

REQUEST FOR PROPOSALS (RFP) 0-1614

Rideshare Consulting Services



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

Key RFP Dates

Issue Date:	June 9, 2010
Question Submittal Date:	June 17, 2010
Proposal Submittal Date:	July 1, 2010

**U.S. Department of Transportation
FTA Project Number: CA-95-X092**

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June 9, 2010

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SUBJECT: NOTICE OF REQUEST FOR PROPOSALS
"RFP 0-1614: Rideshare Consulting Services"

Gentlemen/Ladies:

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide assistance in developing and implementing customized transportation plan, outreach, and education for employers utilizing the OCTA Share the Ride Program. The budget for this project is \$100,000 for the initial year term with one year option term.

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on July 1, 2010.

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

Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Maria Cruz-Thompson, Buyer

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: Maria Cruz-Thompson, Buyer

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) 0-1614 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:

CHIEF EXECUTIVE OFFICE

Will Kempton
Chief Executive Officer

- Name of Firm
- Address
- Contact Person
- Telephone and Facsimile Number
- Request For Proposal (RFP) 0-1614

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 0-1614, 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>
Professional Consulting	• Consultant Services – Transit Planning • Consultant Services – Transportation Planning
Marketing, Advertising & Media Services	• Public Relations/Outreach Services

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.

Sincerely,



Maria Cruz-Thompson
Buyer
Contracts Administration and Materials Management

SECTION I
INSTRUCTIONS TO OFFERORS

SECTION I. INSTRUCTIONS TO OFFERORS

A. 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.

B. 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.

C. AUTHORITY CONTACT

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

Maria Cruz-Thompson, Buyer
Contracts Administration and Materials Management Department
550 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: (714) 560-5605, Fax: (714) 560-5792

D. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, comments, and clarifications must be put in writing and must be received by the Authority no later than 2:00 p.m., on June 17, 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: Maria Cruz-Thompson, Buyer e-mail address is mthompson@octa.net.

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, the Authority's interactive website, no later than June 21, 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 or faxing the request to Maria Cruz-Thompson, Buyer.

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):

Professional Consulting

Commodity(s):

- Consultant Services – Transit Planning
- Consultant Services – Transportation Planning

Inquiries received after June 17, 2010, will not be responded to.

E. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be received in the Orange County Transportation Authority's office at or before 2:00 p.m. on July 1, 2010.

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

2. Address

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

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Maria Cruz-Thompson, Buyer**

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: Maria Cruz-Thompson, Buyer**

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

3. Identification of Proposals

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

"RFP 0-1614: Rideshare Consulting Services"

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.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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. While firm-fixed price is the preferred method of pricing, the Authority will also consider offers quoted on a cost-plus-fixed-fee or time-and-expense basis, although the latter, in particular, may be subject to a significant deduction of points in the Authority's evaluation of the proposals received.

The term of this Agreement resulting from this solicitation, if awarded, will be an initial year term and an option year term. The Authority, at its sole discretion, may elect to extend the term of the Agreement up to an additional twelve (12) months for the option year term.

K. 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.

L. CODE OF CONDUCT

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

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 Maria Cruz-Thompson, Buyer 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.

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

Offerors 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.

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.

At the conclusion of the proposal evaluations, Offerors remaining within the competitive range may be asked to submit a Best and Final Offer (BAFO). In

the BAFO request, the firms may be asked to provide additional information, confirm or clarify issues and submit a final cost/price offer. A deadline for submission will be stipulated.

C. AWARD

The Authority will evaluate the proposals received. The proposal considered to be the most competitive to the Authority will be selected for award. 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

SCOPE OF WORK

Employer Transportation Plan Development and Outreach Consultant

BACKGROUND

The Orange County Transportation Authority (OCTA) was formed in June 1991 to address ongoing transportation needs in Orange County. The concept behind OCTA was to create one agency to develop and implement transportation programs designed to reduce traffic congestion and improve air quality.

To achieve Regional Transportation Plan emission reduction targets, Orange County Transportation Authority (OCTA) implements transportation control measures (TCMs). One TCM provided by OCTA is a rideshare program called Share the Ride. Share the Ride provides a variety of support services for employers to promote alternative modes of transportation to their employees and meet the requirements of the South Coast Air Quality Management District (SCAQMD).

The SCAQMD provides employers of 250 or more employees with a menu of options to reduce mobile source emission generated from employee commutes and comply with Rule 2202. Employers must register with SCAQMD annually. Most Employers use an Average Vehicle Ridership (AVR) Survey to quantify the amount of emissions they already reduce and to determine their plan for achieving their reduction goal. Employers can develop Employee Commute Reduction Programs (ECRP) and/or purchase credits to reach the established emission reduction goal. OCTA's Share the Ride program and services consists of:

- Outreach to employers to provide bus, rail, carpool, employer transit pass program, and other transportation information.
- Training of Employee Transportation Coordinators (ETC) and familiarizing them with OCTA services and transportation options.
- Providing rideshare information by calling 1-800-COMMUTE.
- Providing website information at www.commutesmart.info.
- Participation of programs such as Bike to Work, Dump the Pump, and Rideshare Week.
- Assisting employers with processing carpool match lists and average vehicle ridership (AVR) surveys.
- Vanpool Subsidy Program.
- SCAQMD Assistance.
- Guaranteed Ride Home.

The OCTA Marketing Department is responsible for identifying target audiences for our Share the Ride Program and implementing marketing programs to meet established business goals and objectives. The Marketing Department is currently seeking

professional CONSULTANT services to assist in developing and implementing customized Transportation Plans and Outreach and Education for Orange County employers utilizing the OCTA Share the Ride Program. The CONSULTANT must demonstrate competency with SCAQMD Rule 2202, transportation demand management, and OCTA's Share the Ride program and services including but not limited to bus and Metrolink.

OCTA's Share the Ride Program is reaching more employers and their respective employees each year. There are 330 Orange County employers in Orange County that employ more than 250 people. These employers must meet SCAQMD Rule 2202 requirements. OCTA AVR survey services grew 11 percent in fiscal year 2006/2007 and 14 percent in fiscal year 2007/2008. OCTA provided this service to 123 Orange County employers in the fiscal year 2007/2008.

The AVR survey provides employers a measurement of vehicle occupancy. It indicates the average number of people traveling to the worksite per vehicle. Business commuters are a target for increased AVR by the SCAQMD because many drive alone commuters could ride the bus, train, carpool, vanpool, walk or bike to work. The Transportation Plans developed by CONSULTANT will provide customized information to employers that identifies the commute alternative most appropriate for each of the employees surveyed. The plans will also include tools and assistance available from OCTA and a timeline for the plan implementation and promotion of appropriate commute alternatives to targeted employees. Since the AVR survey will provide the basis for the plan, CONSULTANT will need to persuade employers to supply employee home addresses on surveys processed by OCTA for this purpose.

PROJECT MANAGEMENT

OCTA's Marketing Section Manager will be the key contact for the CONSULTANT. The CONSULTANT will be responsible for implementing the Scope of Services described under the direction and approval Marketing Section Manager and in cooperation with the OCTA Outreach Staff.

TARGET MARKETS AND GOALS

- Orange County employers with 250 or more employees.
- To increase the number of Employers using OCTA AVR services by 18 worksites (15 percent) and ECRP submissions by 5 employers (%5).

SCOPE OF SERVICES

Task 1. Schedule AVR Surveys and Conduct AVR Survey Briefings

The CONSULTANT shall contact all existing OCTA AVR clients (currently 123) to schedule annual AVR Surveys. Working with that schedule, CONSULTANT will add new clients and schedule surveys at a time that is convenient to both the client and OCTA's processing service. Prior to the AVR Survey, CONSULTANT will conduct an AVR Survey Briefing for clients. OCTA will provide meeting space for group AVR Survey Briefings. Group briefings will be conducted no less than once per quarter. Clients who are unable to attend a group briefing will receive the necessary information from CONSULTANT at the clients worksite.

Task 1 Deliverables:

- a. Monthly updated schedule of AVR survey dates for OCTA clients for the duration of the project.
- b. Monthly updated schedule of AVR Survey Group Briefing dates.
- c. Monthly activity report outlining employers contacted, a summary of each meeting/contact and the outcome.

Task 2. Develop and Produce Customized Transportation Plans

CONSULTANT shall develop, produce and deliver a minimum of four (4) customized transportation plans for Orange County employers during the contract period. CONSULTANT will interpret and develop data from all available sources as it relates to a specific employment worksite such as AVR surveys, bus and train routes and stops and will create transportation plans based on that data and other transportation demand management strategies and solutions. Transportation plan recipients will be approved by OCTA and the plans will be presented to OCTA for review prior to the delivery and presentation of a plan to the Employer for which it was developed. Throughout the contract period, CONSULTANT will improve the process for developing and delivering the Transportation Plans based on lessons learned and feedback from clients.

Task 2 Deliverables:

- a. Prepare four (4) customized Transportation Plans.

Task 3. Increase the number of Orange County Employers using ECRP and OCTA Share the Ride Services and Programs

CONSULTANT shall increase participation of Orange County employers using ECRP and OCTA AVR Survey services. OCTA will provide CONSULTANT with a contact list of non-ECRP companies located in Orange County. This list will provide the basis for the CONSULTANT to make contact with employers to introduce SCAQMD Rule 2202 compliance options, OCTA services including AVR survey, the customized transportation plan, and OCTA Share the Ride. The goal is to increase the number of

Employers using OCTA AVR services by 18 worksites (15 percent) and ECRP submissions by 5 employers (5 percent).

Task 3 Deliverables:

- a. A monthly progress report detailing the attempted and completed sales activities, meetings, results, other efforts and accomplishment toward goals.

Task 4. Group Outreach and Education

CONSULTANT shall provide and dedicate one full-time person with office space and equipment provided by OCTA at 600 S. Main Street. This person will act as an extension of OCTA staff supporting the Share the Ride programs and services. Duties will include data entry and report analysis for all Share the Ride programs such as Vanpool, Employer Pass and Guaranteed Ride Home. This person will also perform outreach activities to include ridefairs, formation meetings, and community events and will present Share the Ride services such as transit, carpool, vanpool, bicycling and walking options to other groups as requested.

Task 4 Deliverables:

- a. A full-time employee based at OCTA.

EXHIBIT B
COST AND PRICE FORMS

PRICE SUMMARY SHEET

REQUEST FOR PROPOSALS (RFP) 0-1614

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.

<u>Task</u>	<u>Description</u>	<u>Firm Fixed Price</u>
1	Schedule AVR Surveys and Conduct AVR Survey Briefings	\$_____.00
2	Develop and Produce Customized Transportation Plans	\$_____.00
3	Increase the number of Orange County Employers using ECRP and OCTA Share the Ride Services and Program	\$_____.00
4	Group Outreach and Educations	\$_____.00
TOTAL FIRM FIXED PRICE PAYMENT		<u>\$_____.00</u>

Option Year _____% increase

The above prices are quoted on the following basis (check one):

Firm-Fixed Price_____ Cost-Plus-Fixed-Fee_____ Time and Expense_____

1. I acknowledge receipt of RFP 0-1614 and Addenda No.(s) _____

2. This offer shall remain firm for _____ days from the date of proposal
(Minimum 120)

COMPANY NAME

ADDRESS

TELEPHONE

EMAIL ADDREASS

FACSIMILE

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR

SIGNATURE'S NAME AND TITLE

DATE SIGNED

EXHIBIT C
PROPOSED AGREEMENT

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

ARTICLE 2. AUTHORITY DESIGNEE

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

ARTICLE 3. SCOPE OF WORK

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

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

<u>Names</u>	<u>Functions</u>

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to CONSULTANT, the resume and

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

6 **ARTICLE 4. TERM OF AGREEMENT**

7 A. This Agreement shall commence upon the effective date of this Agreement, and shall
8 continue in full force and effect through June 30 2011, unless earlier terminated or extended as
9 provided in this Agreement.

10 B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an
11 additional twelve (12) months, commencing July 1, 2011, and continuing through June 30, 2012
12 ("Option Term"), and thereupon require CONSULTANT to continue to provide services, and otherwise
13 perform, in accordance with Exhibit A, entitled "Scope of Work", and Article 5 "Payment."

14 AUTHORITY's election to extend the Agreement beyond the Initial Term shall not diminish its
15 right to terminate the Agreement for AUTHORITY's convenience or CONSULTANT's default as
16 provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period
17 extending from commencement through June 30, 2012 which period encompasses the Initial Term and
18 Option Term.

19 **ARTICLE 5. PAYMENT**

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

24 B. The following schedule shall establish the firm fixed payment to CONSULTANT by
25 AUTHORITY for each work task set forth in the Scope of Work. The schedule shall not include any
26 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	Schedule AVR Surveys and Conduct AVR Survey Briefings	\$_____00
2	Develop and Produce Customized Transportation Plan	\$_____00
3	Increase the number of Orange County Employers using ECRP and OCTA	\$_____00
	Share the Ride Services and Program	
4	Group Outreach and Education	\$_____00
TOTAL FIRM FIXED PRICE PAYMENT		\$_____00

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-0-1614;
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);

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: Maria Cruz-Thompson, Buyer
(714) 560 – 5605, mthompson@octa.net

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

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

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

C. CONSULTANT shall include on the face of the Certificate of Insurance the Agreement Number C-0-1614; and, the Buyer's Name, Maria Cruz-Thompson.

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

ARTICLE 11. ORDER OF PRECEDENCE

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including all exhibits, (2) the provisions of RFP 0-1614, (3) CONSULTANT's proposal dated _____; and (4) all other documents, if any, cited

herein or incorporated by reference.

ARTICLE 12. CHANGES

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

ARTICLE 13. DISPUTES

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

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

C. Pending final decision of a dispute hereunder, CONSULTANT shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM. This Disputes clause does not preclude consideration of questions of law in connection with

decisions provided for above. Nothing in this Agreement, however, shall be construed as making final the decision of any AUTHORITY official or representative on a question of law, which questions shall be settled in accordance with the laws of the state of California.

ARTICLE 14. TERMINATION

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

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

ARTICLE 15. INDEMNIFICATION

CONSULTANT shall indemnify, defend and hold harmless AUTHORITY, its officers, directors, employees and agents from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages, bodily injuries, including death, damage

to or loss of use of property caused by the negligent acts, omissions or willful misconduct by CONSULTANT, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of the performance of this Agreement.

ARTICLE 16. ASSIGNMENTS AND SUBCONTRACTS

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

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

A. In accordance with federal financial assistance agreements with the U.S. Department of Transportation (U.S. DOT), the Orange County Transportation Authority (AUTHORITY) has adopted a Disadvantaged Business Enterprise (DBE) Policy and Program, in conformance with Title 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Programs". The project is subject to these stipulated regulations. In order to ensure that the Authority achieves its overall DBE Program goals and objectives, the Authority encourages the participation of DBEs as defined in 49 CFR 26 in the performance of contracts financed in whole or in part with U.S. DOT funds. Pursuant to the intent of these Regulations, it is also the policy of the Authority to:

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

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

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

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

contracts.

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

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

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

B. CONSULTANT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts. Any terms used in this section that are defined in 49 CFR Part 26, or elsewhere in the Regulations, shall have the meaning set forth in the Regulations. In the event of any conflicts or inconsistencies between the Regulations and the Authority's DBE Program with respect to DOT-assisted contracts, the Regulations shall prevail.

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

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

1. "Disadvantaged Business Enterprise (DBE)" means a small business concern: (a) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily

business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

2. "Small Business Concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto, except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of \$19.57 million over the previous three fiscal years.

3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, women and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act, or by the Authority pursuant to 49 CFR part 26.65. Members of the following groups are presumed to be socially and economically disadvantaged:

a. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

b. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

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

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

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

f. Women, regardless of ethnicity or race.

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

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

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

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

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

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

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

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

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

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

b. Economic Disadvantage

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

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

With respect to the individual:

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

With respect to the individual and the business concern:

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

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

CONSULTANT shall complete and submit the following DBE exhibits (forms) at the times specified: "Monthly Race-Neutral DBE Subcontractors Paid Report Summary and Payment Verification" (Form 103) (Exhibit E). 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 E) 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, 1900 Royal Oaks Drive, Sacramento, California 95815; Telephone: (916) 445-3520.

G. DBE Crediting Provisions : When a DBE is proposed to participate in the contract, either as a prime CONSULTANT or 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 allowed for similar work, including: Fees and commissions charged for providing bona fide professional or technical services, or procurement of essential personnel, facilities, equipment, materials, or supplies required in the performance of the Contract; Fees charged for delivery of material and supplies (excluding the cost of materials or supplies themselves) when the licensed hauler, trucker, or delivery service is not also the manufacturer of, or a regular dealer in, the material and supplies; Fees and commissions charged for providing any insurance specifically required in the performance of the Contract. CONSULTANT may count the participation of DBE trucking companies toward race-neutral DBE attainment, as follows: The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the Contract. The DBE

receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE 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. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. For purposes of this paragraph, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. If CONSULTANT listed a non-certified DBE 1st tier subcontractor to perform work on this contract, and the non-certified DBE subcontractor subcontracts a part of its work or purchases materials and/or supplies from a lower tier DBE certified Subcontractor 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. Performance of DBE Subcontractors: DBE subcontractors listed by CONSULTANT in its "DBE Race-Neutral Participation Listing" (Exhibit E-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 E:

"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.

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

1 infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in
2 combination with other material not provided by CONSULTANT when such use in combination infringes
3 upon an existing U.S. letters patent or copyright.

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

12 **ARTICLE 27. FINISHED AND PRELIMINARY DATA**

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

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

negotiated for all preliminary data.

ARTICLE 28. FORCE MAJEURE

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

ARTICLE 29. ALCOHOL AND DRUG POLICY

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

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

ARTICLE 30. PRIVACY ACT

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

ARTICLE 31. INCORPORATION OF FTA TERMS

All contractual provisions required by Department of Transportation (DOT), whether or not

expressly set forth in this document, as set forth in Federal Transit Administration (FTA) Circular 4220.1F, 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 32. FEDERAL CHANGES

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

ARTICLE 33. NO 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 34. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

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

assisted project for which this Agreement's work is being performed. CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

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

ARTICLE 35. RECYCLED PRODUCTS

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

ARTICLE 36. ENERGY CONSERVATION REQUIREMENTS

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

ARTICLE 37. CLEAN AIR

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

appropriate EPA Regional Office. CONSULTANT agrees to include this requirement in all of its subcontracts.

ARTICLE 38. CLEAN WATER REQUIREMENTS

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

ARTICLE 39. DEBARMENT AND SUSPENSION

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

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-0-1614 to be executed on the date first above written.

CONSULTANT

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Carolina Coppolo
Manager
Contracts Administration and Materials Management

APPROVED AS TO FORM:

By _____

Kennard R. Smart, Jr.
General Counsel

SECTION IV

FORMS

EXHIBIT D

STATUS OF PAST AND PRESENT CONTRACTS

Status of Past and Present Contracts Form

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

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

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

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

Name _____
Title _____

_____ Date

EXHIBIT E

**DISADVANTAGE 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, 1900 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 (<i>Required</i>)? ☐ 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: _____

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

Reporting Period (month): _____, 200_____

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

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

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

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

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, **G: "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:		Subcontract or (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.

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EXHIBIT E, EXHIBIT E-2

DBE Firm Name*:	DBE Certification No. and Expiration Date:	Provide Complete Description of Work to be Performed: 															
Business Address:		<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Check</td> <td style="width: 33%; text-align: center;">Appropriate</td> <td style="width: 33%; text-align: center;">Box</td> </tr> <tr> <td colspan="3" style="text-align: center;">Describing</td> </tr> <tr> <td style="border: 1px solid black; text-align: center; padding: 5px;">Subcontract or (100%)</td> <td style="border: 1px solid black; text-align: center; padding: 5px;">Supplier (60%)</td> <td style="border: 1px solid black; width: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; text-align: center; padding: 5px;">Regular Dealer (60%)</td> <td style="border: 1px solid black; text-align: center; padding: 5px;">Broker</td> <td style="border: 1px solid black; width: 20px;"></td> </tr> <tr> <td style="border: 1px solid black; text-align: center; padding: 5px;">Manufacturer (100%)</td> <td style="border: 1px solid black; text-align: center; padding: 5px;">Trucker</td> <td style="border: 1px solid black; width: 20px;"></td> </tr> </table>	Check	Appropriate	Box	Describing			Subcontract or (100%)	Supplier (60%)		Regular Dealer (60%)	Broker		Manufacturer (100%)	Trucker	
Check	Appropriate		Box														
Describing																	
Subcontract or (100%)	Supplier (60%)																
Regular Dealer (60%)	Broker																
Manufacturer (100%)	Trucker																
Contact Person:																	
Telephone:	Fax:																
License No., Classification and Expiration:																	
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:		<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">Subcontract or (100%)</td> <td style="width: 33%; text-align: center;">Supplier (60%)</td> <td style="width: 33%;"></td> </tr> </table>	Subcontract or (100%)	Supplier (60%)	
Subcontract or (100%)	Supplier (60%)				
Contact Person:					

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Telephone:	Fax:	Regular Dealer (60%)	Broker	
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): (NOTE: Mark "NONE" if no DBEs will be utilized.)	%	DBE Race-Neutral Participation Dollar (\$ Value): (NOTE: Mark "NONE" if no DBEs will be utilized.)	\$

Signature of Authorized Representative

Printed Name

Date

Title



OFFERORS LIST

Offeror: _____

RFP No.: _____

0-1614

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:
	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million

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EXHIBIT E, 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:
	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million

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:
	☐ Less than \$1 million
	☐ Less than \$5 million
	☐ Less than \$10 million
	☐ Less than \$15 million
	☐ More than \$15 million

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

EXHIBIT G

DRUG-FREE WORKPLACE ACT OF 1988



DRUG-FREE WORKPLACE ACT OF 1988

THE FEDERAL LAW

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

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

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

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

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

Among "indirect charge" employees, those whose impact or involvement is insignificant to the performance of the grant are exempted from coverage. Any other person, who is on the grantee's payroll and works in any activity under the grant, even if not paid from grant funds, is also considered to be an employee.

Temporary personnel and Offerors who are on the grantee's payroll are covered. Similar workers, who are not on the grantee's payroll, but on the payroll of Offerors working for the grantee, are not covered even if physical place of employment is in the grantee's workplace.

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

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

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

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

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

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

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

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

EXHIBIT H
LEVEL 1 SAFETY SPECIFICATIONS

LEVEL 1 SAFETY SPECIFICATIONS

APPLICATION

Level 1 Safety Specifications apply to contracts as determined by the Authority, including subcontracts, with consultants that are entered into by and between the Authority or in the case of subcontracts, that arise out of a contract entered into by the Authority. The scope of these contracts require the contractor or consultant to manage recognized hazards with a potential of injury or property damage and may require routine unescorted access to Authority property, and including, but not limited to, work in and around maintenance areas, shop and bus base areas, on-board buses, highways, rail construction sites.

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

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

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

1.2 HAZARD COMMUNICATION

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

1.3 ACCIDENT INVESTIGATION

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

1.4 PERSONAL PROTECTIVE EQUIPMENT

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