, quantities, specifications, and delivery schedules in ways that facilitate DBE and other small business participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime Consultants to subcontract portions of work that they might, otherwise, perform with their own forces). However, under a Race-Neutral DBE Program, the Authority may no longer advertise DOT-assisted contracts containing numeric race-conscious goals or require an Offeror to utilize DBEs as a condition of award. Race-neutral DBE participation includes any time a DBE obtains a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

C. Definitions

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

- i. ***"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.
- ii. ***"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.

- iii. **"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.
- iv. **"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.
- v. **"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.

- vi. **"Regular Dealer"** means a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. The firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment.
- vii. **"Other Socially and Economically Disadvantaged Individuals"** means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who, on a case-by-case basis, are determined by Small Business Administration or the Authority to meet the social and economic disadvantage criteria described below.
 - a. Social Disadvantage
 - 1) The individual's social disadvantage must stem from his/her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.
 - 2) The individual must demonstrate that he/she has personally suffered social disadvantage.
 - 3) The individual's social disadvantage must be rooted in treatment, which he/she has experienced in American society, not in other countries.
 - 4) The individual's social disadvantage must be chronic, longstanding and substantial, not fleeting or insignificant.
 - 5) The individual's social disadvantage must have negatively affected his/her entry into and/or advancement in the business world.
 - 6) A determination of social disadvantage must be made before proceeding to make a determination of economic disadvantage.
 - b. Economic Disadvantage
 - 1) The individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same line of business and competitive market area that are not socially disadvantaged.

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

D. DBE Proposal Submission Requirements

1. “DBE Race-Neutral Participation Listing” (Exhibit E-2)

If the Offeror is a DBE or intends to utilize DBE subconsultants and/or purchase goods or services from DBE vendors or DBE suppliers in the performance of this contract, the Offeror shall provide the following information for every DBE firm who will be proposed and/or listed to participate to facilitate capturing race-neutral DBE participation under this contract:

- a. The complete name and address of each DBE who will participate in the contract;
- b. A description of the work that each DBE will perform or provide;
- c. The dollar amount of the work to be performed or provided by the DBE;
- d. Valid DBE Certification eligibility status, in conformance with 49 CFR, Part 26;
- e. The Offeror shall also submit, for each DBE to perform under this contract, a written confirmation from the DBE acknowledging that it is participating in the contract for a specified value, including the corresponding scope of work (a subcontract agreement can serve in lieu of the written confirmation).

The “DBE Race-Neutral Participation Listing” information must be submitted on Exhibit E-2, in a sealed envelope, and should be included with the proposal submittal; however, in the event that the referenced Exhibit is not included, the Exhibit shall be submitted to the Authority no later than 48 hours following proposal submission due date and timeline for the Offeror to be deemed responsive.

In the event that the Offeror is not a DBE and/or does not intend to utilize DBEs in the performance of this contract, the Offeror shall

indicate “None” under the column entitled “DBE Firm Name” of the “DBE Race-Neutral Participation Listing” (Exhibit E-2) and submit accordingly.

The “DBE Race-Neutral Participation Listing” form content will not be considered in evaluating the proposal or determining award of any contract.

2. “Offerors List” (Exhibit E-3)

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

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

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

The “Offerors List” content will not be considered in evaluating the proposal or determining award of any contract.

E. DBE Certification

The Authority requires all DBEs listed by Offeror for participation to be certified as eligible DBEs at the time of proposal submission. Only participation by DBEs certified under the DOT regulations published under 49 CFR Part 26 may be credited towards race-neutral DBE participation. It is the responsibility of the Offeror to verify the DBE certification status of all listed DBEs.

The Authority is a Certifying Member Agency of the California Unified Certification Program (UCP). The Authority will accept DBE certification from

other certifying member agencies of the UCP, which certify the eligibility of DBEs in accordance with 49 CFR Part 26.81. A listing of California UCP certifying member agencies is available from the UCP website, which can be accessed at <http://www.californiaucp.com>.

F. DBE Eligibility and Commercially Useful Function Standards

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.
- v. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - a. The CUCP web site, which can be accessed at <http://www.californiaucp.com>; or the Caltrans "Civil Rights" web site at <http://www.dot.ca.gov/hq/bep>.
 - b. The CUCP DBE Directory, which may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1916 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions

- i. 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 the Consultant is a DBE joint venture participant, only the DBE proportionate interest in the joint venture shall be counted.

- ii. 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.
- iii. Consultant is to calculate and credit participation by eligible DBE vendors of equipment, materials, and suppliers toward race-neutral DBE attainment, as follows:
 - a. Sixty percent (60%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a regular dealer; or
 - b. One hundred percent (100%) of expenditure(s) for equipment, materials and supplies required under the Contract, obtained from a DBE manufacturer.
- iv. 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:
 - a. Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract;
 - b. Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies;
 - c. Fees and commissions charged for providing any insurance specifically required in the performance of the Contract.
- v. Consultant may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows:

- a. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 - b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
 - c. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 - d. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 - e. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - f. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- vi. If the Consultant listed a non-certified DBE 1st tier Subconsultant to perform work on this contract, and the non-certified DBE subconsultant subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subconsultant or Vendor, the value of work performed by the lower tier DBE firm's own forces can be counted toward race-neutral DBE participation on the contract.

H. DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate as DBEs in DOT-assisted contracts. Therefore, Offerors are hereby cautioned against knowingly and willfully using "fronts". The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations. Further, any indication of fraud, waste, abuse or mismanagement of Federal funds should be immediately reported to the Office of Inspector General, U.S. Department of Transportation at the toll-free hotline: (800) 424-9071; or to the following field office: FTA Special

Agent-in-Charge, 210 Mission Street, Room 2210, San Francisco, CA 94105-1839; Telephone: (415) 744-3133; Fax: (415) 744-2726.



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: _____

LIST OF SUBCONTRACTORS

List only the Subcontractors, which will perform, work or labor or render services to the bidder in excess of one-half of one percent of the Bidder's total bid amount. Do not list alternative Subcontractors for the same work. (Use additional sheets if necessary.)

Name Under Which Subcontractor is Licensed / License No.	City & State	Specific Description of Work to be Rendered	Type*	Dollar Amount
				\$
				\$
				\$
				\$
				\$
				\$
				\$
		TOTAL		\$
*Type				
1. Subcontractor				
2. Vendor / Supplier				
3. Trucker				
4. Broker				

Bidders Name _____

DBE RACE-NEUTRAL PARTICIPATION LISTING

Offeror shall complete and submit **Exhibit E-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 Offeror shall refer to Exhibit E, **“DBE Crediting Provisions”** for guidelines relative to DBE participation crediting. (Additional sheets may be duplicated as necessary.)

The DBE information and content provided under Exhibit E-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		
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	
License No., Classification and Expiration:		Manufacturer (100%)	Trucker	
Subcontract Amount:		Subcontractor/Supplier Activity:		

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

**RFP 0-1916
EXHIBIT E-2**

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

*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:				
Contact Person:		Subcontractor (100%)	Supplier (60%)	
Telephone:	Fax:	Regular Dealer (60%)	Broker	

**RFP 0-1916
EXHIBIT E-2**

License No., Classification and Expiration:	Manufacturer (100%)	Trucker
Subcontract Amount:	Check Appropriate Box Describing Subcontractor/Supplier Activity:	

*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



OFFERORS LIST

Offeror: _____ **RFP No.:** 0-1916

The Department of Transportation requires the AUTHORITY to create and maintain a "Offerors 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 "Offerors List" is intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted contracts, whether successful or unsuccessful in their attempt to obtain a contract.

The Offeror is to complete all requested information on **Form E-3: "Offerors List"** for every firm who submitted a bid, proposal or quote, including the primary Offeror, and submit this information at the time of bid submission. However, if not elected to do so at the time of bid submission, 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 "Offerors List" content will not be considered in evaluating the proposal or determining award of any contract.***

Prime Offeror's Information:	
Name of Prime Firm:	Phone: ()
Firm Address:	Fax: ()
	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:
	☐ noillim 1\$ naht sseL ☐
	☐ noillim 5\$ naht sseL ☐
	☐ noillim 01\$ naht sseL ☐
	☐ noillim 51\$ naht sseL ☐
	☐ noillim 51\$ naht erom ☐

**RFP 0-1916
EXHIBIT E-3**

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

Firm Name:	Phone: ()
Firm Address:	Fax: ()
Number of years in business:	Type of work/services/materials provided:
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:
	☐ noillim 1\$ naht sseL ☐
	☐ noillim 5\$ naht sseL ☐
	☐ noillim 01\$ naht sseL ☐
	☐ 51\$ naht sseL ☐ million
	☐ noillim 51\$ naht eroM ☐

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

Firm Name:	Phone: ()
Firm Address:	Fax: ()
Number of years in business:	Type of work/services/materials provided:
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:
	☐ noillim 1\$ naht sseL ☐
	☐ noillim 5\$ naht sseL ☐
	☐ noillim 01\$ naht sseL ☐
	☐ noillim 51\$ naht sseL ☐
	☐ noillim 51\$ naht eroM ☐

If necessary, this "Offerors 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 Offeror to submit the required "Offerors List" form will deem the Offeror non-responsive.

EXHIBIT F

RESTRICTIONS ON LOBBYING

CERTIFICATION REGARDING LOBBYING

The undersigned (Offeror) certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government-wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

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

Signature of Offeror's Authorized Official

Name and Title of Offeror's Authorized Official

Date

**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)

CERTIFICATION
LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN
FEDERAL TRANSACTIONS

A. DEFINITIONS

B. AUTHORITY, AS USED IN THIS CLAUSE, MEANS THE ORANGE COUNTY TRANSPORTATION AUTHORITY, ACTING ON BEHALF OF THE ORANGE COUNTY TRANSIT DISTRICT.

1. Covered Federal action, as used in this clause, means any of the following Federal actions:
The awarding of any Federal contract.
 - a. The making of any Federal grant.
 - b. The making of any Federal loan.
 - c. The entering into of any cooperative agreement.
 - d. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. Indian tribe and tribal organization, as used in this clause, have the meaning provided in Section 4 of the Indian self-determination and Education Assistance Act (25 U.S.C. 4508) and include Alaskan Natives.
3. Influencing or attempting to influence, as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.
4. Local government, as used in this clause, means a unit of government in a State and, if chartered, established, or other were recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
5. Officer or employee of an agency, as used in this clause, includes the following individuals who are employed by an agency:
 - (1) An individual who is appointed to a position in the Government under title 5, United States code, including a position under a temporary appointment.
 - (2) A member of the uniformed services, as defined in the

subsection 101(3), Title 37, United States Code.

- (3) A special Government employee, as defined in Section 202, Title 18, United States Code.
 - (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2.
- 6. Person, as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 7. Reasonable compensation, as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
 - 8. Reasonable payment, as used in this clause means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
 - 9. Recipient, as used in this clause, includes the CONSULTANT and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.
 - 10. Regularly employed, as used in this clause, means, with respect to an officer or employee of a person requesting or receiving by such person for at least 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within one year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.
 - 11. State, as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-State regional or interstate entity having governmental duties and powers.

C. PROHIBITIONS

1. Section 1352 of Title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or, the modification of any Federal contract, grant, loan, or cooperative agreement.
2. The Act also requires consultant to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan or cooperative agreement.
3. The prohibitions of the Act do not apply under the following conditions:
 - a. Agency and legislative liaison by own employees.
 - (1) The prohibition on the use of appropriated funds, in subparagraph B.1. of this clause, does not apply in the case of payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.
 - (2) For purposes of paragraph B.3.a.(1) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (3) The following agency and legislative liaison activities are permitted any time where they are not related to a specific solicitation for any covered Federal action:

Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sale, and service capabilities.

Technical discussions and other activities regarding the application of adaptation of the person's products or services for an agency's use.

- (4) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action:

Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and,

Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507, and subsequent amendments.

- (5) Only those services expressly authorized by paragraph B.3.a.(1) of this clause are permitted under this clause.

b. Professional and technical services

- (1) The prohibition on the use of appropriated funds, in subparagraph B.1. of this clause, does not apply in the case of:

A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as condition for receiving that Federal action.

Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in

the preparation, submission or negotiation of any bid, proposal, or application or that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

Persons other than officers or employees of a person requesting or receiving a covered Federal action include contractors and trade associations.

- (2) For purposes of paragraph B.3.a.(1) of this clause, professional and technical services shall be limited to advise and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission, or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.
- (3) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

- (4) Only those services expressly authorized by paragraph B.3.a.(1) and (2) of this clause are permitted under this clause.
- (5) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

c. Disclosure

- (1) The consultant who requests or receives from an agency a Federal contract shall file with that agency a disclosure form OMB standard form LLL, Disclosure of Lobbying Activities, (Attachment to the bid package) if such person has made or had agreed to made any payment using non appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B.1. of this clause, if paid for with appropriated funds.

- (2) The consultant shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph II.A. of this clause. An event that materially affects the accuracy of the information reported includes:

A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

- (3) The consultant shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.
- (4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until

received by the prime CONSULTANT. The prime CONSULTANT shall submit all disclosures to the District at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding CONSULTANT.

d. Agreement

The consultant agrees not to make any payment prohibited by this clause.

e. Penalties

(1) Any person who makes an expenditure prohibited under paragraph a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Consultants may relay without liability on the representation made by their subcontractors in the certification and disclosure forms.

f. Cost Allowability:

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

DISCLOSURE OF LOBBYING ACTIVITIES

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

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) (attach Continuation Sheet(s) SF - LLL - A if necessary)		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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PERSONNEL.DOCX

INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

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

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

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

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

DISCLOSURE OF LOBBYING ACTIVITIES CONTINUATION SHEET

Reporting Entity: _____ Page _____ of _____

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EXHIBIT G

PARTY AND PARTICIPANT DISCLOSURE FORMS

PARTY DISCLOSURE FORM

Information Sheet

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

Party Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.

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

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and 2 Cal. Adm. Code Sections 18438-18438.8.

ORANGE COUNTY TRANSPORTATION AUTHORITY
AND ITS AFFILIATED AGENCIES

To be completed only if campaign contributions have been made in the preceding 12 months.

Prime Firm's Name: _____

Party's Name: _____

Party's Address: _____

Street

City

State

Zip

Phone

Application or Proceeding
Title and Number: _____

Board Member(s) or Alternate(s) to whom you and/or your agent made campaign contributions and dates of contribution(s) in the preceding 12 months:

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Date: _____

Signature of Party and/or Agent

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Jerry Amante, Chairman

Patricia Bates, Vice Chairman

Art Brown, Director

Peter Buffa, Director

Bill Campbell, Director

Carolyn V. Cavecche, Director

William J. Dalton, Director

Richard Dixon, Director

Paul G. Glaab, Director

Don Hansen, Director

Allan Mansoor, Director

John Moorlach, Director

Shawn Nelson, Director

Janet Nguyen, Director

Curt Pringle, Director

Miguel Pulido, Director

Gregory T. Winterbottom, Director

PARTICIPANT DISCLOSURE FORM

Information Sheet

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

The attached Participant Disclosure Form must be completed by participants in a proceeding involving a license, permit, or other entitlement for use. (Please see next page for definitions of these terms.)

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are a participant in a proceeding involving a license, permit, or other entitlement for use, you are prohibited from making a campaign contribution of more than \$250 to any board member or his or her alternate. This prohibition begins on the date you begin to actively support or oppose an application for license, permit, or other entitlement for use pending before the Orange County Transportation Authority or any of its affiliated agencies, and continues until three months after a final decision is rendered on the application or proceeding by the Board of Directors.

No board member or alternate may solicit or accept a campaign contribution of more than \$250 from you and/or your agency during this period if the board member or alternate knows or has reason to know that you are a participant.

- B. The attached disclosure form must be filed if you or your agent has contributed more than \$250 to any board member or alternate for the Orange County Transportation Authority or any of its affiliated agencies during the 12-month period preceding the beginning of your active support or opposition. (The disclosure form will assist the board members in complying with the law.)
- C. If you or your agent have made a contribution of more than \$250 to any board member or alternate during the 12 months preceding the decision in the proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a participant in the proceeding.

The Participant Disclosure Form should be completed and filed with the proposal submitted by a party, or should be completed and filed the first time that you lobby in person, testify in person before, or otherwise directly act to influence the vote of the board members of the Orange County Transportation Authority or any of its affiliated agencies.

1. An individual or entity is a "participant" in a proceeding involving an application for a license, permit or other entitlement for use if:
 - a. The individual or entity is not an actual party to the proceeding, but does have a significant financial interest in the Orange County Transportation Authority's or one of its affiliated agencies' decision in the proceeding.

AND

- b. The individual or entity, directly or through an agent, does any of the following:
 - (2) Communicates directly, either in person or in writing, with a board member or alternate of the Orange County Transportation Authority or any of its affiliated agencies for the purpose of influencing the member's vote on the proposal;
 - (3) Communicates with an employee of the Orange County Transportation Authority or any of its affiliated agencies for the purpose of influencing a member's vote on the proposal; or
 - (4) Testifies or makes an oral statement before the Board of Directors of the Orange County Transportation Authority or any of its affiliated agencies.
2. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use; all contracts (other than competitively bid, labor, or personal employment contracts) and all franchises.
3. Your "agent" is someone who represents you in connection with a proceeding involving a license, permit, or other entitlement for use. If an agent acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar business entity or corporation, both the business entity or corporation and the individual are agents.

4. To determine whether a campaign contribution of more than \$250 has been made by a participant or his or her agent, contributions made by the participant within the preceding 12 months shall be aggregated with those made by the agent within the preceding 12 months or the period of the agency, whichever is shorter. Campaign contributions made to different members or alternates are not aggregated.
5. A list of the members and alternates of the Board of Directors is attached.

This notice summarizes the major requirements of Government Code Section 84308 and 2 Cal. Adm. Code Sections 18438-18438.8.

ORANGE COUNTY TRANSPORTATION AUTHORITY
AND ITS AFFILIATED AGENCIES

To be completed only if campaign contributions have been made in the preceding 12 months.

Prime's Firm Name: _____

Party's Name: _____

Party's Address: _____

Street

City

State

Zip

Phone

Application or Proceeding
Title and Number: _____

Board Member(s) or Alternate(s) to whom you and/or your agent made campaign contributions and dates of contribution(s) in the preceding 12 months:

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Date: _____

Signature of Party and/or Agent

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Jerry Amante, Chairman

Patricia Bates, Vice Chairman

Art Brown, Director

Peter Buffa, Director

Bill Campbell, Director

Carolyn V. Cavecche, Director

William J. Dalton, Director

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Don Hansen, Director

Allan Mansoor, Director

John Moorlach, Director

Shawn Nelson, Director

Janet Nguyen, Director

Curt Pringle, Director

Miguel Pulido, Director

EXHIBIT H
LEVEL 2 SAFETY SPECIFICATIONS

LEVEL 2 SAFETY SPECIFICATIONS

GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) policies, as well as all federal, state, and local regulations pertaining to scope of work, contracts or agreements with the Authority. Additionally, manufacturer requirements are considered incorporated by reference as applicable to this scope of work.
- B. Observance of repeated unsafe acts or conditions, serious violation of safety standards, non-conformance of Authority health, safety and environmental compliance department (HSEC) requirements, or disregard for the intent of these safety specifications to protect people and property, by Contractor may be cause for termination of this agreement with the Authority, at the sole discretion of the Authority.

C. INJURY AND ILLNESS PREVENTION PLAN

The Contractor shall submit to the Authority, certification of compliance of an Injury and Illness Prevention Plan (IIPP) in accordance with California Code of Regulations (CCR) Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

D. HAZARD COMMUNICATION PROGRAM

- 1. Contractor shall comply with CCR Title 8, Section 5194, Hazard Communication Standard. Prior to use on Authority property and/or project work areas Contractor shall provide the Authority Project Manager copies of MSDS for all applicable products.
 - 2. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.
- E. The Contractor shall provide the Authority's Project Manager the qualifications, or job experience of Contractor's competent person as the safety representative assigned to the project. The Contractor's safety representative for Authority projects are subject to Acceptance by the Authority Project Manager.
 - a. Competent Person, means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are

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

- F. The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, sub-tier contractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects. The safety orientation at a minimum shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation/lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.
- G. The Contractor shall ensure that all Contractor vehicles, including those of its sub-tier contractors, suppliers, vendors and employees are parked in designated parking areas, are identified by company name and/or logo, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- H. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
- I. The Contractor shall immediately notify the Authority's Project Manager whenever local, state or federal regulatory agency personnel are identified as being onsite.
- J. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
- K. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its sub-tier contractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
- L. The Contractor shall instruct all its employees, and all associated sub-contractors under contract with the Contractor who are required to work on Authority property in the recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.
- M. California Code of Regulations (CCR) Title 8 Standards are minimum requirements, and each Contractor is encouraged to exceed minimum

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

1.2 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any of the following types of incidents:
- i. Damage to Authority property (or incidents involving third party property damage);
 - ii. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
 - iii. Incidents impacting the environment, (i.e. spills or releases on or from Authority property).

Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. 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.

1.3 PERSONAL PROTECTIVE EQUIPMENT

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

1.4 LANGUAGE REQUIREMENTS

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

1.5 WARNING SIGNS AND DEVICES

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