

**REQUEST FOR PROPOSALS (RFP) 1-3684**

# **MAINTENANCE SERVICES FOR OPERATING RAILROAD RIGHT-OF- WAY**



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

## **Key RFP Dates**

<b>Issue Date:</b>	<b>September 13, 2021</b>
<b>Pre-Proposal Conference Date:</b>	<b>September 21, 2021</b>
<b>Question Submittal Date:</b>	<b>September 28, 2021</b>
<b>Proposal Submittal Date:</b>	<b>October 13, 2021</b>
<b>Interview Date:</b>	<b>November 17, 2021</b>

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September 13, 2021

**NOTICE OF REQUEST FOR PROPOSALS**

**(RFP): 1-3684: "MAINTENANCE SERVICES FOR OPERATING RAILROAD RIGHT-OF-WAY"**

**TO: ALL OFFERORS**

**FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY**

The Orange County Transportation Authority (OCTA, or Authority) invites proposals from qualified CONTRACTORS to provide Right-of-Way (ROW) maintenance services on OCTA-owned active railroad corridor. The CONTRACTOR shall maintain the appearance of the property, facilities, and structures (bridges, retaining walls and signs); maintain compliance with Federal Railroad Administration (FRA), California Public Utilities Commission (CPUC), and the various municipal code requirements of the local agencies within the County of Orange. The budget for this project is \$9,635,364 for a 5-year term.

**Proposals must be received in the Authority's office at or before 2:00 p.m. on October 13, 2021.**

Offerors are advised that Authority is now accepting proposals electronically.

Proposals must be received by Authority at or before 2:00 p.m. on October 13, 2020, in accordance with the instructions below.

**Proposals must be submitted, electronically**, through the following URL link: <http://www.octa.net/Proposal Upload Link>, at or before 2:00 p.m. on October 13, 2021. Offerors are instructed to visit the link, select "RFP 1-3684" from the drop-down menu and follow the instructions as prompted to upload proposal. Proposals must be submitted electronically at the link stated above and by the specified date and time.

**PLEASE NOTE:**

**Hard copy proposal submission will not be accepted for this RFP. Proposals must be submitted electronically at the link stated above and by the date and time as indicated.**

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

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

To receive all further information regarding this RFP 1-3684, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Maintenance Services - Facility	Landscaping Services
Rail Services	Rail - Landscaping Services
	Rail - Property Management Services
	Rail - Right of Way Maintenance
	Rail Systems Operations and Management

A pre-proposal conference will be held via tele-conference on **September 21, 2021 at 9:00 a.m.** Prospective Offerors may call-in using the following credentials:

- Call-in number: (714) 560-5666
- Conference ID: 139016

No on-site meeting will be held. A copy of the presentation slides and a pre-proposal registration sheet will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to call-in to the pre-proposal conference.

The Authority has established November 17, 2021, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

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**SECTION I: INSTRUCTIONS TO OFFERORS**

**SECTION I. INSTRUCTIONS TO OFFERORS****A. PRE-PROPOSAL CONFERENCE**

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- Conference ID: 139016

No on-site meeting will be held. A copy of the presentation slides and a pre-proposal registration sheet will be issued via addendum prior to the date of the pre-proposal conference. All prospective Offerors are encouraged to call-in to the pre-proposal conference.

**B. EXAMINATION OF PROPOSAL DOCUMENTS**

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

**C. ADDENDA**

The Authority reserves the right to revise the RFP documents. Any Authority changes to the requirements will be made by written addendum to this RFP. Any written addenda issued pertaining to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The Authority will not be bound to any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. Offerors shall acknowledge receipt of addenda in their proposals. Failure to acknowledge receipt of Addenda may cause the proposal to be deemed non-responsive to this RFP and be rejected.

**D. AUTHORITY CONTACT**

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

Robert Webb, Principal Contracts Administrator  
Contracts Administration and Materials Management Department  
600 South Main Street  
P.O. Box 14184  
Orange, CA 92863-1584  
Phone: 714.560. 5743, Fax: 714.560.5792  
Email: rwebb@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority. [rwebb@octa.net](mailto:rwebb@octa.net)

## **E. CLARIFICATIONS**

### **1. Examination of Documents**

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

### **2. Submitting Requests**

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on September 28, 2021.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
  - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
  - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
  - (3) Facsimile: (714) 560-5792.
  - (4) Email: [rwebb@octa.net](mailto:rwebb@octa.net)

### 3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than October 5, 2021. Offerors may download responses from CAMM NET at <https://cammnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to Robert Webb, Principal Contracts Administrator.

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

Category:

Maintenance Services - Facility  
Rail Services

Commodity:

Landscaping Services  
Rail - Landscaping Services  
Rail - Property Management  
Services  
Rail - Right of Way  
Maintenance  
Rail Systems Operations and  
Management

Inquiries received after 5:00 p.m. on September 28, 2021 will not be responded to.

## F. SUBMISSION OF PROPOSALS

### 1. Date and Time

Proposals must be submitted electronically through the following URL link: [https://www.octa.net/Proposal Upload Link](https://www.octa.net/Proposal_Upload_Link) at or before 2:00 p.m. on October 13, 2021. Select "RFP 1-3684" from the drop-down menu and follow the instructions as prompted.

**PLEASE NOTE:**

Hard copy proposal submission will not be accepted for this RFP. Proposals must be submitted electronically at the link stated above and by the date and time as indicated.

### 2. Acceptance of Proposals

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

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

**G. PRE-CONTRACTUAL EXPENSES**

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

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

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

**H. JOINT OFFERS**

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

**I. TAXES**

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

Offeror is responsible for payment of all taxes for any goods, services, processes and operations incidental to or involved in the contract.

**J. PROTEST PROCEDURES**

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

**K. CONTRACT TYPE**

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be with fully burdened labor rates and anticipated expenses for work specified in the scope of work, included in the RFP as Exhibit A.

**L. CONFLICT OF INTEREST**

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

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

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

**M. CODE OF CONDUCT**

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

**SECTION II: PROPOSAL CONTENT**

## **SECTION II. PROPOSAL CONTENT**

### **A. PROPOSAL FORMAT AND CONTENT**

#### **1. Format**

Proposals should be typed with a standard 12-point font, double-spaced and submitted on 8 1/2" x 11" size paper, using a single method of fastening. Charts and schedules may be included in 11"x17" format. Proposals should not include any unnecessarily elaborate or promotional materials. Proposals should not exceed fifty (50) pages in length, excluding any appendices, cover letters, resumes, or forms.

#### **2. Letter of Transmittal**

The Letter of Transmittal shall be addressed to Robert Webb, Principal Contracts Administrator and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the firm is a Disadvantaged Business Enterprise (DBE), contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 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.
- (4) Identify subcontractors by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (5) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (6) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.

**b. Proposed Staffing and Project Organization**

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

Offeror to:

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

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the tasks specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the tasks and specify who would perform them.
- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure quality control as well as budget and schedule control for the project.

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

d. Exceptions/Deviations

State any technical and/or contractual exceptions and/or deviations from the requirements of this RFP, including the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C), using the form entitled "Proposal Exceptions and/or Deviations" included in this RFP. This Proposal Exceptions and/or Deviations form must be included in the original proposal submitted by the Offeror. If no technical or contractual exceptions and/or deviations are submitted as part of the original proposal, Offerors are deemed to have accepted the Authority's technical requirements and contractual terms and conditions set forth in the Scope of Work (Exhibit A) and Proposed Agreement (Exhibit C). Offerors will not be allowed to submit the Proposal Exceptions and/or Deviations form or any technical and/or contractual exceptions after the proposal submittal date identified in the RFP. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed by Authority.

All exceptions and/or deviations will be reviewed by the Authority and will be assigned a "pass" or "fail" status. Exceptions and deviations that "pass" do not mean that the Authority has accepted the change but that it is a potential negotiable issue. Exceptions and deviations that receive a "fail" status means that the requested change is not something that the Authority would consider a potential negotiable issue. Offerors that receive a "fail" status on their exceptions and/or deviations will be notified by the Authority and will be allowed to retract the exception and/or deviation and continue in the evaluation process. Any exceptions and/or deviation that receive a "fail" status and the Offeror cannot or does not retract the requested change may result in the firm being eliminated from further evaluation.

#### 4. Cost and Price Proposal

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. It is anticipated that the Authority will issue a time and expense-price contract specifying fully burdened labor rates and anticipated expenses to complete the Scope of Work.

#### 5. Appendices

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

### B. FORMS

#### 1. Campaign Contribution Disclosure Form

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

This form **must** be completed regardless of whether a campaign contribution has been made or not and regardless of the amount of the contribution.

The prime contractor, subconsultants, lobbyists and agents are required to report all campaign contributions made from the proposal submittal date up to and until the Board of Directors makes a selection.

Offeror is required to submit only **one** copy of the completed form(s) as part of its proposal and it must be included in only the **original** proposal.

#### 2. Status of Past and Present Contracts Form

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the firm has

either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements, arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

A separate form must be completed for each identified contract. Each form must be signed by the Offeror confirming that the information provided is true and accurate. Offeror is required to submit one copy of the completed form(s) as part of its proposals and it should be included in only the original proposal.

**3. Proposal Exceptions and/or Deviations Form**

Offerors shall complete the form entitled "Proposal Exceptions and/or Deviations" provided in this RFP and submit it as part of the original proposal. For each exception and/or deviation, a new form should be used, identifying the exception and/or deviation and the rationale for requesting the change. Exceptions and/or deviations submitted after the proposal submittal date will not be reviewed nor considered by the Authority.

**SECTION III: EVALUATION AND AWARD**

### **SECTION III. EVALUATION AND AWARD**

#### **A. EVALUATION CRITERIA**

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

1. **Qualifications of the Firm** **20%**  
  
Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
2. **Staffing and Project Organization** **25%**  
  
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 resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
4. **Cost and Price** **25%**  
  
Reasonableness of the total price as well as the individual tasks; competitiveness with other offers received; adequacy of data in support of figures quoted.

#### **B. EVALUATION PROCEDURE**

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established November 17, 2021, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from

further discussion. The interview may consist of a short presentation by the Offeror after which the evaluation committee will ask questions related to the firm's proposal and qualifications.

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

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

**C. AWARD**

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

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

The selected Offeror will be required to submit to the Authority's Accounting department a current IRS W-9 form prior to commencing work.

**D. NOTIFICATION OF AWARD AND DEBRIEFING**

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

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

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

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**EXHIBIT A: SCOPE OF WORK**

**SCOPE OF WORK  
RIGHT OF WAY MAINTENANCE SERVICES  
OCTA Owned Rail Right of Way**

**1 BACKGROUND**

The Orange County Transportation Authority (OCTA) owns and maintains approximately 47 miles of the operating railroad Right-of-Way (ROW), with 42 miles along the Orange Subdivision and 5.5 miles along the Olive Subdivision. This active railroad corridor is operated by the Southern California Regional Rail Authority (SCRRA), for the Metrolink commuter trains, the National Railroad Passenger Corporation's (Amtrak) passenger trains, freight trains by the BNSF Railway Company (BNSF), and the Union Pacific Railroad Company (Union Pacific).

To allow for the safe and efficient operation of passenger and freight trains, the railroad ROW needs to comply with Federal, State, and local regulations regarding weed abatement, fire prevention, and nuisance liability standards.

The CONTRACTOR is responsible to maintain the ROW of the following territories on an as needed basis:

**Orange Subdivision:**

Operating railroad ROW, 42 miles, beginning at Fullerton Junction (mile post (MP) 165.44) just south (Railroad (RR) east) of the Fullerton Metrolink Station and ending at the Orange/San Diego County line (MP 207.4), just north (RR west) of San Onofre. With train speeds up to 90 mph, this active, operating rail line is utilized by Metrolink, Amtrak, BNSF, and Union Pacific trains. [See attachment B-1 for Metrolink ROW track chart-Orange Subdivision]

**Olive Subdivision**

Operating railroad ROW, 5.5 miles, beginning at Atwood (MP 0.0), in the city of Placentia, running 5.5 miles south (RR west), ending at CP Maple (MP 5.5), in the city of Orange. With train speeds up to 60 mph, this active, operating rail line is utilized by Metrolink commuter trains and BNSF freight trains. [See attachment B-1 for Metrolink ROW track chart-Olive Subdivision]

The average width of the railroad ROW is 50 feet; however, widths of between 12.5 feet to 300 feet will be encountered.

**2 WORK TO BE PERFORMED**

The CONTRACTOR shall provide ROW maintenance services on OCTA-owned active railroad corridor. The CONTRACTOR shall maintain the appearance of the property, facilities, and structures (bridges, retaining walls and signs); maintain compliance with Federal Railroad Administration (FRA), California Public Utilities Commission (CPUC), and the various municipal code requirements of the local agencies within the County of Orange.

Services shall consist of but not limited to, weed abatement & vegetation control (fire hazard prevention), herbicide & pesticide applications, removal of debris & trash, fencing installation and/or repairs, drainage and/or erosion repairs, graffiti abatement & control, tree trimming & removals, and installation/maintenance/repair of railroad signage. The CONTRACTOR shall provide all materials and equipment for the services specified above.

The CONTRACTOR shall furnish all labor, materials, tools, equipment, services, and special skills for the services specified above.

Services includes maintenance of the contiguous public street ROWs as required by local codes (e.g., from edge of owned ROW to the curb line of an adjoining street). Track or signal maintenance is not within this scope. This work is non-exclusive, and OCTA reserves the right to allow for other contractors to propose on emergency maintenance activities, affecting railroad operations, which may include hours outside of defined work week.

## **2.1 WEED ABATEMENT & VEGETATION CONTROL**

The purpose of this service is to prevent fire hazards posed by vegetative growth and accumulation of combustible materials. Except as noted below, vegetation and weeds should be regulated and cut so as to not exceed six inches in height within the ROWs and shall be kept at three inches when 0 feet to 100 feet from structures. Weed abatement shall be by mowing, mechanical weed trimmer or hand tool removal, to augment the herbicide program. Contractor shall dispose of vegetation and/or weeds (including cut brush).

Decorative landscaping, erosion control, vegetation, and natural vegetation in open space areas, which is more than 20 feet from centerline of track, will be removed at the direction of OCTA's Project Manager.

## **2.2 CLEAN-UP OF DEBRIS AND TRASH (NON-HAZARDOUS WASTE)**

The CONTRACTOR shall pick-up all debris and trash, on the ROWs, and will remove and dispose of vegetation and refuse at specified dump sites within Orange County. Materials to be removed may include, but are not limited to, broken concrete, asphalt, construction debris, scrap metal, furniture, appliances, automobile parts, shopping carts, tires, trees, dead vegetation, dead animals, and bagged or loose trash. Individual items will be handled manually within Occupational Safety and Health Administration (OSHA) guidelines. Items removed which may be potentially hazardous, must be done so appropriately, under such guidelines.

All dump fees associated with maintenance services on the ROWs will be reimbursed at cost.

## **2.3 FENCE INSTALLATION, REPAIRS, AND MINOR UPGRADES**

Work shall consist of new fence installation, repair to existing, and incidental upgrades to welded wire mesh, chain link, post and cable, expanded metal, and any other fencing or barrier repairs as may be required. The frequency of fence repair is dependent upon vandalism and/or accidents, which occur along the ROW. New fence material shall be chain link, welded wire mesh, or an OCTA-approved equal. New fence installation will be at the direction of OCTA's Project Manager.

## **2.4 DRAINAGE SYSTEM AND MAINTENANCE REPAIRS**

The CONTRACTOR shall remove silt, drift, and/or obstructions, from drainage channels, and restore erosion damage, upon direction of OCTA's Project Manager. The removal of vegetation and/or debris will be done in a manner which preserves the functional performance of all drainage facilities and in a manner that does not create depressions in the ground capable of ponding water. The CONTRACTOR will also be required to maintain OCTA's railroad ROW vehicular access roads, removing any obstructions and repairing erosion damage.

The CONTRACTOR shall place erosion prevention materials (e.g., sandbags, silt fence, and fiber rolls) along areas of ROW where potential flooding of adjacent properties may occur at OCTA's Project Managers direction. This shall be done prior to any inclement weather, if possible. OCTA's Project Manager may request CONTRACTOR'S crew work outside of normal scheduled days during times of excessive inclement weather.

The CONTRACTOR may use rip-rap, (cut or fill) slopes, or construct retaining walls to prevent or to mitigate erosion or slope failures.

## **2.5 GRAFFITI ABATEMENT & CONTROL**

The CONTRACTOR shall control graffiti through painting or cleaning on structures, walls, fences, signs, bridges, and abutments, under the direction of OCTA's Project Manager. Paint shall be applied by roller, brush, or spray apparatus (including extension arms from 10 feet to 25 feet), when requested. The CONTRACTOR shall use water-based paint, except on roadway signs, where chemical cleaners will be used (CONTRACTOR will consult with OCTA's Project Manager for situations where cleaning is ineffective and may be directed to utilize other cleaners or to apply aluminum paint). Application of paint or cleaning of graffiti will be performed so as to preserve railroad operating information on signs, and structures (only as directed) (e.g., speed signs, milepost signs, and roadway signs). Graffiti removal on aluminum signal houses and apparatus' will be handled by SCRRRA Signal forces.

## **2.6 TREE TRIMMING AND REMOVALS**

The CONTRACTOR shall trim and/or remove trees in order to maintain clear visibility of railroad signals and grade crossings, as well as those on OCTA's property causing harm to adjacent property/facilities. Work will consist of tree trimming and/or removals, occasional tree replanting, pole line removal, and transport and brush removal. Due to the inaccessibility of certain properties, some trees may need to be climbed with the aid of ropes and others may require use of boom truck with a standard bucket lift, to be trimmed. Fall Protection shall be used where required.

The CONTRACTOR shall fully understand and comply with the applicable safety standards and maintain required documentation available at the scope task site for review by OCTA's representative.

## **2.7 MAINTENANCE, REPAIR AND/OR NEW INSTALLATION OF PROPERTY SIGNS**

Maintenance of existing property signs within the OCTA-owned property shall consist of cleaning (wiping clean, or by chemical cleaner) signs to remove graffiti or other substance hindering visibility of words. Repair will consist of correcting bent or broken posts and replace missing hardware (anti-vandalism type). Repair to existing signage is required prior to replacing with new. The CONTRACTOR shall provide necessary chemicals for removal of graffiti from signs, as well as other materials required to perform this task. Installation of new signs will be at the direction of OCTA's Project Manager.

## **2.8 HERBICIDE AND PESTICIDE APPLICATION**

Herbicide and pesticide application, if needed, will be on a case-by-case basis. The CONTRACTOR shall perform duties to verify specifications for herbicide and pesticide use and application are up-to-date and represent current best practices. The CONTRACTOR shall provide OCTA a work plan to indicate CONTRACTOR efforts to comply with all applicable State regulations concerning herbicide and pesticide use. Application must be completed by a licensed Applicator. All personnel shall be licensed by the State of California. OCTA's Project Manager will confer with the Pest Control Advisor to determine the best chemical and rate of application on an individual parcel basis. OCTA will identify areas that require Herbicide Control.

A State of California, Department of Pesticide Regulation (CDPR) license is required and a hazardous chemical control plan. All employees shall have documented training of pesticides and herbicides use Health Safety and Environmental training by a qualified instructor and a current hazardous communication program (CCR Title 8, Section 5194). The hazardous chemical control plan shall be prepared by a qualified professional and OCTA reserves the right to require a Certified Safety Professional (CSP), or a Certified Industrial Hygienist (CIH) to develop or approve the plan.

Regarding weather conditions, any chemicals shall be applied at times which limit the possibility of contamination from climatic and other factors. Applicator shall monitor forecasted weather conditions to avoid making applications prior to inclement weather to eliminate potential runoff of treated areas. When water is required to increase pesticide efficiency, it shall be applied only in quantities that each area can receive without excessive runoff.

OCTA's Project Manager shall be notified at least one week in advance of the time set for application of any chemicals so that an OCTA representative may witness the application. The notification shall include all related Material Safety Data Sheet certifications for all herbicides, pest control, and other chemical materials.

## **2.9 ADDITIONAL WORK**

The CONTRACTOR may perform work that is outside the Scope of Work deemed to be Additional Work. The CONTRACTOR shall not be obligated to perform any Additional Work without its prior written consent to the nature and extent of the Additional Work. Additional Work shall not be limited to the railroad ROW and may be requested at any property to which OCTA has property

rights. Additional Work may consist of but not limited to; station platform repairs, slope restoration(shotcrete), construction of barriers and walls to prevent trespassing, etc.

### **3 LABOR SKILLS AND STANDARDS OF PERFORMANCE**

These performance standards shall apply to the CONTRACTOR in the performance of any subsequent work or specialized trades herein, including any SUBCONTRACTOR(S) that may be employed by the CONTRACTOR.

Failure to begin and diligently prosecute the services as further described herein may be considered grounds for termination of the contract. It will be the CONTRACTOR'S responsibility to obtain the necessary labor, materials, and/or subcontractor resources to complete the assignment(s).

If any person employed by the CONTRACTOR, or employed as a SUBCONTRACTOR, should fail or refuse to carry out the work or shall appear to be incompetent or to act in a disorderly manner, he/she shall be discharged immediately upon the request of the OCTA, and such person shall not again be employed for any of the services required for the OCTA.

The CONTRACTOR is responsible for determining the correct number of personnel (estimated at four plus a foreman), labor classifications, and equipment necessary to complete the work.

#### **3.1 KEY PERSONNEL**

The CONTRACTOR shall provide resumes of proposed qualified staff and references, as indicated.

##### **3.1.1 PROJECT MANAGER**

###### **Duties:**

Serves as the point of contact for OCTA staff for all matters relating to the Agreement. Reviews annual budget, work plan, training schedule, and invoices. Supervises, promotes, manages, transfers, and disciplines CONTRACTOR staff and arranges with OCTA for replacement personnel in the event of vacancies.

###### **Minimum Requirements:**

- Desirable eight years' experience in supervising or directing the work of others engaged in railroad ROW maintenance and five years' experience in managing construction and/or maintenance.
- Knowledge of training and safety requirements needed for working within the operating railroad ROW.
- Knowledge of the safe and proper procedures for maintenance within operating railroad environment.
- Knowledge of the safe and proper procedures hand and power tools maintenance equipment.

- Must be able to demonstrate ability to communicate in written and verbal English language with prior record keeping experience.

### **3.1.2 SUPERVISOR/FOREMAN**

**Duties:**

The CONTRACTOR shall designate an employee (Supervisor/Foreman) as a primary point of contact to oversee the day-to-day activities and have the authority to act for the CONTRACTOR. Supervisor/Foreman is required to assist and coordinate the activities of the ROW maintenance crew on the Orange and Olive Subdivisions, by arranging for the materials, tools, and equipment required for the maintenance services, arranging for protection of workplace, coordinating with other SCRRA Contractors, Metrolink Operation Center (MOC), and affected public agencies, training employees in proper work methods, inspecting work methods and site conditions for safety conditions and efficiency of use of labor and material, and preparing documentation of work performed and resources (labor, material, equipment, and supplies) used.

**Minimum Requirements:**

- Desirable three years to five years of railroad ROW maintenance experience and/or construction, including at least two years of experience in supervising or directing the work of others engaged in railroad ROW maintenance.
- Knowledge of training and all safety requirements needed for working within the operating railroad ROW.
- Knowledge of the safe and proper procedures for operating maintenance hand and power tools.
- Must be able to demonstrate ability to communicate in written and verbal English language with prior record keeping experience.
- Ability to work outdoors in all weather conditions, to lift objects weighing a minimum of 50lbs. and must have the ability to distinguish colors and to hear warning signals.

### **3.1.3 EQUIPMENT OPERATOR**

**Duties:**

Operates and performs operator-level duties of smaller equipment and rubber tired off- equipment such as a backhoe, skip loaders, and skid steers.

**Minimum Requirements:**

- Desirable one year to three years' experience in the operation of rubber-tired equipment used during railroad maintenance and/or construction.
- Knowledge of safe and proper procedures for operating this equipment.
- Ability to work outdoors in all weather conditions, to lift objects weighing a minimum of 50lbs. and must have the ability to distinguish colors and to hear warning signals.
- Ability to communicate in the written and verbal English language.

### **3.1.4 RAILROAD WORKER IN CHARGE**

The CONTRACTOR shall provide an SCRRA-approved Railroad Worker in Charge (RWIC) as qualified under 49 Code of Federal Regulations (CFR) 214.353. RWIC is required at all times, while working within OCTA ROW.

## **3.2 QUALIFICATIONS APPLICABLE TO ALL POSITIONS**

### **Minimum Requirements:**

- Must meet all SCRRA's safety training requirements and maintain certifications.
- Able to communicate in written and verbal English language.
- Ability to work outdoors in all weather conditions, to lift objects weighing a minimum of 50lbs. and must have the ability to distinguish colors and to hear warning signals.
- Must have appropriate licensing; professional experience, academic training, and technical skills for the assigned work.

### **3.2.1 TRAINING REQUIREMENTS**

All workers working on property shall be trained by SCRRA third-party contractor safety training. OCTA will reimburse, initially, and when required, re-certification of, SCRRA-required safety training. Any employee that fails to meet the standards shall not be approved for work on OCTA owned operating ROWs, under this contract.

## **4 WORK PLAN**

The CONTRACTOR shall establish, develop, maintain, and implement a work plan that provides an organizational chart of the project team and identifies their respective responsibilities; identifies all resources necessary to complete the work; identifies any resources provided by SUBCONTRACTORS, and outlines any management tools that will be utilized to manage the work.

### **4.1 WORKMANSHIP**

The CONTRACTOR shall provide workers who are fully trained to the skill level necessary to complete a given job in a satisfactory manner. The CONTRACTOR warrants that employees shall have all appropriate training needed for the work; have sufficient skill, knowledge, and experience to perform such work; have tools and equipment appropriate for the given work, and that all contract work is performed in a safe, professional, and workmanlike manner.

The CONTRACTOR will not substitute any employee for another unless both have been trained equally, and at such time still current within such training. Training costs due to employee changes, requested by CONTRACTOR, will be at the CONTRACTOR's expense.

### **4.2 NON-CONFORMING WORK**

OCTA may reduce payment for any of the following: non-compliant work, non-compliant work left in place; corrective work, and/or unauthorized work.

### **4.3 EMERGENCY WORK**

The CONTRACTOR and SUBCONTRACTORS must have 24-hour contact number(s) and an acceptable means of emergency "on-call" communication with OCTA's Project Manager.

Four-hour response time may be required in cases of emergency and within one hour in cases where train operations are halted. The CONTRACTOR shall be paid a four-hour minimum for emergency service. The CONTRACTOR shall be paid time and a half for hours worked beyond 40 hours per week, with prior approval of OCTA's Project Manager.

### **4.4 SAFETY**

All safety standards and specifications shall be strictly enforced. Additional Safety Specifications are incorporated within Exhibit C of this Agreement.

#### **4.4.1 UNSAFE CONDITIONS**

The CONTRACTOR and/or its SUBCONTRACTOR(S) are to immediately notify the OCTA's Project Manager of any unsafe or questionable condition that exists on the ROW. OCTA Project Manager will then notify the necessary parties.

If the condition poses immediate danger to rail operations, the CONTRACTOR shall notify the MOC, then OCTA's Project Manager.

## **5 SCHEDULE**

The CONTRACTOR shall submit a weekly schedule every Friday, for anticipated work to be performed by following week including location by MP. Any deviations must be discussed and approved by OCTA's Project Manager.

The CONTRACTOR and/or SUBCONTRACTOR(S) shall respond and perform non-emergency as-needed work request from OCTA's Project Manager within one working day, except in cases of emergency, where an immediate response may be requested.

The CONTRACTOR shall perform all services during the hours of 7:00 a.m.-5:00 p.m., Monday through Friday, excluding OCTA holidays unless approved by OCTA.

During this contract, with future expansion of train operations, OCTA anticipates changes to working hours will need to be made. The CONTRACTOR will be required to adhere to such changes.

### **5.1 DAILY REPORT**

The CONTRACTOR will email OCTA's Project Manager a daily progress report. This report will include type of work completed by location, personnel and equipment used, and other direct cost.

## **5.2 MONTHLY REPORT**

In addition to the terms of the Agreement, the CONTRACTOR shall submit a monthly report to include:

- Daily work reports as back-up to invoices submitted for payment
- Itemization of the materials used and corresponding vendor's invoice copies
- Direct cost of labor
- Equipment rental charges
- Workers' certified payrolls
- Equipment used: size, type, and identification number
- A summary sheet for the hours expended for each task for each month and total project to date

## **6 SITE SECURITY REQUIREMENTS**

The CONTRACTOR shall be solely responsible for the security of the CONTRACTOR's materials and equipment used or stored at the worksite. OCTA shall not be responsible for such security measures, and the CONTRACTOR shall take necessary and prudent measures to verify the security of the CONTRACTOR-owned materials, and equipment, including but not limited to security fencing, locked storage facilities, secured equipment areas, posted security personnel, and other measures deemed necessary by the CONTRACTOR. The cost for any damaged, vandalized, or stolen items shall be borne solely by the CONTRACTOR.

## **7 EQUIPMENT**

The CONTRACTOR'S equipment shall be in good repair and able to operate efficiently and safely. All equipment used in the performance of this contract shall be in operable condition and meet the local, State, and Federal safety requirements. All equipment used shall be inspected and serviced regularly. The inspection and service records shall be available upon request. All vehicles shall be registered, licensed, insured, and operated by a licensed driver. All vehicles shall follow laws regarding parking, driving, and licensing.

The CONTRACTOR'S equipment shall have the proper safety devices always maintained while in use. If equipment does not contain proper safety devices and/or is being operated in an unsafe manner, the OCTA shall direct the CONTRACTOR to remove such equipment and/or operation until the deficiency is corrected to the satisfaction of the OCTA.

OCTA may inspect the CONTRACTOR'S equipment and tools at any time. The daily anticipated equipment necessary to perform this work, but not limited to:

- One Supervisor/Foreman pick-up truck
- One crew truck
- One truck with automatic dumping capability with a minimum hauling capacity of six cubic yards
- Hand and power tools consisting of weed trimmers, chain and pole saws, hedge trimmer, including, but not limited to any item with a retail value of \$1,000.00 or less, shall be considered part of the CONTRACTOR'S overhead cost.

The anticipated heavy equipment necessary to perform this work, including, but not limited to the following:

- Backhoe
- Dozer-D4 or equal
- Skip loader with a 4-in-1 bucket
- Street sweeper and skid steer with attachments

Equipment reimbursement will be either at the CALTRANS published rates within "Labor Surcharge and Equipment Rental Rates" or the actual rental rate, whichever is less. Rates are regularly superseded during contract periods, so avoid the use of old publications or expired rates.

Equipment rental payment is full compensation for:

- Rental equipment costs, including moving rental equipment to and from the site using its own power.
- Transport equipment costs for rental equipment that cannot be transported economically using its own power. No payment is made during transport for the transported equipment.

**END OF SCOPE OF WORK**

**EXHIBIT B: COST AND PRICE FORMS**

## PRICE SUMMARY SHEET

### SCHEDULE I--- HOURLY RATE SCHEDULE

Please enter below the proposed “fully loaded”,( i.e., includes all overhead, general administrative costs and profit) labor rates for “each” applicable job function and year, to include Option term.

**Key Personnel:**

Firm Name: \_\_\_\_\_

Name	Classification	Job Function	Hourly Rate 4/1/22- 3/1/23	Hourly Rate 4/1/23- 3/31/24	Hourly Rate 4/1/24- 3/31/25	Hourly Rate 4/1/25- 3/31/26	Hourly Rate 4/1/26- 3/31/27	Hourly Rate Option 1 24 Months 4/1/27- 3/31/29
*Project Manager		*Project Manager						
*Foreman/Supervisor		*Foreman / Supervisor						
EIC / Flagman		EIC/Flagman						
Equipment Operator		Equipment Operator						
Other – Be Specific								

**\*Non Prevailing Wage Classifications.**

**The remaining listed “Job Function” categories are Prevailing Wage classifications under Key Personnel and Other Labor Charges.**

**NOTE: Proposers’ shall propose on the specific “Job Function” as listed. If additional Job Function categories are needed for Key Personnel and/or Other Labor Charges, please list that information under “Other” and be specific.**

**Other Labor Charges:**

**FIRM NAME** \_\_\_\_\_

Name	Classification	Job Function	Hourly Rate 4/1/22- 3/31/23	Hourly Rate 4/1/23- 3/31/24	Hourly Rate 4/1/24- 3/31/25	Hourly Rate 4/1/25- 3/31/26	Hourly Rate 4/1/26- 3/31/27	Hourly Rate Option 1 24 Months 4/1/27-3/31/29
Laborer								
Group 1		Group 1						
Group 2		Group 2						
Group 2		Group 3						
Group 4		Group 4						
Group 5		Group 5						
Drive On/Off Site Hauling		Driver-Dump Truck On/Off Site Hauling						
Landscape Maintenance Laborer		Landscape Maintenance Laborer						
Driver-Equipment Hauler		Driver – Equipment Hauler						
<b>Other</b> -Be Specific								

**Note:** These fully burdened rates were calculated using the named personnel's actual salary as of \_\_\_\_\_. 2021, which include an overhead rate of \_\_\_\_\_%, profit rate of \_\_\_\_\_%, and escalation rate of \_\_\_\_\_%.

**Other Labor Charges:**

**FIRM NAME** \_\_\_\_\_

Name	Classification	Job Function	Hourly Rate 4/1/22- 3/31/23	Hourly Rate 4/1/23- 3/31/24	Hourly Rate 4/1/24- 3/31/25	Hourly Rate 4/1/25- 3/31/26	Hourly Rate 4/1/26- 3/31/27	Hourly Rate Option 1 24 Months 4/1/27-3/31/29
Operator								
Group 1		Group 1						
Group 2		Group 2						
Group 2		Group 3						
Group 4		Group 4						
Group 5		Group 5						
Group 6		Group 6						
Group 7		Group 7						
Group 8		Group 8						
Group 9		Group 9						
Group 10		Group 10						
<b>Other</b> -Be Specific								

**Note:** These fully burdened rates were calculated using the named personnel's actual salary as of \_\_\_\_\_. 2021, which include an overhead rate of \_\_\_\_\_%, profit rate of \_\_\_\_\_%, and escalation rate of \_\_\_\_\_%.

SCHEDULE II ----- OTHER DIRECT COSTS SCHEDULE

Firm Name: \_\_\_\_\_

Other Direct Costs (ODC)		
Type of ODC	Unit	Rate / HRLY RATE OF EQUIPMENT
1. Foreman Truck (Pick-up)		
2. Crew Truck (w/ utility type bed)		
3. Dump truck (min. 6 cu yd.)		
4. Skip Loader (4n 1 bucket)		
5. Other (please be specific)		

Note: Other direct equipment expenses (i.e. rental equipment, material (non-tool related), permits required, etc.,) not included on cost schedule, will be paid at cost when adequate supporting documentation is provided with invoice.

1. A acknowledge receipt of RFP 1-3684 and Addenda No.(s)\_\_\_\_\_.
2. This offer shall be firm for \_\_\_\_\_ days from the date of proposal.  
(Minimum of 120)

COMPANY NAME \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_

SIGNATURE OF PERSON  
**AUTHORIZED TO BIND OFFER:** \_\_\_\_\_  
NAME AND TITLE OF PERSON: \_\_\_\_\_ DATE SIGNED \_\_\_\_\_

DRAFT

EXHIBIT C: PROPOSED AGREEMENT

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**PROPOSED AGREEMENT NO. C-1-3684**

**BETWEEN**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**AND**

**THIS AGREEMENT** is effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584, a public corporation of the State of California (hereinafter referred to as "AUTHORITY"), and \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ (hereinafter referred to as "CONTRACTOR").

**WITNESSETH:**

**WHEREAS**, AUTHORITY has determined that it requires maintenance services of the AUTHORITY's operating railroad right-of-way; and

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

**WHEREAS**, CONTRACTOR has represented that it has the requisite personnel, experience, material, and equipment and is otherwise qualified to perform such services; and

**WHEREAS**, CONTRACTOR wishes to perform these services; and

**WHEREAS**, the AUTHORITY's Board of Directors authorized this Agreement on \_\_\_\_\_.

**NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CONTRACTOR as follows:

**ARTICLE 1. COMPLETE AGREEMENT**

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

B. AUTHORITY's failure to insist in any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's right to such performance by CONTRACTOR or to future performance of such terms or conditions and CONTRACTOR's obligation in respect thereto shall continue in full force and effect. CONTRACTOR shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions, which can affect the work or the cost thereof. Any failure by CONTRACTOR to do so will not relieve it from responsibility for successfully performing the work without additional expense to AUTHORITY.

C. AUTHORITY assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, employees or agents prior to the execution of this Agreement, unless such understanding or representations by AUTHORITY are expressly stated in this Agreement.

D. Time shall be of the essence hereunder; but CONTRACTOR shall perform work hereunder only to the minimum extent consistent with requirements herein.

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

**Names**

**Functions**

A. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by CONTRACTORCONTRACTOR, 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 CONTRACTORCONTRACTOR, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless CONTRACTORCONTRACTOR is not provided with such notice by the departing employee. AUTHORITY shall respond to CONTRACTORCONTRACTOR within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

**ARTICLE 4. TERM OF AGREEMENT**

A. This Agreement shall commence upon the effective date of this Agreement, and shall continue in full force and effect for a term of five (5) years through XXXXXX, unless earlier terminated or extended as provided in this Agreement.

B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an additional twenty-four (24) months, commencing XXXXX and continuing through XXXXXXXX, ("Option Term"), and thereupon require CONTRACTORCONTRACTOR to continue to provide services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work", and Exhibit B, entitled "Schedule of Fees"

C. AUTHORITY's election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or CONTRACTORCONTRACTOR's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the /  
/

A. period extending from commencement through XXXXXX, which period encompasses the Initial Term and Option Term.

**ARTICLE 5. PAYMENT**

A. For CONTRACTORCONTRACTOR's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provisions set forth in Article6 Maximum Obligation, AUTHORITY shall pay CONTRACTORCONTRACTOR on a **Time and Expenses** basis in accordance with the following provisions.

B. For each full hour of labor satisfactorily performed by CONTRACTOR'S personnel under this Agreement, AUTHORITY shall pay CONTRACTOR at the hourly rates specified in Exhibit B, entitled "Schedule of Fees," which is attached to and by this reference, incorporated in and made a part of this Agreement. These rates shall remain fixed for the term of this Agreement and are acknowledged to include CONTRACTOR's direct labor costs, indirect costs and profit. Furthermore, AUTHORITY shall reimburse CONTRACTOR for the exact amount of the expenses shown in Exhibit B, which are directly incurred by its personnel in the performance of work under this Agreement. The AUTHORITY will not reimburse CONTRACTOR for local meals or any other expenses not approved in the attached Exhibit B.

C. CONTRACTOR shall invoice AUTHORITY on a monthly basis for payments corresponding to the labor hours expended by CONTRACTOR. Work completed shall be documented in a monthly progress report prepared by CONTRACTOR, which shall accompany each invoice submitted by CONTRACTOR. CONTRACTOR 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 work until such time as CONTRACTOR has documented to AUTHORITY's satisfaction, that CONTRACTOR has fully completed all work required. AUTHORITY's payment in full for any task completed shall not constitute AUTHORITY's final acceptance of CONTRACTOR's work under such task; final acceptance shall occur only when AUTHORITY's release of the retention described in paragraph D.

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D. As partial security against CONTRACTOR's failure to satisfactorily fulfill all of its obligations under this Agreement, AUTHORITY shall retain ten percent (10%) of the amount of each invoice submitted for payment by CONTRACTOR. All retained funds shall be released by AUTHORITY and shall be paid to CONTRACTOR within sixty (60) calendar days of payment of final invoice, unless AUTHORITY elects to audit CONTRACTOR's records in accordance with 16 of this Agreement. If AUTHORITY elects to audit, retained funds shall be paid to CONTRACTOR within thirty (30) calendar days of completion of such audit in an amount reflecting any adjustment required by such audit. During the term of the Agreement, at its sole discretion, AUTHORITY reserves the right to release all or a portion of the retained amount based on CONTRACTOR'S satisfactory completion of certain milestones. CONTRACTOR shall invoice AUTHORITY for the release of the retention in accordance with Article 5.

E. Invoices shall be submitted by CONTRACTOR on a monthly basis and shall be submitted in duplicate to AUTHORITY's Accounts Payable office. CONTRACTORS may also submit invoices electronically to AUTHORITY's Accounts Payable Department at [vendorinvoices@octa.net](mailto:vendorinvoices@octa.net). Each invoice shall be accompanied by the monthly progress report specified in paragraph C of this Article. At its sole discretion, AUTHORITY may decline to make full payment for any work until such time as CONTRACTOR has documented to AUTHORITY'S satisfaction, that CONTRACTOR has fully completed all work required. 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-1-3684;
2. Specify the labor for which payment is being requested;
3. The time period covered by the invoice;
4. Labor (staff name, hours charged, hourly billing rate, current charges and cumulative charges) performed during the billing period;
5. Itemized expenses including support documentation incurred during the billing period;
6. Certification signed by the CONTRACTOR or his/her designated alternate that i.) The invoice is a true, complete and correct statement of reimbursable costs and progress; ii.) The backup

information included with the invoice is true, complete and correct in all material respects; iii.) All payments due and owing to subcontractors and suppliers have been made; iv.) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; v.) The invoice does not include any amount which CONTRACTOR intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice.

7. Total monthly invoice (including project-to-date cumulative invoice amount);

8. Monthly Progress Report prepared by CONTRACTOR summarizing work performed, milestones reached and deliverables produced.

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

#### **ARTICLE 6. MAXIMUM OBLIGATION**

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

#### **ARTICLE 7. 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 CONTRACTOR:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Bob Webb

Title:

Title: Principal Contracts Administrator

Phone:

Phone: (714) 560 - 5743

Email:

Email: rwebb@octa.net

**ARTICLE 8. INDEPENDENT CONTRACTOR**

A. CONTRACTOR's relationship to AUTHORITY in the performance of this Agreement is that of an independent contractor. CONTRACTOR's personnel performing work under this Agreement shall at all times be under CONTRACTOR's exclusive direction and control and shall be employees of CONTRACTOR and not employees of AUTHORITY. CONTRACTOR 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.

B. Should CONTRACTOR's personnel or a state or federal agency allege claims against AUTHORITY involving the status of AUTHORITY as employer, joint or otherwise, of said personnel, or allegations involving any other independent contractor misclassification issues, CONTRACTOR shall defend and indemnify AUTHORITY in relation to any allegations made.

**ARTICLE 9. INSURANCE**

A. CONTRACTOR shall procure and continuously maintain in full force and affect through contract completion, insurance coverages specified herein. Coverages shall not be subject to self-insurance provisions. CONTRACTOR shall provide the following insurance coverage:

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

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

2. Workers' Compensation with limits as required by the State of California including a Waiver of Subrogation in favor of AUTHORITY, its officers, directors and employees; and

3. Employers' Liability with minimum limits of \$1,000,000 per accident, \$1,000,000 policy limit-disease, and \$1,000,000 policy limit employee-disease; and

4. Railroad Protective coverage with minimum limits of \$2,000,000 per occurrence, \$6,000,000 general aggregate and \$2,000,000; and

5. Pollution Liability with minimum limits of \$2,000,000 per occurrence.

C. Prior to commencement of any work hereof, CONTRACTOR shall furnish to AUTHORITY's Contract Administrator broker-issued insurance certificate showing the required insurance coverages and further providing that:

1. AUTHORITY, its officers, directors, employees and agents must be named as additional insured on Commercial General Liability and Automobile Liability policy with respect to performance hereunder; and

2. The coverage shall be primary and noncontributory as to any other insurance with respect to performance hereunder; and

3. Thirty (30) days prior written notice of cancellation or material change be given to AUTHORITY.

In addition, CONTRACTOR shall provide insurance policy blanket endorsement.

D. "Occurrence," as used herein, means any event or related exposure to conditions, which result in bodily injury or property damage.

E. The Certificate of Insurance shall reference Agreement Number C-1-3684 and, the Contract Administrator's Name, Bob Webb.

F. Upon AUTHORITY's request, certified, true and exact copies of each of the insurance policies shall be provided to AUTHORITY.

G. AUTHORITY shall notify CONTRACTOR in writing of any changes in the requirements to insurance required to be provided by CONTRACTOR. Except as set forth in this Article, any additional

cost from such change shall be paid by AUTHORITY and any reduction in cost shall reduce the contract price pursuant to a change order.

H. CONTRACTOR shall also include in each subcontract the stipulation that subcontractors shall maintain coverage in the amounts required as provided in this Agreement.

I. CONTRACTOR shall be required to immediately notify AUTHORITY of any modifications or cancellation of any required insurance policies.

#### **ARTICLE 10. ORDER OF PRECEDENCE**

Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence: (1) the provisions of this Agreement, including its exhibits; (2) the provisions of IFB including all Addendums; (3) the bid submitted to AUTHORITY by CONTRACTOR in response to said IFB; and (4) any other documents, cited herein or incorporated by reference. In the event of conflicting provisions of Exhibit B ("Specifications"), and Exhibit C ("List of Drawings"), Project Specifications shall take precedence.

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

A. By written notice or order, AUTHORITY may, from time to time, order work suspension and/or make any change in the general scope of this Agreement, including, but not limited to, changes in the drawings, specifications, schedules (either deceleratory or acceleratory) or any other particular of the specifications or provisions of this Agreement. If any such work suspension or change causes an increase or decrease in the price or time required for performance, CONTRACTOR 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 CONTRACTOR from proceeding immediately with the Agreement as changed. Changes will be made in accordance with the terms as set forth in Exhibit A, "General Provisions," paragraph F, Extra Work and Changes, by written Change Order.

B. No claims by CONTRACTOR for equitable adjustment hereunder shall be allowed if asserted after final payment under this Agreement.

C. Any work done beyond the technical provisions specified in this Agreement, or any extra work done without AUTHORITY's written authority, will be considered unauthorized work and will not be paid for. Upon order of AUTHORITY's Engineer or its designee, unauthorized work shall be remedied, removed or replaced at CONTRACTOR's expense.

**ARTICLE 12. MODIFICATION PROPOSALS-PRICE BREAKDOWN**

CONTRACTOR, in connection with any proposal it makes for an agreement modification, shall furnish a price breakdown, itemized as required by AUTHORITY. Unless otherwise directed, the breakdown shall be in sufficient detail to permit an analysis of all material, labor, equipment, subcontract and overhead costs, as well as profit, and shall cover all work involved in the modification, whether such work was deleted, added or changed. Any amount claimed for subcontracts shall be supported by a similar price breakdown. In addition, if the proposal includes a time extension, a justification therefore shall also be furnished. The proposal, together with the price breakdown and time extension justification, shall be furnished by the date specified by AUTHORITY.

**ARTICLE 13. DISPUTES**

A. Except as otherwise provided in this Agreement, when a dispute arises between CONTRACTOR and AUTHORITY, the project managers shall meet to resolve the issue. If project managers do not reach a resolution, the dispute will be decided by AUTHORITY's Director of Contracts Administration and Materials Management (CAMP), who shall reduce the decision to writing and mail or otherwise furnish a copy thereof to CONTRACTOR. The decision of the Director, CAMP, shall be the final and conclusive administrative decision.

B. Pending final decision of a dispute hereunder, CONTRACTOR shall proceed diligently with the performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMP. 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.

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**ARTICLE 14. TERMINATION FOR CONVENIENCE**

A. AUTHORITY may terminate this Agreement for its convenience at any time in whole or in part, by giving CONTRACTOR written notice thereof. AUTHORITY shall terminate by delivering to CONTRACTOR a written Notice of Termination for Convenience specifying the extent of termination and its effective date. Upon termination, AUTHORITY shall pay CONTRACTOR its allowable costs incurred to date of that portion terminated. The rights, duties and obligations of the parties shall be construed in accordance with the applicable 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 CONTRACTOR in accordance with the provisions of the FAR referenced above and Article 8, herein. Upon receipt of said notification, CONTRACTOR shall immediately proceed with all obligations, regardless of any delay in determining or adjusting any amounts due under this Article, and agrees to comply with all applicable provisions of the FAR pertaining to termination for convenience.

**ARTICLE 15. TERMINATION FOR DEFAULT-DAMAGES FOR DELAY-TIME EXTENSIONS**

A. If CONTRACTOR refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete said work within such time, AUTHORITY may, by written notice to CONTRACTOR, terminate CONTRACTOR's right to proceed with the work or such part of the work as to which there has been delay. In such event, AUTHORITY may take over the work and prosecute the same to completion, by Agreement or otherwise, and may take possession of and utilize in completing the work such materials, appliances and plant as may be on the site of the work and necessary therefore. Whether or not CONTRACTOR's right to proceed with the work is terminated, it and its sureties shall be liable for any damage to AUTHORITY resulting from its refusal or failure to complete the work within the specified time.

B. If AUTHORITY so terminates CONTRACTOR's right to proceed, the resulting damage will consist of such liquidated damages as set forth in the Article 31 in this Agreement entitled "Liquidated

Damages," until such reasonable time as may be required for final completion of the work together with any increased costs occasioned AUTHORITY in completing the work. If AUTHORITY does not so terminate CONTRACTOR's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted./

C. CONTRACTOR's right to proceed shall not be so terminated nor the CONTRACTOR charged with resulting damage if:

1. The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including but not restricted to, acts of God, acts of the public enemy, acts or omissions of AUTHORITY, acts of another CONTRACTOR in the performance of an Agreement with AUTHORITY, fires, floods, epidemics, quarantine restrictions, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both CONTRACTOR and such subcontractors or suppliers; and

2. CONTRACTOR, within ten (10) calendar days from the beginning of any such delay, notifies AUTHORITY in writing of the causes of delay. AUTHORITY shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in its judgment, the findings of fact justify such an extension, and its findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in the "Disputes" clause of this Agreement. Any such time extensions will not become effective until approved by AUTHORITY's Engineer in writing. AUTHORITY's Engineer will furnish CONTRACTOR a weekly statement showing the number of calendar days charged to the Agreement for the preceding week, the number of calendar days of time extensions being considered or approved, the number of calendar days originally specified for the completion of this Agreement and the number of calendar days remaining to complete this Agreement, and the extended date for completion thereof.

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3. Should at any time extensions be included by AUTHORITY's Engineer on the Weekly Statement of Contract Calendar Days, a change order covering the sum total of the time extensions will be issued to CONTRACTOR at periodic intervals during the project.

D. If, after notice of termination of CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that CONTRACTOR was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 16, entitled "Termination for Convenience."

E. The rights and remedies of AUTHORITY provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

F. As used in paragraph C.1 of this Article, the term "subcontractors or suppliers," means subcontractors or suppliers at any tier.

#### **ARTICLE 16. INDEMNIFICATION**

CONTRACTOR 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, costs, penalties, fines, damages, bodily injuries, including death, damage to or loss of use of property, arising out of, resulting from, or in connection with the performance of CONTRACTOR, its officers, directors, employees, agents, subcontractors or suppliers under the Agreement. Notwithstanding the foregoing, such obligation to defend, hold harmless, and indemnify AUTHORITY, its officers, directors, employees and agents shall not apply to such claims or liabilities arising from the sole or active negligence or willful misconduct of AUTHORITY.

#### **ARTICLE 17. ASSIGNMENTS AND SUBCONTRACTS**

A. Neither this Agreement nor any interest herein nor claim hereunder may be assigned by CONTRACTOR either voluntarily or by operation of law. CONTRACTOR shall not have the right to make any substitutions of any subcontractor listed in Exhibit D-1, entitled "List of Subcontractors," except in accordance with the provisions of the Subletting and Subcontractors Fair Practices Act, Public Contract

Code section 4100 et. seq. AUTHORITY's consent shall not be deemed to relieve CONTRACTOR of its obligation to fully comply with the requirements of this Agreement.

B. CONTRACTOR shall be fully responsible to AUTHORITY for all acts and omissions of its own employees, and of subcontractors and their employees. CONTRACTOR shall coordinate the work performed by subcontractor./

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

#### **ARTICLE 18. AUDIT AND INSPECTION OF RECORDS**

CONTRACTOR shall provide AUTHORITY, or other agents of the AUTHORITY, such access to CONTRACTOR's accounting books, records, payroll documents and facilities of the CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case CONTRACTOR agrees to maintain same until AUTHORITY, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. AUTHORITY's right to audit books and records directly related to this Agreement shall also extend to all first-tier subcontractors. CONTRACTOR shall permit any of the foregoing parties to reproduce documents by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

#### **ARTICLE 19. CONFLICT OF INTEREST**

CONTRACTOR agrees to avoid organizational conflicts of interest. An organizational conflict of interest means that due to other activities, relationships or contracts, the CONTRACTOR is unable, or potentially

unable to render impartial assistance or advice to the AUTHORITY; CONTRACTOR's objectivity in performing the work identified in the Scope of Work is or might be otherwise impaired; or the CONTRACTOR has an unfair competitive advantage. CONTRACTOR is obligated to fully disclose to the AUTHORITY in writing Conflict of Interest issues as soon as they are known to the CONTRACTOR. 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 20. CODE OF CONDUCT**

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

**ARTICLE 21. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

CONTRACTOR and all subcontractors performing work under this Agreement, shall be prohibited from concurrently representing or lobbying for any other party competing for a contract with AUTHORITY, either as a prime CONTRACTOR or subcontractor. Failure to refrain from such representation may result in termination of this Agreement.

**ARTICLE 22. FEDERAL, STATE AND LOCAL LAWS**

CONTRACTOR 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 23. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with its performance under this Agreement, CONTRACTOR agrees that it shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. CONTRACTOR 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,

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pgrading, 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 24. FINISHED AND PRELIMINARY DATA**

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

B. It is expressly understood that any title to preliminary technical data is not passed to AUTHORITY but is retained by CONTRACTOR. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONTRACTOR solely for the purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AUTHORITY if CONTRACTOR causes AUTHORITY to exercise Article 17, and a price shall be negotiated for all preliminary data.

**ARTICLE 25. PRIVACY ACT**

CONTRACTOR 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, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands 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 26. 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 CONTRACTOR'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 CONTRACTOR 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. CONTRACTOR shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONTRACTOR, which is otherwise known to CONTRACTOR or is or becomes generally known to the related industry shall be deemed confidential. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR and AUTHORITY.

**ARTICLE 27. CONVICT LABOR**

In connection with the performance of work under this Agreement, CONTRACTOR agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

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**ARTICLE 28. NOTICE OF LABOR DISPUTE**

Whenever CONTRACTOR has knowledge that any actual or potential labor dispute may delay its performance under this Agreement, CONTRACTOR shall immediately notify and submit all relevant information to AUTHORITY. CONTRACTOR shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay performance under this Agreement. However, any subcontractor need give notice and information only to its next higher-tier subcontractor.

**ARTICLE 29. GENERAL WAGE RATES**

A. All laborers and mechanics employed by CONTRACTOR or subcontractor at any tier working on the construction site, will be paid unconditionally and not less often than once a week and without any subsequent deduction or rebate on any account (except such payroll deductions as are permitted or required by federal, state or local law, regulation or ordinance), the full amounts due at the time of payment computed at wage rates and per diem rate not less than the aggregate of the highest of the two basic hourly rates and rates of payments, contributions or costs for any fringe benefits contained in the current general prevailing wage rate(s) and per diem rate(s), established by the Director of the Department of Industrial Relations of the State of California, (as set forth in the Labor Code of the State of California, commencing at Section 1770 et. seq.), regardless of any contractual relationship which may be alleged to exist between CONTRACTOR or subcontractor and their respective mechanics, laborers, journeypersons, workpersons, craftspersons or apprentices. Copies of the current General Prevailing Wage Determinations and Per Diem Rates are on file at AUTHORITY's offices and will be made available to CONTRACTOR upon request. CONTRACTOR shall post a copy thereof at each job site at which work hereunder is performed.

B. In addition to the foregoing, CONTRACTOR agrees to comply with all other provisions of the Labor Code of the State of California, which are incorporated herein by reference, pertaining to workers performing work hereunder including, but not limited to, those provisions for work hours, payroll records and apprenticeship employment and regulation program. CONTRACTOR agrees to insert or cause to

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be inserted the preceding clause in all subcontracts, which provide for workers to perform work hereunder regardless of the subcontractor tier.

**ARTICLE 30. INSPECTION AND ACCEPTANCE**

A. All work (which term includes but is not restricted to materials, equipment, workmanship, and manufacture and fabrication of components) shall be subject to inspection and test by AUTHORITY at all reasonable times and at all places prior to acceptance. Any such inspection and test is for the sole benefit of AUTHORITY and shall not relieve CONTRACTOR of the responsibility of providing quality control measures to assure that the work strictly complies with requirements of this Agreement. No inspection or test by AUTHORITY or its representative shall be construed as constituting or implying acceptance. Inspection or test shall not relieve CONTRACTOR of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of AUTHORITY after acceptance of the completed work under the terms of paragraph F of this Article, except as herein above provided.

B. CONTRACTOR shall, without charge, replace any material or correct any workmanship found by AUTHORITY not to conform to the requirements of this Agreement, unless in the public interest AUTHORITY consents to accept such material or workmanship with an appropriate adjustment in the price of this Agreement. CONTRACTOR shall promptly segregate and remove rejected material from the premises.

C. CONTRACTOR shall furnish promptly, without additional charge, all facilities, labor, equipment and material reasonably needed for performing such safe and convenient inspection and test as may be required by AUTHORITY. All inspections and tests by AUTHORITY shall be performed in such manner as to not unnecessarily delay the work. AUTHORITY reserves the right to charge to CONTRACTOR any additional cost of inspection or test when material or workmanship is not ready at the time specified by CONTRACTOR for inspection or test or when reinspection or retest is necessitated by prior rejection.

D. If CONTRACTOR does not promptly replace rejected material or correct rejected workmanship, AUTHORITY (1) may, by Agreement or otherwise, replace such material or correct such

workmanship and charge the cost thereof to CONTRACTOR, or (2) may terminate CONTRACTOR's right to proceed in accordance with the clause of this Agreement entitled "Termination for Default."

E. Should it be considered necessary or advisable by AUTHORITY at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, CONTRACTOR shall, on request, promptly furnish all necessary facilities, labor and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of CONTRACTOR or its subcontractors, CONTRACTOR shall pay all costs of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of this Agreement, an equitable adjustment shall be made in the Agreement price to compensate CONTRACTOR for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, it shall in addition, be granted a suitable extension of time.

F. Unless otherwise provided in this Agreement, acceptance by AUTHORITY shall be made as promptly as practicable after completion and inspection of all work required by this Agreement, or that portion of the work that AUTHORITY determines can be accepted separately. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud or as regards AUTHORITY's rights under the warranty provisions set forth herein.

#### **ARTICLE 31. MATERIAL AND WORKMANSHIP**

A. Unless otherwise specifically provided in this Agreement, all equipment, material, and articles incorporated in the work covered by this Agreement are to be new and of the most suitable grade for the purpose intended. Unless otherwise specifically provided in this Agreement, reference to any equipment, material, article or patented process, by trade name, make or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition, and CONTRACTOR may, at its option, use any equipment, material, article or process which, in the judgment of AUTHORITY, is equal to that named. CONTRACTOR shall furnish to AUTHORITY for its approval the name of the manufacturer, the model number and other identifying data and information respecting the performance, capacity, nature and rating of the machinery and mechanical and other equipment, which CONTRACTOR

contemplates incorporating in the work. When required by this Agreement or when called for by AUTHORITY, CONTRACTOR shall furnish AUTHORITY, for approval, full information concerning the material or articles, which it contemplates incorporating in the work. When so directed, samples shall be submitted for approval at CONTRACTOR's expense, with all shipping charges prepaid. Machinery, equipment, material and articles installed or used without required approval shall be at the risk of subsequent rejection.

B. All work under this Agreement shall be performed in a skillful and workmanlike manner. Notwithstanding the provisions of Article 3 hereof, AUTHORITY may, in writing, require CONTRACTOR to remove from the work any employee AUTHORITY deems incompetent, careless or otherwise objectionable.

#### **ARTICLE 32. NON-CONFORMING WORK**

A. Nonconforming work rejected by AUTHORITY shall be removed and replaced so as to conform to the requirements of this Agreement, at CONTRACTOR's cost and without a time extension; and CONTRACTOR shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that AUTHORITY may not have discovered the nonconforming Work shall not constitute an acceptance of such nonconforming Work. If CONTRACTOR fails to correct any nonconforming work within ten days of receipt of notice from AUTHORITY requesting correction, or if such nonconforming work cannot be corrected within ten days, and CONTRACTOR fails to (1) provide to AUTHORITY a schedule for correcting any such nonconforming work acceptable to AUTHORITY within such ten-day period, (2) commence such corrective work within such ten-day period and (3) thereafter diligently prosecute such correction in accordance with such approved schedule to completion, then AUTHORITY may cause the nonconforming work to be remedied or removed and replaced and may deduct the cost of doing so from any moneys due or to become due CONTRACTOR and/or obtain reimbursement from CONTRACTOR for such cost.

B. If AUTHORITY agrees to accept any Nonconforming Work without requiring it to be fully corrected, AUTHORITY shall be entitled to reimbursement of a portion of the Contract Price in an amount

equal to the greater of the amount deemed appropriate by AUTHORITY to provide compensation for future maintenance and/or other costs relating to the Nonconforming Work, or 100% of CONTRACTOR's cost savings associated with its failure to perform the Work in accordance with Contract requirements. Such reimbursement shall be payable to AUTHORITY within ten days after CONTRACTOR's receipt of an invoice thereof. CONTRACTOR acknowledges and agrees that AUTHORITY shall have sole discretion regarding acceptance or rejection of Nonconforming Work and that AUTHORITY shall have sole discretion with regard to the amount payable in connection therewith.

**ARTICLE 33. CONTRACTOR INSPECTION SYSTEM**

CONTRACTOR shall maintain an adequate inspection system and perform such inspections as will assure that the work performed under this Agreement conforms to the specified requirements, and shall maintain and make available to AUTHORITY adequate records of such inspections.

**ARTICLE 34. SUPERINTENDENCE BY CONTRACTOR**

CONTRACTOR, at all times during performance and until the work is completed and accepted, shall give its personal superintendence to the work or have on the work a competent superintendent, satisfactory to AUTHORITY and with authority to act for and on behalf of CONTRACTOR.

**ARTICLE 35. OTHER CONTRACTS**

AUTHORITY may undertake or award other agreements for additional work, and CONTRACTOR shall fully cooperate with such other CONTRACTOR's and AUTHORITY's employees and carefully fit its own work to such additional work as may be directed by AUTHORITY. CONTRACTOR shall not commit or permit any act, which will interfere with the performance of work by any other CONTRACTOR or by AUTHORITY.

**ARTICLE 36. PROHIBITED INTERESTS**

CONTRACTOR covenants that, for the term of this Agreement, no director, 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.

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**ARTICLE 37. CONTRACTOR PURCHASED EQUIPMENT**

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

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

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

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

**ARTICLE 38. 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 39. HEALTH AND SAFETY SPECIFICATIONS**

CONTRACTOR shall comply with all requirements set forth in Exhibit\_\_\_\_, Level 3 Safety Specifications.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement No. C-1-3684 to be executed as of the date of the last signature below.

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

By: \_\_\_\_\_

License No:

By: \_\_\_\_\_

Darrell E. Johnson  
Chief Executive Officer

**APPROVED AS TO FORM:**

By: \_\_\_\_\_

James M. Donich  
General Counsel

**APPROVED:**

By: \_\_\_\_\_

Jennifer Bergener  
Deputy COO/CEO

DRAFT

EXHIBIT D: FORMS

**STATUS OF PAST AND PRESENT CONTRACTS FORM**

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

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

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

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

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CAMPAIGN CONTRIBUTION DISCLOSURE FORM**

**Information Sheet**

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

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

**IMPORTANT NOTICE**

Basic Provisions of Government Code Section 84308

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

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

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

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

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

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

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

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

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

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

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

Is Contributor:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ORANGE COUNTY TRANSPORTATION AUTHORITY  
AND AFFILIATED AGENCIES**

**Board of Directors**

**Andrew Do, Chairman**

**Mark A. Murphy, Vice Chairman**

**Lisa A. Bartlett, Director**

**Doug Chaffee, Director**

**Barbara Delgleize, Director**

**Katrina Foley, Director**

**Brian Goodell, Director**

**Patrick Harper, Director**

**Michael Hennessey, Director**

**Gene Hernandez, Director**

**Steve Jones, Director**

**Joseph Muller, Director**

**Tam Nguyen, Director**

**Vicente Sarmiento, Director**

**Tim Shaw, Director**

**Harry S. Sidhu, Director**

**Donald P. Wagner, Director**

**EXHIBIT E: SAFETY SPECIFICATIONS**

## LEVEL 3 HEALTH, SAFETY AND ENVIRONMENTAL (HSE) SPECIFICATIONS

### REQUIRED HSE SUBMITTAL SUMMARY

The contractor shall submit copies of the items listed below for contract scope work on OCTA projects and property. Copies shall be provided prior to contractor's mobilization onto OCTA projects and property. Contractor shall provide compliant written Health, Safety & Environmental (HSE) submittals within 30 days of the contract notice to proceed.

HSE submittals shall comply with the 1988 Drug Free Workplace Act, or the Department of Transportation (DOT), or the Federal Transportation Administration (FTA) requirements (according to OCTA procurement funding guidelines) and comply with the California Code of Regulations (CCR) Title 8 regulatory standards.

Contractor's established written programs/plans shall comply with CCR Title 8 regulatory standards. All HSE related programs/plans submitted to OCTA for acceptance shall be prepared and submitted by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, CHMM, etc.) and is experienced in developing compliant written HSE programs. The site safety HSE representative shall participate in the HSE submittal process.

1. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
2. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
3. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program.
4. Contractor shall provide a copy of their Hazard Communication Program and MSDS Management Program in compliance with CCR Title 8, Section 5194, Hazard Communication Standard.

5. HSE Representative:

Facility Modification Projects, The Contractor shall submit a resume of the Company's HSE Representative that will oversee the scope task activities:

Certification from the Board of Certified Safety Professionals (BCSP)

- Certified Safety Professional (CSP), or,
- Associate Safety Professional (ASP), or
- Construction Health and Safety Technician (CHST), or,
- Safety Trained Supervisor (STS), or,
- Safety Trained Supervisor Construction (STSC)

Experience:

The Contractor's HSE Representative(s) shall have a minimum of five (5) years of heavy construction or scope agreement experience in administering HSE programs on project sites, the last two years of which have been administering HSE compliance in a similar type of scope (Construction, Rail, Industrial, etc.) for which Contractor is contracting with the Authority. The designated HSE Representative shall participate in all HSE related

submittals through completion of the scope and administer the monthly safety report.

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

On Capital Programs, The Contractor's on-site qualified HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP) or a Construction Health and Safety Technician (CHST) with current standing from the (BCSP) or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH), or an equal professional HSE Certificate of standing from The National Examination Board in Occupational Safety and Health (NEBOSH), that is acceptable to the Authority. The Contractor's on-site HSE Representative(s) shall provide a resume and have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction/scope discipline for which Contractor is contracting with the Authority.

6. A Detailed Site Specific HSE Work Implementation Plan:

This plan shall be prepared and submitted by a recognized HSE professional experienced in developing compliant written HSE programs. Indicate the methods and procedures and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, South Coast Air Quality Management District (SCAQMD) rules, National Fire Protection Association (NFPA), National Electric Code (NEC), American National Standards Institute (ANSI) codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above and may require as necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.

## **PART I – GENERAL**

### **1.0 GENERAL HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS**

- A. The Contractor, its subcontractors, suppliers, and employees have the obligation to comply with all Authority health, safety and environmental compliance department (HSEC) requirements of this safety specification, project site requirements, and bus yard safety rules, as well as all federal, state, and local regulations pertaining to scope of work or agreements with the Authority including California Department of Transportation safety requirements and special provisions. Additionally, manufacturer requirements are considered incorporated by reference, as applicable, to this scope of work.
- B. Observance of unsafe acts or conditions, serious violation of health and safety standards, non-conformance of Authority HSEC requirements, or disregard for the intent of these safety specifications to protect people and property, by

Contractor may be reason for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

- C. The Authority HSEC requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be pre-planned and performed, and safe conditions shall be maintained during the course of this work scope.
- D. The Contractor shall specifically acknowledge that it has primary responsibility to prevent and correct all health, safety and environmental hazards for which it and its employees, or its subcontractors (and their employees) are responsible. The Contractor shall further acknowledge their expertise in recognition and prevention of hazards in the operations for which they are responsible, that the Authority may not have such expertise, and is relying upon the Contractor for such expertise. The Authority retains the right to notify the Contractor of potential hazards and request the Contractor to evaluate and, as necessary, to eliminate those hazards.
- E. The Contractor shall provide all necessary tools, equipment, and related safety protective devices to execute the scope of work in compliance with the Authority's HSEC requirements, CCR Title 8 Standards, and recognized safe work practices.
- F. The Contractor shall instruct all its employees, and all associated sub-contractors under contract with the Contractor who works on Authority projects in the following; recognition, identification, and avoidance of unsafe acts and/or conditions applicable to its work.

## **PART II – SPECIFIC REQUIREMENTS**

- 2.0 While these safety specifications are intended to promote safe work practices, Contractors are reminded of their obligation to comply with all federal (Code of Federal Regulations (CFR) Sections 1926 & 1910 Standards), state (CCR Title 8 Standards), local and municipal safety regulations, and Authority health, safety and environmental requirements applicable to their project scope. Failure to comply with these standards may be cause for termination of scope or agreements with the Authority, at the sole discretion of the Authority.

### **2.1 REQUIRED DOCUMENTATION / REPORTING REQUIREMENTS**

The Contractor at a minimum shall provide the following documents to the Authority's Project Manager. Items A through E below shall be submitted and accepted by the Authority's Project Manager prior to Contractor mobilization. Item F upon each occurrence, and for items G through K, contractor shall verify the following documentation is in place, prior to and during contract scope and make the same available to the Authority upon request within 72 hours.

Contractor's established written programs/plans shall comply with CCR Title 8 regulatory standards. All new programs/plans shall be prepared and submitted by a qualified HSE professional who is recognized by an organization of industry standard (i.e., CSP, CIH, CHST, STS, CHMM, etc.) and is experienced in developing compliant written HSE programs. The site safety HSE representative shall participate in the scope submittal process.

- A. A Comprehensive Project Specific Health, Safety, and Environmental (HSE) Work Plan.
- a. The Contractor shall develop a site project plan that may include, but is not limited to: Permits, Evacuation, Emergency Plan, Roles and Responsibilities, Scope and Construction Activity Details, Constructability Review, Contractor Coordination Process, Safe Work Methods, Hazard Identification & Risk Control, First Aid and Injury Management, Emergency Procedures, Public Protection, Authority and Contractor Site Rules, Incident Reporting and Investigation, Specialized Work or Licensing, Training and Orientation Requirements, Chemical Management, and Subcontractor Management.
  - b. A Detailed Site Specific HSE Implementation Plan: This plan shall be prepared and submitted by a recognized HSE professional (current BCSP Certification in good standing, i.e., CSP, CHST, OHST) experienced in developing compliant written HSE programs, acceptable to OCTA. Indicate the methods and procedures, and include the sequence of tasks as listed on the project schedule, include the hazards, tools and equipment, and the safe work practices to mitigate the hazards in a format acceptable OCTA. Specify safety measures in accordance with applicable Cal/OSHA standards, SCAQMD rules, NFPA, NEC, ANSI codes and regulations, job hazard analysis, policies, procedures, HSE training requirements and known and potential hazards of Contractor's scope. Plans shall be prepared as specified above, and may require if necessary a professional engineer licensed to practice in the state of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
- B. Contractor shall provide a copy of their Company HSE Policy/Procedure Manual, in compliance with CCR Title 8 Standards for awarded scope.
- C. Contractor shall provide a copy of Company's Injury Illness Prevention Program in accordance with CCR Title 8, Section 3203.
- D. Contractor shall provide a copy of their Policy or Substance Abuse Prevention Program that complies with the 1988 Drug Free Workplace Act.
- E. Contractor shall provide the resume and qualifications/certifications of assigned project designated Onsite HSE Representative for this scope as identified in section 2.3 of this specification.
- F. Accident/Incident investigation report within 24 hours of event (immediate verbal notification to Authority Project Manager, followed by Written Report).

The following required documentation shall be provided to the Authority's Project Manager, upon Authority request, within 72 hours.

- G. A copy of Contractor weekly site safety inspection report with status of corrections, upon request, within 72 hours.

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

**K. TRAINING DOCUMENTATION**

To ensure that each employee is qualified to perform their assigned work, when applicable to scope work, Contractor shall verify training documentation is in place, prior to and during contract scope, and make available to the Authority, upon request, within 72 hours. Training may be required by the Authority or CCR Title 8 Standards and required for activity on Authority's property and/or Authority projects. Contractor shall provide to Authority, upon request, within 72 hours.

**2.2 HAZARD COMMUNICATION (CCR Title 8, Section 5194)**

- A. Contractor shall comply with CCR Title 8, Section 5194 Hazard Communication Standard. Prior to chemical use on Authority property and/or project work areas the Contractor shall provide to the Authority Project Manager copies of Material Safety Data Sheet (MSDS) for all applicable products used, if any.
- B. All chemicals including paint, solvents, detergents and similar substances shall comply with SCAQMD Rules 103, 1113, and 1171.

**2.3 DESIGNATED HEALTH, SAFETY, ENVIRONMENTAL (HSE) REPRESENTATIVE**

- A. Before beginning on-site activities, the Contractor shall require their company HSE Representative to review the scope tasks to ensure compliance with Cal/OSHA Standards. This person shall be a Competent or Qualified Individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards, and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.
- B. The Contractor's qualified HSE Representative for all Authority projects is subject to acceptance by the Authority Project Manager and the HSEC Department Manager. All contact information of the HSE Representative (name,

phone, and fax and pager/cell phone number) shall be provided to the Authority Project Manager.

**QUALIFICATIONS – On Capital Programs**, the Contractor shall submit a resume of the full time, on-site qualified HSE Representative(s) who reports directly to the Contractor's Project Manager or Superintendent, and who is responsible for HSE oversight for field operations on the project no later than ten (10) days after receipt of Notice to Proceed, and prior to mobilization. The Contractor's On-site HSE Representative(s) shall have a minimum of seven (7) years heavy construction experience in administering HSE programs on heavy construction project sites, the last two years of which have been administering HSE in the construction discipline for which Contractor is contracting with the Authority. The Contractor's On-site HSE Representative shall be a Certified Safety Professional (CSP) with current standing from the Board of Certified Safety Professionals (BCSP), or a Construction Health and Safety Technician (CHST) with current standing from the BCSP or a Certified Industrial Hygienist (CIH) with current standing from the American Board of Industrial Hygiene (ABIH), or an equal professional HSE Certificate of standing from The National Examination Board in Occupational Safety and Health (NEBOSH), that is acceptable to the Authority. The Contractor's On-site HSE Representatives(s) shall be on site during all operational hours. The On-site HSE Representative(s) shall set up, carry forward and aggressively and effectively maintain the project specific safety program and IIPP covering all phases of the work. If at any time the Contractor wishes to replace their On-site HSE Representative(s), the Contractor must provide written notice thirty (30) days prior to change of personnel to the Authority. The Contractor shall take all precautions and follow all procedures for the safety of, and shall provide all protection to prevent injury to, all persons involved in any way in the scope work and all other persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of the Authority who may be involved. This requirement applies continuously and is not limited to normal working hours. The designated HSE Representative shall participate in all HSE related submittals. The Authority reserves the right to allow for an exception to modify these minimum qualification requirements for unforeseen circumstances, at the sole discretion of the Authority Project Manager and HSEC Department Manager.

**Facility Modification Projects**, The Contractor shall submit a resume of the designated HSE Representative and their Professional Certification:

Certification from the Board of Certified Safety Professionals (BCSP)

- Certified Safety Professional (CSP), or,
- Associate Safety Professional (ASP), or
- Construction Health and Safety Technician (CHST), or,
- Safety Trained Supervisor (STS), or,
- Safety Trained Supervisor Construction (STSC)

Experience:

The Contractor's HSE Representative(s) shall have a minimum of five (5) years of heavy construction or scope agreement experience in administering HSE programs on project sites, the last two years of which have been administering HSE compliance in a similar type of scope (Construction, Rail, Industrial, etc.) for which Contractor is contracting with the Authority. The designated HSE Representative shall participate in all HSE related

submittals through completion of the scope and administer the monthly safety report.

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

1. Capital Programs may include, but are not limited to, projects involving demolition and construction of; heavy construction, rail projects, highway projects, parking lots and structures, fuel stations, building construction, facility modifications, bus base construction, EPA/DTSC remediation, AQMD air or soil monitoring, fuel tank removal or modification, major bus base modifications, handling potential hazardous waste projects, and similar projects as deemed a Capital Program at the sole discretion by the Authority.
  2. Facility Modification Projects may include, but are not limited to, projects involving minor demolition and construction or improvement projects for transportation centers, bus base sites and/or building modifications, equipment and/or building upgrades, and similar projects as deemed a Facility Modification Project at the sole discretion by the Authority.
  3. Competent Individual means an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees and/or property, and who has authorization to take prompt corrective measures to eliminate them.
  4. Qualified Individual means an individual who by possession of a recognized degree, certificate, certification or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, the work, or the project.
- C. The Contractor shall designate a Competent Individual for each task, as required by Cal-OSHA standards or laws. The task Competent Individual shall be responsible for the prevention of accidents. If the Authority or any public agency with jurisdiction notifies the Contractor of any claimed dangerous condition at the site that is within the Contractor's care, custody or control, the Contractor shall take immediate action to rectify the condition at no additional cost to the Authority. The Contractor shall be responsible for the payment of all fines levied against the Authority for deficiencies relating to the Contractor's supervision or conduct and/or control of the scope agreement.
- D. On Facility Modification Projects, the Authority Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in section 2.3 (C), above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 15 workers, there are multiple scope work sites, or as warranted by the scope of work at the sole discretion by the Authority.

- E. On Capital Programs, the Authority's Project Manager reserves the right to require the Contractor to provide one additional full-time safety representative with qualifications as identified in item 2.3 (C) above whenever the number of individuals from the Contractor, its subcontractors, suppliers, and vendors meets or exceeds 50 workers, or is warranted by the scope of work.

## **2.4 SITE HSE ORIENTATION**

The Contractor shall conduct and document a project site safety orientation for all Contractor personnel, subcontractors, suppliers, vendors, and new employees assigned to the project prior to performing any work on Authority projects, a copy of the HSE orientation attendance list shall be provided to the Authority Project Manager. The safety orientation, at a minimum, shall include, as applicable, Personal Protection Equipment (PPE) requirements, eye protection, ANSI class 2 reflective vests, designated smoking, eating, and parking areas, traffic speed limit and routing, cell phone policy, and barricade requirements. When required by scope, additional orientation shall include fall protection, energy isolation lock-out/tag-out (LOTO), confined space, hot work permit, security requirements, and similar project safety requirements.

## **2.5 INCIDENT NOTIFICATION AND INVESTIGATION**

- A. The Authority shall be promptly notified of any of the following types of incidents:
1. Damage to Authority property (or incidents involving third party property damage);
  2. Reportable and/or recordable injuries (as defined by the U. S. Occupational Safety and Health Administration);
  3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An initial immediate verbal notification, followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.

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

- C. A Serious Injury, Serious Incident, OSHA Recordable Injury / Illness, or Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within

seven (7) calendar days of the incident. This review shall require a senior executive from the Contractors' organization to participate in the presentation. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors leading to the incident, a root cause analysis, and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.

1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement.
2. Serious Incident: includes property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, etc.) notification or representation.
3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

## 2.6 REGULAR INSPECTIONS & THIRD PARTY INSPECTIONS

- A. Frequent and regular inspections of the project jobsite shall be made by the Contractor's HSE Representative, or another Competent Individual designated by the Contractor. Unsafe acts and/or conditions noted during inspections shall be corrected immediately.
- B. The Contractor is advised that representatives of regulatory agencies (i.e., CAL-OSHA, EPA, SCAQMD, etc.), upon proper identification, are entitled to access onto Authority property and projects. The Authority Project Manager shall be notified of their arrival as soon as possible.

## 2.7 ENVIROMENTAL REQUIREMENTS

- A. The Contractor shall comply with Federal, State, county, municipal, and other local laws and regulations pertaining to the environment, including noise, aesthetics, air quality, water quality, contaminated soils, hazardous waste, storm water, and resources of archaeological significance. Expense of compliance with these laws and regulations is considered included in the agreement. Contractor shall provide water used for dust control, or for pre-wetting areas to be paved, as required; no payment will be made by OCTA for this water.
- B. The Contractor shall prevent pollution of storm drains, rivers, streams, irrigation ditches, and reservoirs with sediment or other harmful materials. Fuels, oils, bitumen, calcium chloride, cement, or other contaminants that would contribute

to water pollution shall not be dumped into or placed where they will leach into storm drains, rivers, streams, irrigation ditches, or reservoirs. If operating equipment in streambeds or in and around open waters, protect the quality of ground water, wetlands, and surface waters.

- C. The Contractor shall protect adjacent properties and water resources from erosion and sediment damage throughout the duration of the contract. Contractor shall comply with applicable NPDES permits and Storm Water Pollution Prevention Plan (SWPPP) requirements.
- D. Contractor shall comply with all applicable EPA, Cal EPA, Cal Recycle, DTSC, SCAQMD, local, state, county and city standards, rules and regulations for hazardous and special waste handling, recycling and/ disposal. At a minimum, Contractor shall ensure compliance where applicable with SCAQMD Rule 1166, CCR Title 8, Section 5192, 29 CFR Subpart 1910.120, 49 CFR Part 172, Subpart H, 40 CFR Subpart 265.16 and CCR Title 22 Section 6625.16. Contractor shall provide OCTA a schedule of all hazardous waste and special or industrial waste disposal dates in advance of transport date. Only authorized OCTA personnel shall sign manifests for OCTA generated wastes. Contractor shall ensure that only current registered transporters are used for disposal of hazardous waste and industrial wastes. The Contractor shall obtain approval from OCTA for the disposal site locations in advance of scheduled transport date.
- E. If the Contractor encounters on the site material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or other Hazardous Substance (as defined in California Health and Safety Code, and all regulations pursuant thereto) which has not been rendered harmless, the Contractor shall immediately stop work in that area affected and report the condition to the Authority in writing. The work in the affected area shall not thereafter be resumed except by written agreement of the Authority and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous substance and has not been rendered harmless. The work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or other hazardous substance, or when it has been rendered harmless, by written agreement of the Authority and the Contractor, or in accordance with a final determination by an Environmental Consultant employed by the Authority.
- F. The Contractor shall not permit any hazardous substances to be brought onto or stored at the Project Site or used in the construction of the work, except for specified materials and commonly used construction materials for which there are no reasonable substitutes. All such materials shall be handled in accordance with all manufacturers' guidelines, warnings and recommendations and in full compliance with all applicable laws. All notices required to be given with respect to such materials shall be given by the Contractor. The Contractor shall not intentionally release or dispose of hazardous substances at the Project Site or into the soil, drains, surface or ground water, or air, nor shall the Contractor allow any Sub-Contractor, subcontractor or supplier or any other person for whose acts the Contractor or any subcontractor, vendor or supplier may be liable, to do so. For purposes of Contract Documents, "hazardous substance" means any substance or material which has been determined or during the time of performance of the work is determined to be capable of posing a risk of injury

to health, safety, property or the environment by any federal, state or local governmental authority.

## **2.8 VEHICLE AND ROADWAY SAFETY REQUIREMENTS**

- A. The Contractor shall ensure that all Contractor vehicles, including those of its subcontractors, suppliers, vendors and employees are parked in designated parking areas, are identified by company name and/or logo, and comply with traffic routes, and posted traffic signs in areas other than the employee parking lots.
- B. Personal vehicles belonging to Contractor employees shall not be parked on the traveled way or shoulders including any section closed to public traffic, or areas of the community that may cause interference or complaints
- C. The Contractor shall comply with California Department of Transportation safety requirements and special provisions when working on highway projects.
- D. The Contractor shall conform to American Traffic Safety Services Association (Quality Standard for Work Zone Control Devices 1992).

## **2.9 LANGUAGE REQUIREMENTS**

For safety reasons, the Contractor shall ensure employees that do not read, or understand English, shall be within visual and hearing range of a bilingual supervisor or responsible designee at all times when on the Authority property or projects.

## **2.10 PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING**

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

- A. **RESPIRATORS** (CCR Title 8, Section 5144) - The required documentation for training and respirator use shall be provided to the Authority's Project Manager upon request within 72 hours. All compliance documentation as required by CCR Title 8, Section 5144, Respiratory Protective Equipment.
- B. **EYE PROTECTION** – The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.
- C. **BUS BASE** – Minimum PPE required includes but is not limited to; Eye protection, class 2 reflective vest, steel toe or construction type footwear that meets ANSI Z41 1991 are recommended.
- D. **CONSTRUCTION PROJECTS** - Minimum PPE required includes but is not limited to; hard hat, eye protection, hand protection, class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 are recommended.

- E. **HARD HATS:** Approved hard hat that meet ANSI Z89. 1 (latest revision). Hard hats should be affixed with the company/agency logo and/or name. The bill shall be worn forward. Metal hard hats and cowboy style are forbidden on Authority projects.
- F. **FOOTWEAR:** Enclosed leather that covers the ankles, such as a construction type boot. Employees shall not wear casual dress shoes, open toe, sneakers, sandals, canvas-type shoes, or other shoes that have thin soles or heels that are higher than normal in construction work areas. Safety toe footwear that meets ANSI Z41 1991 are recommended on construction sites and in operating facilities.
- G. **CLOTHING/SHIRTS:** minimum or waist length shirts with sleeves (4" minimum).
- H. **CLOTHING/TROUSERS:** Cover the entire leg. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. No sweat pants, or trousers with holes.

**2.11 AERIAL DEVICES (CCR Title 8, Section 3648)**

Aerial devices are defined in CCR Title 8 as any vehicle-mounted or self-propelled device, telescoping extensible or articulating, or both, which is primarily designed to position personnel. If aerial devices are to be used, the required documentation in CCR Title 8, Section 3648 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

**2.12 CONFINED SPACE ENTRY (CCR Title 8, Section 5157)**

Before any employee will be allowed to enter a confined space, the required documentation as required by CCR Title 8, Section 5157 shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. **RECOMMENDED:** a copy of the most recent calibration record for each air monitoring unit, 3-gas monitor or "sniffer" to be used by the Entry Supervisor prior to entering permit-required confined spaces.

**2.13 CRANES**

- A. Crane activity shall comply with 29 CFR 1926.550, CCR Title 8 Standards, manufacture's recommendations and requirements, applicable American Society of Mechanical Engineers (ASME), and ANSI Standards. In addition, Contractor shall comply with the following requirements: Prior to using mobile cranes, the Contractor shall provide to the Authority Project Manager, items 1, 2 & 3 of the following documentation a minimum of seven (7) days prior to activity, and item 4 on each day of crane activity.
  - 1. Cranes require a submittal of the annual certification, and copy of the cranes most recent quarterly inspection.
  - 2. A copy of each crane operator's qualification (NCCCO or equivalent) of company-authorized crane operators that have been properly trained in the

equipment's use and limitations. Operator certification as required by CCR Title 8, Section 5006.1.

3. A rigging plan is required for all lifts. Critical lifts require an engineered plan designed by a registered professional engineer licensed in the State of California.
  4. Contractor shall provide the name and qualifications of each "Qualified Rigger" as defined by OSHA.
  5. Rigging scope activity shall comply with 29 CFR Subparts 1926.250, 1929.753 and CCR Title 8 Standards.
  6. All rigging equipment shall be free from defects, in good operating condition and maintained in a safe condition.
  7. Rigging equipment shall be inspected by a designated, competent employee prior to initial use on the project, prior to each use, and documented inspections performed regularly. Records shall be kept on jobsite of each of these inspections by contractor and be made available to the Authority upon request within 72 hours.
  8. Only one (1) sling eye should be in a hook, for multiple slings a shackle shall be used to prevent separation of slings, and prevent stress on weak points of the hook.
  9. Contractor shall prepare a documented daily crane inspection report.
- B. Pick and carry with rubber tired cranes is forbidden on Authority projects.
- C. Engineered Critical Lifts

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

1. Where in the crane's current configuration at any point during the lift, a gross load weight exceeds 75% of the capacity of the crane.
2. A gross weight equal to, or greater than 10 tons.
3. Lifts over buildings, equipment, public roadways, structures, or power lines.
4. A single lift where two or more cranes are used, including tandem lifts and tailing cranes.
5. Lifts made in close proximity of power lines, as defined by CCR Title 8 voltage clearance specifications.
6. Lifts involving helicopters, and specialized or unique and complex rigging equipment.

7. Hoisting of suspended work platforms.
8. Static tower crane erection and dismantlement.
9. Making lifts below the ground level where the crane is positioned.  
Note: Where the below the ground lift is minimal (evaluated by California registered professional engineer), a critical lift plan may not be required.

**D. Critical Lift Plan**

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

1. Crane manufacturer, capacity, and all specifications for the configuration to be used for the lift.
2. Load chart data for the crane to be used to make the lift. Total calculated weight of the load to be lifted including all rigging and other deductions consistent with the manufacturer's load chart.
3. Engineering data shall be provided on the hook assembly (manufacturer's certification or independent laboratory testing and load testing within the past 60 days), below-the hook rigging, and all specialized below-the-hook lifting devices.
4. Diagrams of the lift that provides geometrical conditions of the load, rigging, and all crane positions during the lift. The drawing shall provide the following:
  - A. Locations of all components to be lifted prior, during and after the lift is completed.
  - B. Radius points.
  - C. Swing patterns.
  - D. In the event that the lift must be aborted, positions where the load may be safely landed.
  - E. Areas where any personnel, public, and vehicles must be evacuated during the lift.
5. Potential ground loading for each point of contact by the crane in selected locations in which the crane will perform the critical lift.

6. Soil and subsurface data and information pertaining to the location on which the crane used for the critical lift will be positioned. This information shall be procured from an authoritative source such as a geotechnical engineer or a professional civil engineer registered in the state of California.

**Note:** *This information may be available from the Authority for selected locations on some projects.*

7. An engineer shall use the data provided in #5 and #6 above to verify and confirm the following:
  - A. That the soil and subsurface conditions are capable of supporting all loads imposed during the critical lift.
  - B. That the designs of cribbing and other supports used under the crane load points are appropriate to safely transfer such loads.
8. Signature and stamp on the plan by a California registered professional engineer, evidencing review of the plan as meeting the requirements that all loads and load information and calculations contained in the plan are approved, acceptable and safe to perform.
9. Operator qualifications.
10. Method by which communication will be provided to the crane operator. (Designated signal person, two-way radio, hard wire phone system, etc.).
11. A critical lift hazard analysis which identifies the particular hazards (including weather, wind, obstructions, etc.) associated with the lift and the means and methods to reduce, mitigate, or eliminate the hazards.
12. Emergency action plan.
13. Documentation of lift and pre-job meeting shall be conducted by Contractor's Project Manager.

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

#### E. OVERHEAD CRANES

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

#### 2.14 DEMOLITION OPERATIONS (CCR Title 8, Section 1734)

Before starting demolition activities the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. Contractor shall provide all compliance documentation as required by CCR Title 8 Article 31.

- A. The Contractor shall be responsible for visiting and examining the project site to assess and personally determine the extent of demolition, associated work, debris removal, disposal and general work to be done under this section.
- B. The Contractor shall take possession of all demolished materials, except as noted otherwise in the Contract Documents, and be responsible for disposing of them in accordance with applicable laws and regulations. On-site burning or burial of demolition materials will not be permitted.
- C. Provide continuous noise and dust abatement as required, preventing disturbances and nuisances to the public, workers, and the occupants of adjacent premises and the surrounding areas. Dampen areas affected by demolition operation as necessary to prevent dust nuisance.
- D. Site demolition plan: Indicate methods, procedures, equipment, and structures to be employed. Specify safety measures in accordance with applicable codes including signs, barriers, and temporary walkways. Plans shall be prepared by a qualified person (CSP, CIH, CHST, CHMM, etc.), or as necessary by a professional engineer licensed to practice in the State of California, when so required by the provisions of the California Board for Professional Engineer and Surveyors.
- E. Equipment, haul routes, and disposal sites to be used in the demolition and disposal work. Copy of manifests showing delivery of disposed materials in accordance with the plan and permit conditions. Certification that all demolished materials removed from the site have been disposed of in accordance with applicable laws and regulations.

## **2.15 EXCAVATION OPERATIONS (CCR Title 8, Section 1541)**

Before starting excavation activities more than 5 feet deep into which people shall enter, the required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours. All compliance documentation shall comply with the following CCR Title 8, Section 1541 requirements:

- A. A copy of the Contractor's Excavation Permit.
- B. Attention is directed to the applicable sections of the Labor Code concerning trench excavation safety plans, "Trench Safety." Excavation for any trench 5 feet or more in depth shall not begin until the Contractor has received approval from the Engineer of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of that trench and any design calculations used in the preparation of the detailed plan. Excavations 20 feet or greater shall be engineered and plan stamped by a California registered professional engineer.
- C. The detailed plan shall show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No plan shall allow the use of shoring, sloping or a protective

system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If the plan complies with the shoring system standards established by the Construction Safety Orders, the plan shall be submitted at least five (5) days before the Contractor intends to begin excavation for the trench.

- D. Excavations and trenches shall be inspected by a "Competent Person" daily and after every rainfall to determine if they are safe. Daily inspections shall be recorded. Documentation is to be kept on site and available for review upon request.
- E. Excavations are considered class 'C' soil unless documented testing in accordance with 29 CFR Subpart P, Section 1926.650 and CCR Title 8 Standards supports a class 'B' soil classification and is confirmed and stamped by a California registered professional engineer. In no case will excavations be classified as class 'A' soil.

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

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

- A. Fall protection is required for workers exposed to falls in excess of six (6) feet.
- B. When conventional fall protections methods are impractical or create a greater hazard, a written plan in conformance with CCR Title 8, Article 24, shall be submitted to the Authority a minimum of seven (7) days in advance of the scheduled activity.

#### 2.17 FORKLIFTS, BACKHOES AND OTHER INDUSTRIAL TRACTORS (CCR Title 8, Section 3664)

CCR Title 8 defines backhoes as "industrial tractors". All compliance documentation shall be provided as required by CCR Title 8, Section 3664. The following required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A copy of each operator's certificate or a list of company-authorized industrial tractor operators that have been properly trained in the equipment's use and limitations. Please state which equipment, and model each operator has been authorized to operate (i.e. forklifts, backhoe, bulldozer, front-end loader, etc.).

#### 2.18 ELECTRICAL OPERATIONS

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

Any work on electrical equipment defined by OSHA as high-voltage, at or above 600 volts, requires specialized training certifications and personal protective equipment. Before any high-voltage work commences, the Authority Project Manger must be notified and must provide approval. The following required NFPA 70E certification and a certificate of training from a recognized organization of a two day high voltage

safety training course shall be provided to the Authority's Project Manager, upon request, within 72 hours:

- A. A list of the name(s) of the company-designated high voltage Qualified Electrical Worker(s)

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

Only qualified persons shall work on electrical equipment or systems.

- A. Electrical Certification of Training: Contractor employees working on or around electrical panels, wiring, motors, electrical energy sources or similar electrical devices shall have attended a NFPA 70E, Electrical Safety Course and provide to the OCTA Project Manager a copy of employees' NFPA 70E qualification certificate of training for each employee assigned to electrical tasks on OCTA property or projects.

2.19 POWDER-ACTUATED TOOLS (CCR Title 8, Section 1685)

Before using tools such as "Hilti guns" or other powder-actuated tools, the following required documentation shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- A. A copy of each qualified person's valid operator card.

2.20 SCAFFOLDS (CCR Title 8, Sections 1635.1-1677)

Scaffold erection shall be in compliance with CCR Title 8 Standards. All compliance documentation shall be provided as required by CCR Title 8, Sections 1635.1-1677. In addition, the Contractor shall comply with the following additional requirements.

- A. All scaffolds on Authority project shall be inspected by a competent person qualified for scaffolds in accordance with CCR Title 8 Standards.
- B. Contractor shall arrange for a third party inspection, at least quarterly, by a credentialed professional (insurance carrier, scaffold manufacturer representative, or similar) in addition to the contractors daily self inspections.
- C. A proper scaffold inspection and tagging system shall be maintained identifying compliance status (Example: Green/safe, Yellow/modified-fall protection required, Red/unsafe-do not use).
- D. Contractor shall have a fall protection plan that meets CCR Title 8 Standards for scaffold erectors, an erection/dismantling plan shall be submitted to Authority Project Manager for review prior to start of activity.
- E. Scaffold erection/dismantling shall install handrails beginning on the first level above ground erected, and erectors shall plan erection and dismantling in a manner to maximize handrail protection and minimize employees at unprotected areas.

2.21 WARNING SIGNS AND DEVICES

Signs, signals, and/or barricades shall be visible at all times when and where a hazard exists. Overhead tasks, roofing tasks, excavations, roadwork activity, demolition work, and other recognized hazards shall have guardrail protection, warning barricades, or similar protective measures acceptable to the Authority's Project Manager. Signs, signals, and/or barricades shall be removed when the hazard no longer exists.

## **2.22 STEEL ERECTION**

Steel Erection scope activity shall comply with 29 CFR Subpart R, Section 1926.750, and CCR Title 8 Standards. In addition to OSHA Standards, Contractor shall comply with the following requirements.

- A. Erection planning should incorporate installation methods using aerial devices (man-lifts) and elevated work platforms (scissor lift) to minimize fall hazards of climbing steel where possible. A detailed written job safety analysis (JSA) shall identify installation methods, equipment, and control methods to minimize potential fall hazards.
- B. The Contractor shall not allow any employee to walk the steel unprotected from falls. Contractor employees must be tied-off and "coon" the beam until safety cables are provided to which employees shall use 100% tie-off protection. Two lanyards are required to ensure 100% tie-off protection.
- C. A safe means of access to the level being worked shall be planned. Climbing and sliding down columns are not considered safe access and are forbidden on Authority projects.
- D. A qualified rigger shall inspect the rigging prior to each shift and each lift.
- E. Multiple lift rigging (Christmas Treeing) lifts are forbidden on Authority property and controlled projects.

## **2.23 AUDITS**

- A. The Authority may make periodic patrols of the project site as a part of its normal security and safety program. The Contractor shall not be relieved of its aforesaid responsibilities and the Authority shall not assume same, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor, as a result of safety patrols by the Authority.
- B. The Authority may audit the Contractor's safety program for HSE compliance at various intervals of the project, at the sole discretion of the Authority. Elements may include, but are not limited to: OSHA injury & illness records and logs, Job Safety Analysis and safety plans, equipment operator licenses and training records, incident reports, meeting minutes, engineered plans, safety meeting records, crane and rigging plans, equipment inspection records, qualifications of

and interviews with key Contractor management personnel, and other similar information. The Contractor shall support and cooperate with these audits at no additional compensation or schedule impacts with this contract.

## **2.24 RAILWAY SAFETY PRECAUTIONS**

- A. Work on operating railways shall be in compliance with 49 CFR, Part 214, CCR Title 8 Standards, and the Southern California Regional Rail Authority (SCRRA).
- B. New construction rail projects require that all employers and contractors are responsible to assure employees are trained and understand on-track safety procedures, and follow roadway worker rules identified in 49 CFR, Part 214, CCR Title 8, SCRRA, the California Department of Transportation (CalTrans), and OCTA HSE Construction Management Requirements (i.e., item E references).
- C. Minimum PPE for workers include hard hat, safety glasses, orange (i.e., rail company approved color) class 2 reflective vest, safety toe footwear that meets ANSI Z41 1991 (lace-up type over the ankle) and hearing protection (on person and worn as necessary).

## **2.25 FINES**

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

## **2.26 COMPLIANCE COSTS**

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

## **2.27 REFERENCES**

- A. CCR Title 8 Standards (Cal/OSHA)
- B. CFR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. USACE Construction Quality Management Manual (EM-385-1-1)
- E. Construction Industry Institute (CII)
- F. OCTA Construction Management Procedures Manual
- G. OCTA Yard Safety Rules

**END OF DOCUMENT**

**EXHIBIT F: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

**PROPOSAL EXCEPTIONS AND/OR DEVIATIONS**

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

Offeror: \_\_\_\_\_

RFP No.: \_\_\_\_\_ RFP Title: \_\_\_\_\_

Deviation or Exception No. : \_\_\_\_\_

Check one:

- Scope of Work (Technical) \_\_\_\_\_
- Proposed Agreement (Contractual) \_\_\_\_\_

Reference Section/Exhibit: \_\_\_\_\_ Page/Article No. \_\_\_\_\_

Complete Description of Deviation or Exception:

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Rationale for Requesting Deviation or Exception:

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Area Below Reserved for Authority Use Only:
