



COMMITTEE TRANSMITTAL

September 23, 2013

To: Members of the Board of Directors

WK
From: Wendy Knowles, Clerk of the Board

Subject: Cooperative Agreement with the California Department of Transportation for the Interstate 405 Improvement Project Between Interstate 605 and State Route 55

Regional Planning and Highways Committee Meeting of September 16, 2013

Present: Directors Bates, Donchak, Harper, Lalloway, Miller, Murray, and Spitzer

Absent: Director Nelson

Committee Vote

This item was passed by the Members present.

Director Harper was not present to vote on this item.

Committee Recommendation

Authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-2-2145 between the Orange County Transportation Authority and the California Department of Transportation to provide independent quality assurance, at no cost, for preliminary engineering, right-of-way support, right-of-way capital activities, and development of the request for qualifications for design-build services for the Interstate 405 improvement project between Interstate 605 in the City of Seal Beach and State Route 55 in the City of Costa Mesa.



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Cooperative Agreement with the California Department of
Transportation for the Interstate 405 Improvement Project
Between Interstate 605 and State Route 55**

Staff Report



September 16, 2013

To: Regional Planning and Highways Committee

From: Darrell Johnson, Chief Executive Officer

A handwritten signature in blue ink, appearing to read "Darrell Johnson", is written over the "From:" line.

Subject: Cooperative Agreement with the California Department of Transportation for the Interstate 405 Improvement Project Between Interstate 605 and State Route 55

Overview

The Orange County Transportation Authority proposes to enter into a cooperative agreement with the California Department of Transportation to establish roles and responsibilities for independent quality assurance of preliminary engineering, right-of-way support, right-of-way capital activities, and development of the request for qualifications for the Interstate 405 improvement project between Interstate 605 in the City of Seal Beach and State Route 55 in the City of Costa Mesa.

Recommendation

Authorize the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-2-2145 between the Orange County Transportation Authority and the California Department of Transportation to provide independent quality assurance, at no cost, for preliminary engineering, right-of-way support, right-of-way capital activities, and development of the request for qualifications for design-build services for the Interstate 405 improvement project between Interstate 605 in the City of Seal Beach and State Route 55 in the City of Costa Mesa.

Discussion

The Interstate 405 (I-405) improvement project (Project) proposes to add new lanes to the I-405, from south of the Orange/Los Angeles county line at the I-405/Interstate 605 interchange in the City of Seal Beach to north of the State Route 55 in the City of Costa Mesa, generally within the existing right-of-way (ROW).

At the October 22, 2012 Orange County Transportation Authority (OCTA) Board of Directors (Board) meeting, Project Alternative 1, the addition of a single general purpose lane in each direction, was selected by the Board.

Work to finalize the environmental impact report/environmental impact statement (EIR/EIS) is currently underway. On April 22, 2013, staff presented a report to the Board which outlined a path forward to advance delivery of the Project, while also providing opportunities for the Board to explore new concepts for a design variation and new alternative. At the request of the City of Long Beach, the California Department of Transportation (Caltrans) circulated a supplemental draft EIR/EIS which includes additional traffic study information in the south Los Angeles County/City of Long Beach area. The required 45-day circulation period, from June 28, 2013 through August 12, 2013, included a public hearing in the City of Long Beach on July 24, 2013. Public comments are being reviewed. A separate staff report on today's agenda summarizes the categories of comments received and provides the screening results of the two new concepts.

Concurrently, as directed by the Board on April 22, 2013, staff is continuing to advance the Project by initiating the design and construction of the Project. Design-build (DB) is the delivery method proposed for the Project. The program management consultant, Parsons Transportation Group, Inc., will soon begin preliminary engineering and initial ROW activities; therefore, it is necessary to have the cooperative agreement with Caltrans in place for Caltrans to participate and provide oversight.

The proposed cooperative agreement specifies roles, responsibilities, and the process for oversight of preliminary engineering, ROW support, ROW capital activities, and development of the request for qualifications (RFQ) for the Project. Caltrans will provide independent quality assurance at no cost to OCTA.

The proposed cooperative agreement will cover work performed until completion of the RFQ process. Subsequent to the RFQ, it is proposed that the cooperative agreement be amended to include work required to produce the DB request for proposals. If AB 401 (Daly, D-Anaheim) becomes law, it is anticipated DB authority would be effective on January 1, 2014. At that time, staff would recommend for Board approval either a separate cooperative agreement or an amendment to Cooperative Agreement No. C-2-2145 to cover the remainder of Project activities related to the procurement and implementation of the DB contract.

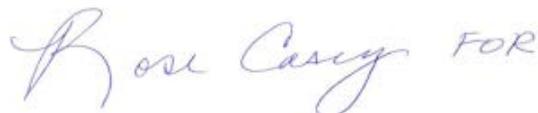
Summary

Staff requests Board of Directors' approval for the Chief Executive Officer to negotiate and execute Cooperative Agreement No. C-2-2145 with the California Department of Transportation, at no cost to the Orange County Transportation Authority, to provide oversight for the preliminary engineering, right-of-way support, right-of-way capital activities, and development of the request for qualifications for design-build services for the Interstate 405 improvement project between Interstate 605 in the City of Seal Beach and State Route 55 in the City of Costa Mesa.

Attachment

- A. Draft Cooperative Agreement No. C-2-2145 Between Orange County Transportation Authority and California Department of Transportation for the Interstate 405 Improvement Project

Prepared by:



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Approved by:



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ORANGE COUNTY TRANSPORTATION AUTHORITY

**Cooperative Agreement with the California Department of
Transportation for the Interstate 405 Improvement Project
Between Interstate 605 and State Route 55**

Attachment A

**DRAFT COOPERATIVE AGREEMENT NO. C-2-2145 BETWEEN
ORANGE COUNTY TRANSPORTATION AUTHORITY AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE
INTERSTATE 405 IMPROVEMENT PROJECT**

This Agreement, effective on _____, 2013, is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

ORANGE COUNTY TRANSPORTATION AUTHORITY, a political subdivision of the State of California, referred to hereinafter as OCTA.

RECITALS

1. PARTNERS are authorized to enter into a cooperative agreement for improvements to the state highway system (SHS) per the California Streets and Highways Code sections 114 and 130.
2. For the purpose of this Agreement, Caltrans to provide Independent Quality Assurance (IQA) to widen both northbound and southbound directions of Interstate 405 (I-405) from approximately 0.2-mile south of Bristol Street (12-ORA-405 Postmile [PM] 9.3) to the Orange County/Los Angeles County line (12-ORA-405 PM 24.2) and in Los Angeles County from the county line (07-LA-405 PM 0.00) to 1.4 miles north of Interstate 605 (I-605) (07-LA-405 PM 1.2). Improvements are proposed on SR-22 West in Orange County from 0.2-mile west of I-605 (12-ORA-22 PM R0.5) to I-405 (12-ORA-22 PM R0.7) and on SR-22 East in Orange County from I-405(12-ORA-22 PM R0.7) to 0.2-mile east of the Beach Boulevard Undercrossing (12-ORA-22 PM R3.8). Improvements on SR-73 will be from the Bear Street Overcrossing (12-ORA-73 PM R27.2) to I-405 (12-ORA-73 PM R27.8). Improvements on I-605 in Orange County will be from I-405 (12-ORA-605 PM 3.5) to the county line (12-ORA-605 PM R1.6) and in Los Angeles County from the county line (07-LA-605 PM R0.0) to 0.9-mile north of the Spring Street Overcrossing (07-LA-605 PM R1.2). Encroachments into Los Angeles County and work on SR-22 are associated with signing and striping to accommodate the transition from the existing to proposed facility will be referred to hereinafter as "PROJECT".
3. All responsibilities assigned in this Agreement will be referred to hereinafter as OBLIGATIONS. This Agreement relates to the following PROJECT COMPONENTS:
 - Preliminary Engineering
 - Permits and Agreements
 - Environmental Activities
 - Preliminary Right of Way Activities
4. For the purpose of this Agreement, the WORK included in the PROJECT COMPONENTS, will be in compliance with the CALTRANS STANDARDS, including but not limited to

the *Guide to Capital Project Delivery Workplan Standards (WBS Guide)*, December, 2012. The WORK outlined in this section is described at WBS levels 5 and 6. WBS Guide level 5, 6 and 7 WORK, is described in Attachment “A” “*CALTRANS PROJECT COMPONENTS, WBS Levels 5, 6, 7*”, which is made a part of this Agreement. Following are the Level 5 and 6 WBS activities for each PROJECT COMPONENT:

Preliminary Engineering:

- Updated Project Information (*WBS Activity 185.05*)
- Engineering and Photogrammetric Surveys (*WBS Activity 185.10*)
- Preliminary Design (*WBS Activity 185.15*)
- Engineering Reports (*WBS Activity 185.20*)
- Right of Way Requirements Determination (*WBS 185.25*)
- Structure Site Plans (*WBS Activity 185.30*)
- Other Base Maps and Plan Sheets Products (*WBS Activity 185.99*)
- Draft Specifications (*WBS Activity 230.35*)

Permits and Agreements:

- Permits (*WBS Activity 170.10*)
- Freeway Agreements (*WBS Activity 170.20*)
- Updated Required Permits (*WBS Activity 205.05*)
- Permits (*WBS Activity 205.10*)
- Railroad Agreements (*WBS Activity 205.15*)
- Executed Maintenance Agreement (*WBS Activity 205.30*)

Environmental Activities:

- Completed Environmental Document (*WBS Activity 180.15*)
- Long Term Mitigation Monitoring (*WBS Activity 235.35*)
- Updated Environmental Commitments Record (*WBS Activity 235.40*)
- Environmental Reevaluation (*WBS Activity 255.15*)
- Resident Engineer’s Pending File (*WBS Activity 255.40*)

Right of Way Activities:

- Approved Utility Relocation Plan (*WBS Activity 200.15*)
- Utility Relocation Package (Excluding Notice to Owner activities) (*WBS Activity 200.20*)
- Utility Relocation Management (*WBS Activity 200.25*)
- Other Utility Relocation Products (*WBS Activity 200.99*)
- Existing Land Net (*WBS Activity 220.05*)
- Land Net Map (*WBS Activity 220.10*)
- Right of Way Maps (*WBS Activity 220.15*)

- Field Located Right of Way (*WBS Activity 220.35*)
 - Parcel and Project Documentation (*WBS Activity 225.50*)
 - Right of Way Appraisals (*WBS Activity 225.60*)
5. This Agreement is separate from, and does not modify or replace, any other cooperative agreement or memorandum of understanding between PARTNERS regarding the PROJECT.
 6. Prior to this Agreement:
 - OCTA developed the Project Report/Environmental Document (Cooperative Agreement No. 12-594 and Amendments A-1 and A-2).
 7. In this Agreement capitalized words represent defined terms and acronyms.
 8. PARTNERS agree that the activities not specifically identified and assigned, including but not limited to those associated with final design, advertisement, award, and administration of this PROJECT will be addressed in a separate cooperative agreement.
 9. This Agreement will terminate upon completion of all activities, by COOPERATIVE AGREEMENT CLOSURE STATEMENT or, in the event PROJECT qualifies for design-build delivery process method, PARTNERS agree to terminate this cooperative agreement and enter into a new design-build cooperative agreement.
 10. PARTNERS hereby set forth the terms, covenants, and conditions of this Agreement, under which they will accomplish their respective OBLIGATIONS.
 11. OCTA or CALTRANS may terminate this Agreement at any time for any reason following thirty days written notice of termination to the other party.

RESPONSIBILITIES

12. OCTA is SPONSOR for 100% of PROJECT.
13. OCTA is the only FUNDING PARTNER for this Agreement.
14. OCTA is the IMPLEMENTING AGENCY for the WORK as identified above including:
 - Preliminary Engineering
 - Permits and Agreements
 - Environmental Activities
 - Preliminary Right of Way Activities
15. CALTRANS is the CEQA lead agency for PROJECT.

16. CALTRANS is the NEPA lead agency for PROJECT.
17. OCTA will prepare and submit for CALTRANS review and approval, all required supplemental documents to the approved FEIR/EIS, Environmental Commitment Record, Record of Decision, Final Project Report, Facts Sheets, and other required supplemental documents, when deemed necessary, to keep the PROJECT in environmental compliance.
18. CALTRANS will provide Independent Quality Assurance (IQA) for the portions of WORK within existing and proposed SHS right-of-way. As the owner and operator of the State Highway System, CALTRANS' will perform said IQA for its benefit only. CALTRANS will process all applicable reviews and, as appropriate, issue required approvals, and within a reasonable time.

SCOPE

Scope: General

19. OCTA will perform all OBLIGATIONS and WORK in accordance with federal and California laws, regulations, and standards; FHWA STANDARDS; and CALTRANS STANDARDS.
20. OCTA will submit a Project Management Plan (PMP) within 30 days from the start of PROJECT COMPONENTS listing the deliverables for PROJECT to be submitted to CALTRANS.
21. CALTRANS retains the right to reject noncompliant WORK, protect public safety, preserve property rights, and ensure that all WORK is in the best interest of the SHS.
22. OCTA will ensure that personnel participating in OCTA OBLIGATIONS are appropriately qualified or licensed to perform the tasks assigned to them.
23. PARTNERS will invite each other to participate in the selection of any consultants who participate in OBLIGATIONS and will review related procurement documents.
24. CALTRANS will issue, upon proper application, the encroachment permits required for WORK within SHS right-of-way.

No activities of any nature associated with the WORK will be performed within the SHS right of way without an encroachment permit being first issued by CALTRANS in the name of the party seeking to perform WORK within the SHS and without appropriate proof of insurance, including a Certificate of Insurance naming the State of California as a first party, additionally-named insured.

25. If OCTA discovers unanticipated cultural, archaeological, paleontological, or other protected resources during the WORK, all WORK in that area will stop and OCTA will

notify CALTRANS within 24 hours of discovery. WORK may only resume after a qualified professional has evaluated the nature and significance of the discovery and a plan is approved for its removal or protection.

26. PARTNERS will hold all administrative drafts and administrative final reports, studies, materials, and documentation relied upon, produced, created, or utilized for PROJECT in confidence to the extent permitted by law and where applicable, the provisions of California Government Code section 6254.5(e) shall protect the confidentiality of such documents in the event that said documents are shared between PARTNERS.

PARTNERS will not distribute, release, or share said documents with anyone other than employees, agents, and consultants who require access to complete PROJECT without the written consent of the PARTNER authorized to release them, unless required or authorized to do so by law.

27. If a PARTNER receives a public records request pertaining to OBLIGATIONS, that PARTNER will notify PARTNERS within five (5) working days of receipt and make PARTNERS aware of any disclosed public documents. PARTNERS will consult with each other prior to the release of any public documents related to the PROJECT.
28. If HM-1 or HM-2 is found during any PROJECT COMPONENT, OCTA will immediately notify CALTRANS.
29. CALTRANS, independent of PROJECT, is responsible for any HM-1 found within the existing SHS right-of-way. CALTRANS will undertake HM MANAGEMENT ACTIVITIES related to HM-1 with minimum impact to PROJECT schedule.
30. If HM-1 is found within PROJECT limits and outside the existing SHS right-of-way, responsibility for such HM-1 rests with the owner(s) of the parcel(s) on which the HM-1 is found. OCTA, in concert with the local agency having land use jurisdiction over the parcel(s), will ensure that HM MANAGEMENT ACTIVITIES related to HM-1 are undertaken with minimum impact to PROJECT schedule.
31. If HM-2 is found within PROJECT limits, the public agency responsible for the advertisement, award, and administration (AAA) of the PROJECT construction contract will be responsible for HM MANAGEMENT ACTIVITIES related to HM-2.
32. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition. It is expressly understood that CALTRANS is not obligated to accept possession of title or property which was formerly outside of the SHS and which is or which may be contaminated with either HM-1 or HM-2.

33. PARTNERS will comply with all of the commitments and conditions set forth in the environmental documentation, environmental permits, approvals, and applicable agreements as those commitments and conditions apply to each PARTNER's responsibilities in this Agreement.
34. Upon OBLIGATION COMPLETION, ownership or title to all materials and equipment constructed or installed for the operations and/or maintenance of the SHS within SHS right-of-way as part of WORK become the property of CALTRANS.
- CALTRANS will not accept ownership or title to any materials or equipment constructed or installed outside SHS right-of-way.
35. OCTA will accept, reject, compromise, settle, defend or litigate any claims, suits or actions related to a an OBLIGATION or PROJECT COMPONENT assumed by OCTA and further agrees to defend, indemnify and hold CALTRANS and its officers harmless for all claims, suits or actions associated with its OBLIGATIONS or PROJECT COMPONENT which OCTA has assumed.
36. CALTRANS, as CEQA and NEPA lead agency for PROJECT, will accept, reject, compromise, settle, defend or litigate any legal challenge to the environmental approval(s) for PROJECT. All legal costs, including but not limited to cost of preparation of an administrative record, attorneys' fees, court costs, expert's fees and incidental expenses associated with defense of such legal challenge shall be considered a PROJECT cost.
37. The parties expressly acknowledge that compromise or settlement of a legal challenge to the environmental approvals may require modification of the PROJECT features or scope. Understanding the discretion vested with CALTRANS, including the discretion described in paragraph 35 above, the parties agree to work cooperatively to reach consensus on any modification of the PROJECT which is contemplated as a result of a legal challenge to the environmental approvals.
38. If OCTA funds any part of OBLIGATIONS with state or federal funds administered by CALTRANS then the following will apply to all funding types included in this Agreement:
- OCTA will maintain, and will ensure that any party hired by OCTA to participate in OBLIGATIONS will maintain, a financial management system that conforms to Generally Accepted Accounting Principles (GAAP), and that can properly accumulate and segregate incurred PROJECT costs and billings.
- OCTA will comply and will ensure that any party hired to participate in OBLIGATIONS will comply with the federal cost principles of 2 CFR Part 225 and federal administrative requirements outlined in 49 CFR Part 18.
- PARTNERS will maintain and make available to each other all OBLIGATIONS-related documents, including financial data, during the term of this Agreement.

PARTNERS have the right to audit each other in accordance with generally accepted governmental audit standards.

CALTRANS, the state auditor, FHWA (if PROJECT utilizes federal funds) and OCTA will have access to all OBLIGATIONS-related records of each PARTNER, and any party hired by a PARTNER to participate in OBLIGATIONS, for audit, examination, excerpt, or transcription.

The examination of any records will take place in the offices and locations where said records are generated and/or stored and will be accomplished during reasonable hours of operation. The auditing PARTNER will be permitted to make copies of any OBLIGATIONS-related records needed for the audit.

The audited PARTNER will review the draft audit, findings, and recommendations, and provide written comments within 30 calendar days of receipt.

Upon completion of the final audit, PARTNERS have 30 days to refund or invoice as necessary in order to satisfy the obligation of the audit.

Any audit dispute not resolved by PARTNERS is subject to mediation. Mediation will follow the process described in the General Conditions section of this Agreement.

OCTA will undergo an annual audit in accordance with the Single Audit Act of OMB Circular A-133.

Any other party hired to participate in OBLIGATIONS will conduct a pre-award audit of that party in accordance with the *Local Assistance Procedures Manual*.

39. If WORK stops for any reason, OCTA will place PROJECT right-of-way in a safe and operable condition acceptable to CALTRANS.
40. If WORK stops for any reason, OCTA will continue to implement all of its applicable commitments and conditions included in the PROJECT environmental documentation, permits, agreements, or approvals that are in effect at the time that WORK stops, as they apply to OCTA's responsibilities in this Agreement, in order to keep PROJECT in environmental compliance until WORK resumes.
41. OCTA will furnish CALTRANS with all relevant deliverables and history files within one hundred eighty (180) days following the completion of each PROJECT COMPONENT.

Scope: Environmental Permits, Approvals and Agreements

42. Each PARTNER identified in the Environmental Permits table below accepts the responsibility to complete the assigned activities. If PARTNERS later determine that an environmental permit, approval or agreement is necessary PARTNERS will amend this Agreement to ensure completion and implementation of all environmental permits, approvals, and agreements. OCTA and Caltrans are Co-Permittees for work done within State Right of Way.

ENVIRONMENTAL PERMITS						
PERMIT	COORD.	PREPARE	OBTAIN	IMPLEMENT	RENEW	AMEND
404 USACOE	CT	OCTA	OCTA	OCTA/CT	OCTA	OCTA
401 RWQCB	CT	OCTA	OCTA	OCTA/CT	OCTA	OCTA
1602 Permit	CT	OCTA	OCTA	OCTA/CT	OCTA	OCTA
NPDES SWRCB	OCTA/CT	OCTA	OCTA	OCTA/CT	OCTA	OCTA
Dewatering - RWQCB	OCTA/CT	OCTA	OCTA	OCTA	OCTA	OCTA
Orange County Health Care Agency	OCTA/CT	OCTA	OCTA	OCTA	OCTA	OCTA
Orange County Flood Control District	OCTA	OCTA	OCTA	OCTA	OCTA	OCTA
US Navy	OCTA/CT	OCTA	OCTA	OCTA/CT	OCTA	OCTA
Cities of Costa Mesa, Fountain Valley, Huntington Beach, Garden Grove, Seal Beach, Westminster, Los Alamitos, Long Beach and Community of Rossmoor	OCTA	OCTA	OCTA	OCTA	OCTA	

Scope: Right of Way Activities

43. OCTA will make all necessary arrangements with utility owners for the timely accommodation, protection, relocation, or removal of any existing utility facilities that conflict with construction of PROJECT or that violate CALTRANS’ encroachment policy.
44. OCTA will provide a land surveyor licensed in the State of California to be responsible for surveying and right of way engineering. All survey and right of way engineering documents will bear the professional seal, certificate number, registration classification, expiration date of certificate, and signature of the responsible surveyor.
45. OCTA will use a properly licensed consultant for all right of way activities. A qualified right of way agent will administer all right of way consultant contracts.
46. OCTA will maintain any part of PROJECT located outside of State right of way until acceptance of any such part of PROJECT into SHS.

47. All surveying and mapping work affecting the existing or proposed State right of way in the PROJECT area shall be in accordance with the instructions and procedures contained in the *Caltrans, District 12 R/W Engineering Requirements for the Preparation of Documents and Maps*, herein after referred to as “REQUIREMENTS”, published by Caltrans, District 12, R/W Engineering (D12 RWE), which by this reference is incorporated into this document and made a part hereof. A copy of the REQUIREMENTS can be obtained from the Chief of D12RWE. WORK shall not be considered complete until the Chief of D12RWE has approved for the work for inclusion into D12RWE files.

COST

Cost: General

48. All costs associated with completing the PROJECT COMPONENTS, except where otherwise noted in this agreement, are the responsibility of OCTA including, but not limited to:
- Legal challenges relating to any OBLIGATION described in this Agreement, including costs, fees, awards, judgments, settlements, fines, interest, or penalties.
 - Public meetings.
 - Preliminary engineering
 - Permits and agreements
 - Environmental activities
 - Right of Way activities
 - Placement of the PROJECT right of way in a safe and operable condition
 - HM management activities related to HM2
49. CALTRANS, independent of PROJECT, and consistent with Legislative appropriations and existing budget capacity will pay, or cause to be paid, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within the existing SHS right-of-way.
50. Independent of PROJECT, all costs for HM MANAGEMENT ACTIVITIES related to HM-1 found within PROJECT limits and outside the existing SHS right-of-way will be the responsibility of the owner(s) of the parcel(s) where the HM-1 is located.
51. Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its own IQA for WORK done within existing or proposed future SHS right-of-way.
- Independent of OBLIGATIONS cost, CALTRANS will fund the cost of its QC/QAP process review for environmental documentation.

52. CALTRANS will provide encroachment permits to PARTNERS, their contractors, consultants and agents, at “no cost”. “No cost” is not meant to preclude the application of ordinary permit conditions, such as requirements for obtaining insurance coverage.
53. The cost for PROJECT COMPONENTS is an OCTA obligation and the cost for IQA is a CALTRANS obligation.

Cost: Right of Way Activities

54. OCTA will determine the cost to positively identify and locate, protect, relocate, or remove any utility facilities whether inside or outside SHS right-of-way in accordance with federal and California laws and regulations, and CALTRANS’ policies, procedures, standards, practices, and applicable agreements, including but not limited to, Freeway Master Contracts.

SCHEDULE

55. OCTA will manage the schedule for OBLIGATIONS through the work plan included in the PROJECT MANAGEMENT PLAN.

GENERAL CONDITIONS

56. PARTNERS understand that this Agreement is in accordance with and governed by the Constitution and laws of the State of California. This Agreement will be enforceable in the State of California. Any PARTNER initiating legal action arising from this Agreement will file and maintain that legal action in the Superior Court of the county in which the CALTRANS district office that is signatory to this Agreement resides, or in the Superior Court of the county in which PROJECT is physically located.
57. All OBLIGATIONS of CALTRANS under the terms of this Agreement are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission.
58. When CALTRANS performs IQA activities it does so for its own benefit. No one can assign liability to CALTRANS due to its IQA activities.
59. Neither OCTA nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS under this Agreement.

It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless OCTA and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of

liability occurring by reason of anything done or omitted to be done by CALTRANS and/or its agents under this Agreement.

60. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by OCTA and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon OCTA under this Agreement.

It is understood and agreed that OCTA, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by OCTA and/or its agents under this Agreement.

61. PARTNERS do not intend this Agreement to create a third party beneficiary or define duties, obligations, or rights in parties not signatory to this Agreement. PARTNERS do not intend this Agreement to affect their legal liability by imposing any standard of care for fulfilling OBLIGATIONS different from the standards imposed by law.
62. PARTNERS will not assign or attempt to assign OBLIGATIONS to parties not signatory to this Agreement.
63. PARTNERS will not interpret any ambiguity contained in this Agreement against each other. PARTNERS waive the provisions of California Civil Code section 1654.
64. A waiver of a PARTNER's performance under this Agreement will not constitute a continuous waiver of any other provision. An amendment made to any article or section of this Agreement does not constitute an amendment to or negate all other articles or sections of this Agreement.
65. A delay or omission to exercise a right or power due to a default does not negate the use of that right or power in the future when deemed necessary.
66. If any PARTNER defaults in its OBLIGATIONS, a non-defaulting PARTNER will request in writing that the default be remedied within 30 calendar days. If the defaulting PARTNER fails to do so, the non-defaulting PARTNER may initiate dispute resolution.
67. PARTNERS will first attempt to resolve Agreement disputes at the PROJECT team level. If they cannot resolve the dispute themselves, the CALTRANS district director and the executive officer of OCTA will attempt to negotiate a resolution. If PARTNERS do not reach a resolution, PARTNERS' legal counsel will initiate mediation. PARTNERS agree to participate in mediation in good faith and will share equally in its costs.

68. Neither the dispute nor the mediation process relieves PARTNERS from full and timely performance of OBLIGATIONS in accordance with the terms of this Agreement. However, if any PARTNER stops fulfilling OBLIGATIONS, any other PARTNER may seek equitable relief to ensure that OBLIGATIONS continue.

Except for equitable relief, no PARTNER may file a civil complaint until after mediation, or 90 calendar days after filing the written mediation request, whichever occurs first.

PARTNERS will file any civil complaints in the Superior Court of the county in which the CALTRANS district office signatory to this Agreement resides or in the Superior Court of the county in which PROJECT is physically located. The prevailing PARTNER will be entitled to an award of all costs, fees, and expenses, including reasonable attorney fees as a result of litigating a dispute under this Agreement or to enforce the provisions of this article including equitable relief.

69. PARTNERS maintain the ability to pursue alternative or additional dispute remedies if a previously selected remedy does not achieve resolution.
70. If any provisions in this Agreement are found by a court of competent jurisdiction to be, or are in fact, illegal, inoperative, or unenforceable, those provisions do not render any or all other Agreement provisions invalid, inoperative, or unenforceable, and those provisions will be automatically severed from this Agreement.
71. PARTNERS intend this Agreement to be their final expression and supersedes any oral understanding or writings pertaining to OBLIGATIONS.
72. If during performance of WORK additional activities or environmental documentation is necessary to keep PROJECT in environmental compliance, PARTNERS will amend this Agreement to include completion of those additional tasks.
73. If the work performed on this PROJECT is done under contract and falls within Labor Code section 1720(a)(1) definition of a “public work” in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771 OCTA must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations, Title 8, Chapter 8, Subchapter 3, Articles 1-7. OCTA agrees to include prevailing wage requirements in its contracts for public work. Work performed by OCTA’s own forces is exempt from the Labor Code’s Prevailing Wage requirements. OCTA shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a “public work” as defined in Labor Code section 1720(a)(1) and Labor Code section 1771. Subcontracts shall include all prevailing wage requirements set forth in OCTA’s contracts.

12-ORA-405 PM 9.3/24.2 / 07-LA-405 PM 0.0/1.2
12-ORA-22 PM R0.7/R3.8 / 12-ORA-22 PM R0.5/R0.7
12-ORA-73 PM R27.2/R27.8 / 12-ORA-605 PM 3.5/R1.6
07-LA-605 PM R0.0/R1.
EA: 0H100
Project Number: 1200000180
Agreement 12-0670
OCTA Agreement No. C-2-2145

74. Except as otherwise provided in the Agreement, PARTNERS will execute a formal written amendment if there are any changes to OBLIGATIONS.

75. PARTNERS agree to sign a COOPERATIVE AGREEMENT CLOSURE STATEMENT to terminate this Agreement. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, maintenance and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

DEFINITIONS

CALTRANS – The California Department of Transportation

CALTRANS STANDARDS – CALTRANS policies and procedures, including, but not limited to, the guidance provided in the *Guide to Capital Project Delivery Workplan Standards* (previously known as WBS Guide) available at www.dot.ca.gov/hq/projmgmt/guidance.htm. The Guide lists every activity in the CALTRANS work breakdown structure and references the manuals, policies, procedures, memos, and any other resource that direct those activities.

CEQA (California Environmental Quality Act) – The act (California Public Resources Code, sections 21000 et seq.) that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those significant impacts, if feasible.

CFR (Code of Federal Regulations) – The general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government

COOPERATIVE AGREEMENT CLOSURE STATEMENT – A document signed by PARTNERS that verifies the completion of all OBLIGATIONS included in this Agreement and in all amendments to this Agreement.

FHWA – Federal Highway Administration

FHWA STANDARDS – FHWA regulations, policies and procedures, including, but not limited to, the guidance provided at www.fhwa.dot.gov/topics.htm.

FUNDING PARTNER – A PARTNER that commits funds to complete all OBLIGATIONS for this Agreement.

FUNDING SUMMARY – A document separate from this Agreement that documents the details of funding and billing/payment arrangements. Details include, but are not limited to, fund source, fund type, payment method, invoice frequency, deposit amounts and PROJECT COMPONENT in which funds are to be spent. Funds listed on the FUNDING SUMMARY are “not-to-exceed” amounts for each FUNDING PARTNER.

GAAP (Generally Accepted Accounting Principles) – Uniform minimum standards and guidelines for financial accounting and reporting issued by the Federal Accounting Standards Advisory Board that serve to achieve some level of standardization. See <http://www.fasab.gov/accepted.html>.

HM-1 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law whether it is disturbed by PROJECT or not.

HM-2 – Hazardous material (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.

HM MANAGEMENT ACTIVITIES – Management activities related to either HM-1 or HM-2 including, without limitation, any necessary manifest requirements and disposal facility designations.

IMPLEMENTING AGENCY – The PARTNER is responsible for managing the scope, cost, and schedule of a PROJECT COMPONENT to ensure the completion of that component.

IQA (Independent Quality Assurance) – Ensuring that IMPLEMENTING AGENCY’s quality assurance activities result in WORK being developed in accordance with the applicable standards and within an established Quality Management Plan (QMP). IQA does not include any work necessary to actually develop or deliver WORK or any validation by verifying or rechecking work performed by another PARTNER.

NEPA (National Environmental Policy Act of 1969) – This federal act establishes a national policy for the environment and a process to disclose the adverse impacts of projects with a federal nexus.

OBLIGATION COMPLETION – PARTNERS have fulfilled all OBLIGATIONS included in this Agreement, and all amendments to this Agreement, and have signed a COOPERATIVE AGREEMENT CLOSURE STATEMENT.

OBLIGATIONS – All responsibilities included in this Agreement.

OMB (Office of Management and Budget) – This federal office oversees the preparation of the federal budget and supervises its administration in Executive Branch agencies.

PARTNER – Any individual signatory party to this Agreement.

PARTNERS – The term that collectively references all of the signatory agencies to this Agreement. This term only describes the relationship between these agencies to work together to achieve a mutually beneficial goal. It is not used in the traditional legal sense in which one PARTNER’s individual actions legally bind the other PARTNER.

PSA (Program Supplement Agreement) – The document executed for PROJECT between OCTA and the Caltrans’ Division of Local Assistance that authorizes payment and billing to occur with locally sponsored state and federal funds..

PROJECT COMPONENT – A distinct portion of the planning and project development process of a capital project as outlined in California Government Code, section 14529(b).

- **PID (Project Initiation Document)** – The activities required to deliver the project initiation document for PROJECT.

- **PA&ED (Project Approval and Environmental Document)** – The activities required to deliver the project approval and environmental documentation for PROJECT.
- **PS&E (Plans, Specifications, and Estimate)** – The activities required to deliver the plans, specifications, and estimate for PROJECT.
- **R/W (Right-of-way) SUPPORT** – The activities required to obtain all property interests for PROJECT.
- **R/W (Right-of-way) CAPITAL** – The funds for acquisition of property rights for PROJECT.
- **CONSTRUCTION SUPPORT** – The activities required for the administration, acceptance, and final documentation of the construction contract for PROJECT.
- **CONSTRUCTION CAPITAL** – The funds for the construction contract.

PROJECT MANAGEMENT PLAN – A group of documents used to guide a project’s execution and control throughout that project’s lifecycle.

PS&E (Plans, Specifications, and Estimate) – See PROJECT COMPONENT.

QMP (Quality Management Plan) – An integral part of the PROJECT MANAGEMENT PLAN that describes IMPLEMENTING AGENCY’s quality policy and how it will be used.

QC/QAP (QUALITY CONTROL/QUALITY ASSURANCE PROGRAM) – Per NEPA assignment CALTRANS will review all environmental documents as described in the Jay Norvell Memos dated October 1, 2012 (available at <http://www.dot.ca.gov/ser/memos.htm>). This also includes the independent judgment analysis and determination under CEQA and NEPA that the environmental documentation meets statutory and regulatory requirements.

SHS (State Highway System) – All highways, right-of-way, and related facilities acquired, laid out, constructed, improved, or maintained as a state highway pursuant to constitutional or legislative authorization.

SPONSOR – Any PARTNER that accepts the responsibility to establish scope of PROJECT and the obligation to secure financial resources to fund PROJECT. SPONSOR is responsible for adjusting the PROJECT scope to match committed funds or securing additional funds to fully fund the PROJECT scope. If a PROJECT has more than one SPONSOR, funding adjustments will be made by percentage (as outlined in Responsibilities). Scope adjustments must be developed through the project development process and must be approved by CALTRANS as the owner/operator of the SHS.

WORK – All scope activities included in this Agreement.

12-ORA-405 PM 9.3/24.2 / 07-LA-405 PM 0.0/1.2
12-ORA-22 PM R0.7/R3.8 / 12-ORA-22 PM R0.5/R0.7
12-ORA-73 PM R27.2/R27.8 / 12-ORA-605 PM 3.5/R1.6
07-LA-605 PM R0.0/R1.
EA: 0H100
Project Number: 1200000180
Agreement 12-0670
OCTA Agreement No. C-2-2145

CONTACT INFORMATION

The information provided below indicates the primary contact information for each PARTNER to this Agreement. PARTNERS will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this Agreement.

The primary Agreement contact person for CALTRANS is:

Ahmad Hindiyeh, Project Manager
3347 Michelson Drive, Suite 100
Irvine, CA 92612
Office Phone: 949-724-2465
Mobile Phone: 949-279-8559
Email: Ahmad.Hindiyeh@dot.ca.gov

The primary Agreement contact person for OCTA is:

Niall Barrett, Program Manager
550 South Main Street
Orange, CA 92863
Office Phone: 714-560-5879
Email: NBarrett@octa.net

SIGNATURES

PARTIES declare that:

1. Each party is an authorized legal entity under California state law.
2. Each party has the authority to enter into this Agreement.
3. The people signing this Agreement have the authority to do so on behalf of their public agencies.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

ORANGE COUNTY
TRANSPORTATION AUTHORITY

By: _____
LISA RAMSEY
Acting Deputy District Director
Capital Projects Outlay Program

By: _____
DARRELL JOHNSON
Chief Executive Officer

CERTIFIED AS TO FUNDS:

ATTEST:

By: _____
NEDA SABER ANSARI
District Budget Manager

By: _____
KENNARD R. SMART, JR.
Authority General Counsel

APPROVED AS TO FORM AND
PROCEDURE:

APPROVED AS TO FORM AND
PROCEDURE:

By: _____
GLENN B. MUELLER
ASSISTANT CHIEF COUNSEL

By: _____
JIM BEIL, P.E.
Executive Director
Capital Programs

By: _____
HQ ACCOUNTING

DRAFT

ATTACHMENT 1

**CALTRANS IQA PROJECT COMPONENTS
 WBS LEVELS 5, 6, 7**

5	6	7	Description
170			Permits, Agreements, and Route Adoptions
	10		Permits
		60	Updated ECR
	20		Freeway Agreements
		05	Draft Freeway Agreement
		10	Draft Freeway Agreement Review
		15	Final Freeway Agreement
		20	Executed Freeway Agreement
		99	Other Freeway Agreement Products
180			Prepare and Approve Project Report and Final Environmental Document
	15		Completed Environmental Document
		20	Environmental Commitments Record
185			Prepare Base Maps and Plan Sheets
	05		Updated Project Information
		05	Project Concept Review
		10	Updated Project Information
		99	Other Updated Project Information Products
	10		Engineering and Photogrammetric Surveys
		50	Control Surveys
		60	Engineering Surveys
		65	As-Built Centerline Surveys
		70	Pavement Surveys
	15		Preliminary Design
		05	Roadway and Miscellaneous Design
		10	Proposed Geometrics Review
		15	Requests for Exceptions to Design Standards
		20	Value Analysis
		99	Other Preliminary Design Products
	20		Engineering Reports
		05	Traffic Data Analysis and Forecasts
		10	Preliminary Hydrology and Hydraulic Reports
		15	Preliminary Geotechnical Design Report (PGDR)
		20	Preliminary Pavement Design Report
		25	Preliminary Materials Report
		30	Soundwall Design Report
		35	Updated Transportation Management Plan for Design Phase
		40	Utility Locations Determined for Design
185			Prepare Base Maps and Plan Sheets (continued)

5	6	7	Description
		99	Right Of Way Requirements Determination
	25		Right Of Way Requirements Determination
		05	Project Review with Affected Agencies
		10	Fee and Easement Requirements Determination
		15	Right of Way Requirements Maps
		20	Final Railroad Involvement Determination
		25	Water Well Abandonment Needs Determination
		30	Utility Conflict Maps
	30		Structure Site Plans
		10	Site Plans for Bridges and Structures
		15	Site Plans for Retaining Walls/Non-standard Earth Retention Systems
		20	Site Plans for Soundwalls on Retaining Systems or Structures
		25	Site Plans for Pumping Plants
		30	Site Plans for Special-Design Culverts
	99		Other Base Maps and Plan Sheets Products
205			Permits and Agreements
	05		Updated Required Permits
	10		Permits
		05	U.S. Army Corp of Engineers Permit (404)
		20	Department of Fish and Game 1600 Agreement(s)
		30	Local Agency Concurrence/Permit
			City of Costa Mesa
			City of Fountain Valley
			City of Huntington Beach
			City of Garden Grove
			City of Seal Beach
		40	Waste Discharge (NPDES) Permit(s)
		50	Regional Water Quality Control Board 401 Permit
		60	Updated ECR
		95	Other Permits
			Santa Ana Water Control Board
			Orange County Health Care Agency
			Orange County Flood Control District
			U.S. Navy
			Other
	15		Railroad Agreements
		05	Plan Approval
		10	Special Provisions and Insurance Clauses
		15	Service Contract for Railroad Services
		20	Construction and Maintenance Agreements
		25	PUC Exhibits and Applications
		99	Other Railroad Agreement Products
	30		Executed Maintenance Agreement
	45		MOU from Tribal Employment Rights Office (TERO)
200			Utility Relocation

5	6	7	Description
	15		Approved Utility Relocation Plan
	20		Utility Relocation Package (exluding Notice to Owner)
	99		Other Utility Relocation Products
220			Right of Way Engineering
	05		Existing Land Net
		05	Existing Records
		10	Land Net Survey
		25	Monumentation Perpetuation Record of Survey
	10		Land Net Map
	15		Right of Way Maps
		05	Appraisal Maps
		95	Other Maps
		95	Other Deeds and Documents
	35		Field Located Right of Way
		05	Flagged Right of Way
		10	Staked Right of Way
225			Obtain Right of Way Interests for Project Right of Way Certification
	50		Parcel and Project Documentation
	60		Right of Way Appraisals
230			Prepare Draft PS&E
	35		Draft Specifications
		05	Roadway Specifications
		10	Highway Planting Specifications
		15	Traffic Specifications
		20	Electrical Specifications
		25	Utility Specifications
		30	Hydraulic Specifications
		35	Water Pollution Control Specifications
		40	Erosion Control Specifications
		99	Other Draft Specification Products
235			Mitigate Environmental Impacts and Clean-up Hazardous Waste
	35		Long Term Mitigation Monitoring
	40		Updated Environmental Commitments Record
255			Circulate, Review and Prepare Final District PS&E Package
	15		Environmental Reevaluation
	40		Resident Engineer's Pending File