



ORANGE COUNTY FIRE AUTHORITY AGENDA

Budget and Finance Committee Meeting

Wednesday, April 14, 2021

12:00 Noon

Regional Fire Operations and Training Center

Board Room

1 Fire Authority Road
Irvine, California 92602

Joe Muller, Chair

Tri Ta, Vice Chair

Ed Sachs • Shelley Hasselbrink • Gene Hernandez
Mark Tettermer • John O'Neill • Anthony Kuo • Troy Bourne
Jennifer Cervantez, Ex Officio

This Agenda contains a brief general description of each item to be considered. Except as otherwise provided by law, no action or discussion shall be taken on any item not appearing on the following Agenda. Unless legally privileged, all supporting documents, including staff reports, and any writings or documents provided to a majority of the Budget and Finance Committee after the posting of this agenda are available for review at the Orange County Fire Authority Regional Fire Operations & Training Center, 1 Fire Authority Road, Irvine, CA 92602 or you may contact the Clerk of the Authority at (714) 573-6040 Monday through Thursday, and every other Friday from 8 a.m. to 5 p.m. and available online at <http://www.ocfa.org>.



In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, you should contact the Clerk of the Authority at (714) 573-6040 and identify the need and the requested modification or accommodation. Please notify us as soon as is feasible, however 48 hours prior to the meeting is appreciated to enable the Authority to make reasonable arrangements to assure accessibility to the meeting.

NOTICE REGARDING PUBLIC PARTICIPATION DURING COVID-19 EMERGENCY

During the Statewide COVID-19 Emergency, the public is not permitted to convene in person for this public meeting. However, the public may still view and comment on the meeting as follows:

- To watch the meeting online, please go to website at www.OCFA.org
- To submit an e-comment, please email to PublicComments@ocfa.org

You may comment on items on the agenda or not on the agenda. Your comments will be forwarded electronically and immediately to the members of the Committee. Comments related to a particular agenda item will only be considered prior to the close of public comments on that item.

CALL TO ORDER – Chair Muller

PLEDGE OF ALLEGIANCE - Director Tettermer

ROLL CALL – Clerk of the Authority

PUBLIC COMMENTS

Please refer to instructions on how to submit a public comment during COVID-19 Emergency on Page 1 of this Agenda.

1. PRESENTATION

A. OCFA's Pension Liability, Accelerated Pension Paydown Plan and New Contract Cities

2. CONSENT CALENDAR

All matters on the consent calendar are considered routine and are to be approved with one motion unless a Director or a member of the public requests separate action on a specific item.

A. Minutes for the March 10, 2021, Regular Budget and Finance Committee Meeting

Submitted by: Maria Huizar, Clerk of the Authority

The record will reflect that any Director not in attendance at the meeting of the Minutes will be registered as an abstention, unless otherwise indicated.

Recommended Action:

Approve as submitted.

B. Minutes for the March 10, 2021, Special Budget and Finance Committee Meeting

Submitted by: Maria Huizar, Clerk of the Authority

The record will reflect that any Director not in attendance at the meeting of the Minutes will be registered as an abstention, unless otherwise indicated.

Recommended Action:

Approve as submitted.

C. Monthly Investment Reports

Submitted by: Tricia Jakubiak, Treasurer

Recommended Action:

Review the proposed agenda item and direct staff to place the item on the agenda for the Executive Committee meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Executive Committee receive and file the reports.

3. DISCUSSION CALENDAR

A. Communication with Auditors for Fiscal Year 2020/21 Financial Audit

Submitted by: Robert Cortez, Assistant Chief/Business Services Department and Julie Nemes, Finance Manager/Auditor

Recommended Action:

Receive and file the report.

B. Update on Public Works Procurement Procedures to Incorporate Best Practices

Submitted by: Robert Cortez, Assistant Chief/Business Services Department and Sara Kennedy, Purchasing Manager

Recommended Action:

Receive and file the report.

C. Review of Purchasing Ordinance and Purchasing Provisions of Roles/Responsibilities/Authorities Matrix

Submitted by: Lori Zeller, Deputy Chief and Robert Cortez, Assistant Chief/Business Services Department and Sara Kennedy, Purchasing Manager

Recommended Action:

Direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors receive and file the report.

D. Quick Reaction Force (QRF) Pilot Program

Submitted by: Brian Fennessy, Fire Chief

Recommended Actions:

Direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors:

1. Approve the Funding Agreement with Southern California Edison in a form substantially consistent with the attachment and approved by legal counsel to accept funding in the amount of \$7,725,000 to fund the Quick Reaction Force Pilot Program for 150-days and an additional \$1,545,000 for a 30-day program extension. Funds will cover the cost of the daily standby lease for one CH-47 Helitanker, daily standby lease for one S-76 Aerial Supervision aircraft, Air Tactical Group Supervisors, and standby lease for one mobile retardant plant to enhance the effectiveness of aerial responses to wildland fires.
2. Approve and authorize the Purchasing Manager to execute the Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc. in a form substantially consistent with the attachment and approved by legal counsel utilizing the sole source procurement provision in the Purchasing Ordinance for the provision of aircraft and other operational related services in an amount not to exceed \$8,710,000.

3. Approve and authorize the Purchasing Manager to enter into new Professional Services Agreements with Perimeter Solutions in a form substantially consistent with the attachment and approved by legal counsel utilizing the sole source procurement provision in the Purchasing Ordinance for the provision of a mobile fire retardant plant and related services in an amount not to exceed \$1,490,000.
4. Approve and authorize the Purchasing Manager to enter into new Professional Services Agreements with the Air Tactical Group Supervisors (ATGS) in a form substantially consistent with the attachment and approved by legal counsel at annual amounts not to exceed \$250,000 each with an aggregate program spending cap not to exceed \$720,000.
5. Approve and authorize a FY 2020/21 General Fund (121) budget adjustment to recognize funding from SCE for a revenue increase of \$9,270,000 and to increase appropriations by the same amount.
6. Approve the updated Cost Reimbursement Rate schedule to include the CH-47 Helitanker and S-76 Helitanker hourly flight rates, and mobile fire retardant plant rates to be effective June 15, 2021.
7. Adopt an exemption from the California Environmental Quality Act (CEQA) pursuant to Title 14, California Code of Regulations, Section 15301 (Existing Facilities) and direct staff to file a Notice of Exemption.

E. Fiscal Year 2019/20 Backfill/Overtime and Calendar Year 2020 Total Earnings/Compensation Analysis

Submitted by: Robert Cortez, Assistant Chief/Business Services Department and Julie Nemes, Finance Manager/Auditor

Recommended Actions:

Review the proposed agenda item and direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors take the following actions:

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies as quickly as possible after the positions become vacant.
2. Authorize staff to temporarily exceed the number of authorized firefighter positions on the Master Position Control to maximize the number of firefighters hired into each academy, pending attrition/promotions that occur during and following academy graduations.
3. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.

REPORTS

No Items.

COMMITTEE MEMBER COMMENTS

ADJOURNMENT – The next regular meeting of the Budget and Finance Committee is scheduled for Wednesday, May 12, 2021, at 12:00 noon.

AFFIDAVIT OF POSTING

I hereby certify under penalty of perjury and as required by the State of California, Government Code § 54954.2(a), that the foregoing Agenda was posted in the lobby and front gate public display case of the Orange County Fire Authority, Regional Fire Operations and Training Center, 1 Fire Authority Road, Irvine, CA, not less than 72 hours prior to the meeting.

Maria D. Huizar, CMC
Clerk of the Authority

UPCOMING MEETINGS:

Executive Committee

Thursday, April 22, 2021, 5:30 p.m.

Board of Directors

Thursday, April 22, 2021, 6:00 p.m.

Human Resources Committee

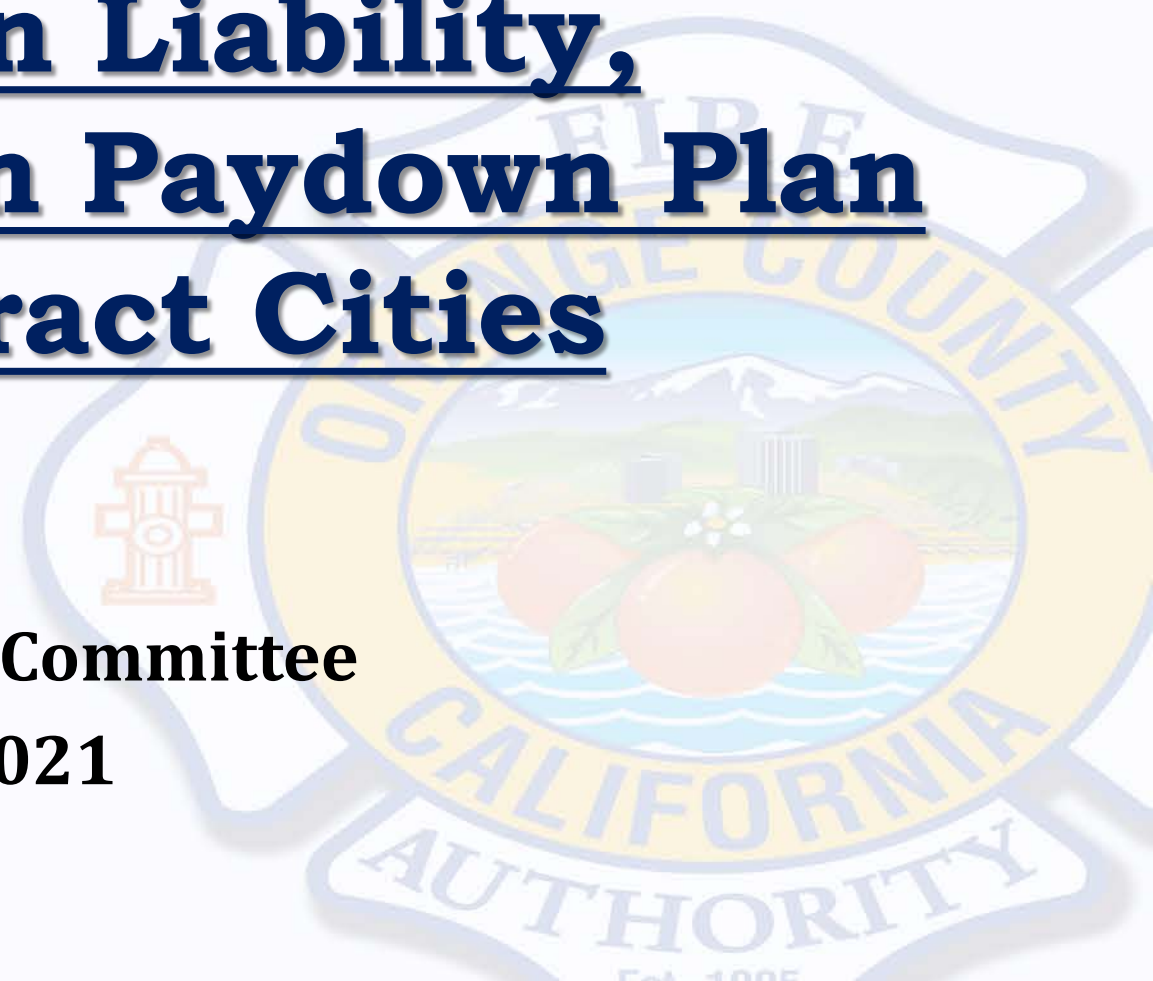
Tuesday, May 4, 2021, 12 noon

Orange County Fire Authority

OCFA's Pension Liability, **Accelerated Pension Paydown Plan** **and New Contract Cities**

Budget & Finance Committee

April 14, 2021



Funding OCFA's Pension Liability – The Basics

- **When cash contract cities join OCFA, their contract charge with OCFA does not reflect any share of OCFA's past pension liability, nor any share of OCFA's accelerated pension paydown plan**
- **Cash contract cities remain responsible for their past accrued pension liability w/PERS, which developed before they joined OCFA, and they continue making pension liability payments to PERS after joining OCFA**
- **New elements of pension liability with OCFA/OCERS that occur after the city joins OCFA (such as OCERS' investment losses) do get added as part of the annual increases to the cash contract cities' charges with OCFA**
- **The following slides demonstrate the mechanics of how this works**

Funding OCFA's Pension Liability – The Basics

- **OCFA funds its employee pension plans by paying the retirement contribution rates established by OCERS**
- **Retirement contribution rates are comprised of two components; a Normal Cost component and an Unfunded Actuarial Accrued Liability (UAAL) component**
 - **Normal Cost covers the value of future retirement benefits earned during the current year of service, based on assumptions about the future**
 - **UAAL covers accrued liability for benefits previously earned, when actual “real-life” results differed from assumptions**

Funding OCFA's Pension Liability – The Basics

- **OCERS uses an annual actuarial study to determine the retirement contribution rates**
- **Every year, the actuarial study identifies financial gains or losses associated with the prior calendar year**
- **Annual gains or losses occur as a result of actual “real-life” results differing from what was previously assumed**
- **Annual gains create a financial layer that reduces the UAAL**
- **Annual losses create a financial layer that increases the UAAL**

Funding OCFA's Pension Liability – The Basics

- Every year, the new layer of gains or losses:
 - Gets amortized over the following 20 years
 - Impacts the UAAL component of retirement contribution rates for the next 20 years
 - If the layer is a gain, then the UAAL component of the employer's retirement contribution rate is reduced
 - If the layer is a loss, then the UAAL component of the employer's retirement contribution rate is increased

Funding OCFA's Pension Liability – The Basics

- **Every year, the new layer of annual gains or losses is comprised of several itemized gain/loss impacts, such as:**
 - **Was OCERS' investment return more or less than assumed?**
 - **Did the employer provide higher or lower cost-of-living-adjustment salary increases than assumed?**
 - **Did employees receive higher or lower merit salary increases than assumed?**
 - **Did the employer add employees resulting in payroll growth that was greater than assumed?**

Reconciliation of Employer Contributions for Safety Members

2019 Segal Study

	RG #6	RG #7	RG #8
1. Aggregate Recommended Contribution Rate as of December 31, 2018 (before adjustments for additional UAAL contributions and phase-in)	57.36%	66.64%	48.99%
2. Adjustment to FY20-21 rates for additional UAAL contributions from OCSD and TCA	0.00%	0.00%	0.00%
3. Effect of three-year phase-in of UAAL cost impact due to changes in actuarial assumptions	<u>-2.13%</u>	<u>-1.85%</u>	<u>-1.15%</u>
4. Aggregate Recommended Contribution Rate as of December 31, 2018 (after adjustments for additional UAAL contributions and phase-in)	55.23%	64.79%	47.84%
5. Actuarial (gain)/loss items:			
a. Effect of investment loss (after smoothing)	0.24%	0.26%	0.23%
b. Effect of additional UAAL contributions from OCFA	0.00%	0.00%	-0.60%
c. Effect of \$18.6 million asset transfer from O.C. Sanitation District UAAL Deferred Account	0.00%	0.00%	0.00%
d. Effect of difference in actual versus expected contributions (including loss from phase-in)	0.90%	0.41%	0.16%
e. Effect of difference in actual versus expected COLA increases	0.53%	0.73%	0.52%
f. Effect of difference in actual versus expected salary increases	-0.87%	0.31%	0.30%
g. Effect of growth in total payroll (greater)/less than expected	1.74%	-0.85%	-1.82%
h. Effect of other experience (gain)/loss ^{1,2}	-0.21%	0.05%	0.93%
i. Effect of three-year phase-in of UAAL cost impact due to changes in actuarial assumptions	<u>2.13%</u>	<u>1.85%</u>	<u>1.15%</u>
j. Subtotal	4.46%	2.76%	0.87%
6. Aggregate Recommended Contribution Rate as of December 31, 2019	59.69%	67.55%	48.71%

RG #8 = OCFA
Safety

Funding OCFA's Pension Liability – The Rates

Rates Calculated by OCERS (excludes snowball plan)

- **OCFA Safety Members – FY 2021/22:**

- Normal Cost Component: 24.92%
- UAAL Component: 23.79%
- Total Retirement Contribution Rate: 48.71% *(See Slide 7)*

- **OCFA Non-Safety Members – FY 2021/22:**

- Normal Cost Component: 12.64%
- UAAL Component: 14.06%
- Total Retirement Contribution Rate: 26.70%

Funding OCFA's Pension Liability – The Rates

Valuation Date (12/31/19) Rates Effective Fiscal Year 2021/22	
Rate Group #8 - OCFA Safety	
Retirement Rate per Segal Study	48.71
Remove Effect of Additional UAAL Contribution - 2019	0.60
Remove Effect of Additional UAAL Contribution - 2018	0.73
Remove Effect of Additional UAAL Contribution - 2017	1.02
Remove Effect of Additional UAAL Contribution - 2016	0.27
Remove Effect of Additional UAAL Contribution - 2015	0.99
Remove Effect of Additional UAAL Contribution - 2014	1.19
Adjusted Retirement Contribution Rate	53.51
<i>Increase to Segal calculated rate, voluntarily paid by OCFA, to ensure "Acceleration" is not negated</i>	4.80
Rate Group #10 - OCFA Non-Safety	
Retirement Rate per Segal Study	26.70
Remove Effect of Additional UAAL Contribution - 2019	1.55
Remove Effect of Additional UAAL Contribution - 2018	2.63
Remove Effect of Additional UAAL Contribution - 2017	3.92
Remove Effect of Additional UAAL Contribution - 2016	0.15
Remove Effect of Additional UAAL Contribution - 2015	0.80
Remove Effect of Additional UAAL Contribution - 2014	1.17
Adjusted Retirement Contribution Rate	36.92
<i>Increase to Segal calculated rate, voluntarily paid by OCFA, to ensure "Acceleration" is not negated</i>	10.22

See slide 7

Funding OCFA's Pension Liability – The Rates

Budgeted and Paid to OCERS (excludes snowball plan)

- **OCFA Safety Members – FY 2021/22:**

○ Normal Cost Component:	24.92%
○ <u>UAAL Component:</u>	23.79% + 4.80%
○ Total Retirement Contribution Rate:	48.71% = 53.51%

- **OCFA Non-Safety Members – FY 2021/22:**

○ Normal Cost Component:	12.64%
○ <u>UAAL Component:</u>	14.06% + 10.22%
○ Total Retirement Contribution Rate:	26.70% = 36.92%

Funding OCFA's Pension Liability – The Rates

- The process of removing the “gain” effect of the accelerated payments from our regular – non-snowball – payments to OCERS ensures that:
 - The gain doesn't get spread across the future 20 years, effectively negating our “acceleration” from the snowball plan
 - New cash contract cities (Santa Ana, Garden Grove, and any future new cities) are paying for any new elements of loss/liability that may develop after they join, without having the snowball payments offset that loss/liability element

Questions?



MINUTES ORANGE COUNTY FIRE AUTHORITY

Budget and Finance Committee Regular Meeting

Wednesday, March 10, 2021

12:00 Noon

Regional Fire Operations and Training Center

Board Room

1 Fire Authority Road

Irvine, CA 92602

CALL TO ORDER

A regular meeting of the Orange County Fire Authority Budget and Finance Committee was called to order on March 10, 2021, at 12:02 p.m. by Chair Muller.

PLEDGE OF ALLEGIANCE

Director O'Neill led the assembly in the Pledge of Allegiance to our Flag.

ROLL CALL

Present: Joseph Muller, Dana Point - Chair*
Tri Ta, Westminster - Vice Chair*
Gene Hernandez, Yorba Linda*
Shelley Hasselbrink, Los Alamitos*
Anthony Kuo, Irvine*
John O'Neill, Garden Grove*
Mark Tettemer, Lake Forest*

Absent: Troy Bourne, San Juan Capistrano
Ed Sachs, Mission Viejo
Ex-Officio Member, Jennifer Cervantez

Also present were:

Fire Chief Brian Fennessy
Deputy Chief Kenny Dossey
Assistant Chief Stephanie Holloman
Assistant Chief Jim Ruane
Clerk of the Authority Maria Huizar
Dir. of Corp. Comm. Colleen Windsor

Deputy Chief Lori Zeller
Assistant Chief Randy Black
Assistant Chief Lori Smith
Assistant Chief Robert Cortez
General Counsel David Kendig

PUBLIC COMMENTS

Chair Muller opened the Public Comments portion of the meeting. Chair Muller closed the Public Comments portion of the meeting without any comments from the general public.

1. PRESENTATIONS

No items.

2. CONSENT CALENDAR

A. Minutes for the February 10, 2021, Regular Budget and Finance Committee Meeting (FILE 12.02B2)

On motion by Director Hasselbrink and second by Vice Chair Ta, and following a roll call vote, declared passed 7-0 (Directors Bourne and Sachs were absent) to approve as submitted.

B. FY 2020/21 Mid-Year Budget Adjustment (FILE 15.04)

On motion of Director Tettemer and second by Director Kuo, and following a roll call vote, declared passed 7-0 (Directors Bourne and Sachs were absent), to review the proposed agenda item and direct staff to place the item on the agenda for the Board of Directors meeting of March 25, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors authorize the proposed mid-year budget adjustments and transfers as detailed in this report and attachments.

3. DISCUSSION CALENDAR

A. Monthly Investment Reports (FILE 11.10D2)

Tricia Jakubiak presented the Monthly Investment Reports.

On motion of Director Tettemer and second by Director Kuo, and following a roll call vote, declared passed 7-0 (Directors Bourne and Sachs were absent), to review the proposed agenda item and direct staff to place the item on the agenda for the Executive Committee meeting of March 25, 2021, with the Budget and Finance Committee's recommendation that the Executive Committee receive and file the reports.

REPORTS

No Items.

COMMITTEE MEMBER COMMENTS

The Committee Members offered no comments.

ADJOURNMENT – Chair Muller adjourned the meeting at 12:21 p.m. The next regular meeting of the Budget and Finance Committee is scheduled for Wednesday, April 14, 2021, at 12:00 noon.

Maria D. Huizar, CMC
Clerk of the Authority

MINUTES ORANGE COUNTY FIRE AUTHORITY

**Budget and Finance Committee Special Meeting
Wednesday, March 10, 2021
12:00 Noon**

**Regional Fire Operations and Training Center
Board Room
1 Fire Authority Road
Irvine, CA 92602**

CALL TO ORDER

A special meeting of the Orange County Fire Authority Budget and Finance Committee was called to order on March 10, 2021, at 12:22 p.m. by Chair Muller.

PLEDGE OF ALLEGIANCE

Director O'Neill led the assembly in the Pledge of Allegiance to our Flag.

ROLL CALL

Present: Joe Muller, Dana Point, Chair*
Tri Ta, Westminster, Vice Chair*
Shelley Hasselbrink, Los Alamitos*
Gene Hernandez, Yorba Linda*
Anthony Kuo, Irvine*
John O'Neill, Garden Grove*
Mark Tettemer, Lake Forest*

Absent: Troy Bourne, San Juan Capistrano
Ed Sachs, Mission Viejo
Ex-Officio Member, Jennifer Cervantez

Also present were:

Fire Chief Brian Fennessy
Deputy Chief Kenny Dossey
Assistant Chief Randy Black
Assistant Chief Lori Smith
Dir. of Corp. Comm. Colleen Windsor
Clerk of the Authority, Maria D. Huizar

Deputy Chief Lori Zeller
Assistant Chief Robert Cortez
Assistant Chief Stephanie Holloman
Assistant Chief Jim Ruane
General Counsel David Kendig

**Budget and Finance Committee Members participating via teleconferencing.*

PUBLIC COMMENTS

Chair Muller opened the Public Comments portion of the meeting. Chair Muller closed the Public Comments portion of the meeting without any comments from the general public.

1. PRESENTATIONS

A. Budget and Finance Committee Orientation (FILE 12.02B1)

Assistant Chief Robert Cortez provided a PowerPoint Budget and Finance Committee Orientation.

2. CONSENT CALENDAR

No Items.

3. DISCUSSION CALENDAR

B. Authorization to Prepare a Fire & Emergency Services Proposal for the City of Fullerton (FILE 10.03)

Deputy Chief Lori Zeller presented the Authorization to Prepare a Fire & Emergency Services Proposal for the City of Fullerton.

Discussion ensued.

On motion of Director Hernandez and second by Director O'Neill, and following a roll call vote, declared passed 7-0 (Directors Bourne and Sachs were absent) to direct staff to place the item on the agenda for the Board of Directors meeting of March 25, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors:

1. Direct staff to require advance payment from the City of Fullerton in the amount of \$80,207.55 to cover the cost of OCFA staff time to prepare a fire and emergency services proposal.
2. Direct staff, when invoicing the City of Fullerton, to inform the City that should they choose to contract with the OCFA, the \$80,207.55 payment will be applied as a credit towards the City's first month of services with the OCFA.
3. Direct staff to prepare a fire and emergency services proposal for Board consideration for the City of Fullerton upon receipt of the advance payment.
4. Memorialize this advance payment and credit-back process as Board-approved policy for all future requests from local jurisdictions for Fire Service Proposals from OCFA.

C. Approval of Budget Adjustment for the Fire Integrated Real-time Intelligence System (FIRIS) 2.0 Program Extension (FILE 18.09D)

Fire Chief Brian Fennessy presented the Approval of Budget Adjustment for the Fire Integrated Real-time Intelligence System (FIRIS) 2.0 Program Extension.

On motion of Chair Muller and second by Director Tettemer, and following a roll call vote, declared passed 7-0 (Directors Bourne and Sachs were absent) contingent upon written confirmation of funding from Cal OES, approve and authorize a budget adjustment to increase revenue and appropriations in the FY 2020/21 General Fund (121) budget by \$2,638,675 for the extension of the FIRIS 2.0 Program.

REPORTS

No Items.

COMMITTEE MEMBER COMMENTS

The Committee Members offered no comments.

ADJOURNMENT – Chair Muller adjourned the meeting at 1:26 p.m. The next regular meeting of the Budget and Finance Committee is scheduled for Wednesday, April 14, 2021, at 12:00 noon.

Maria D. Huizar, CMC
Clerk of the Authority



Orange County Fire Authority
AGENDA STAFF REPORT

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 2C
Consent Calendar

Monthly Investment Reports

Contact(s) for Further Information

Robert C. Cortez, Assistant Chief, Business Services Department	robertcortez@ocfa.org	714.573.6012
Tricia Jakubiak, Treasurer Treasury & Financial Planning	triciajakubiak@ocfa.org	714.573.6301
James Slobojan, Assistant Treasurer Treasury & Financial Planning	james@slobojan@ocfa.org	714.573.6305

Summary

This agenda item is a routine transmittal of the monthly investment reports submitted to the Committee in compliance with the investment policy of the Orange County Fire Authority and with Government Code Section 53646.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Review the proposed agenda item and direct staff to place the item on the agenda for the Executive Committee meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Executive Committee receive and file the reports.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

Attached is the final monthly investment report for the month ended February 28, 2021. A preliminary investment report as of March 19, 2021, is also provided as the most complete report that was available at the time this agenda item was prepared.

Attachment(s)

Final Investment Report – February 2021/Preliminary Report –March 2021

Orange County Fire Authority Monthly Investment Report



Final Report – February 2021

Preliminary Report – March 2021



Monthly Investment Report Table of Contents

Final Investment Report – February 28, 2021 1

<i>Executive Summary.....</i>	<i>2</i>
<i>Portfolio Statistics.....</i>	<i>3</i>
<i>Benchmark Comparison.....</i>	<i>4</i>
<i>Portfolio Size, Yield, & Duration.....</i>	<i>4</i>
<i>Portfolio Summary.....</i>	<i>5</i>
<i>Portfolio Details.....</i>	<i>6</i>
<i>Aging Report.....</i>	<i>9</i>
<i>Notes to Portfolio Management Report.....</i>	<i>10</i>
<i>Local Agency Investment Fund.....</i>	<i>11</i>

Preliminary Investment Report – March 19, 2021..... 13

<i>Portfolio Summary.....</i>	<i>14</i>
<i>Portfolio Details.....</i>	<i>15</i>
<i>Aging Report.....</i>	<i>18</i>
<i>Notes to Portfolio Management Report.....</i>	<i>19</i>

<i>Glossary.....</i>	<i>20</i>
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Orange County Fire Authority

Final Investment Report

February 28, 2021



EXECUTIVE SUMMARY

Portfolio Activity & Earnings

During the month of February 2021, the size of the portfolio decreased by approximately \$20 million to \$133.9 million. Significant receipts for the month included three cash contract payments totaling \$6.9 million, an apportionment of property taxes, various intergovernmental agency payments and other charges for current services totaling \$4.2 million. Significant disbursements for the month included primarily two biweekly payrolls which were approximately \$14.9 million each with related benefits. Total February cash outflows amounted to approximately \$31.6 million. The portfolio's balance is expected to increase in the following month as secured property tax receipts are scheduled in March.

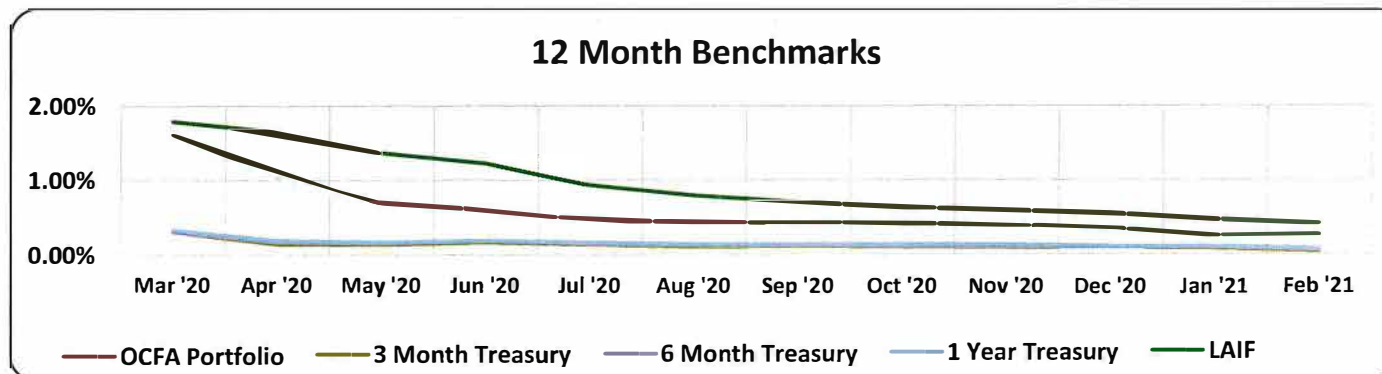
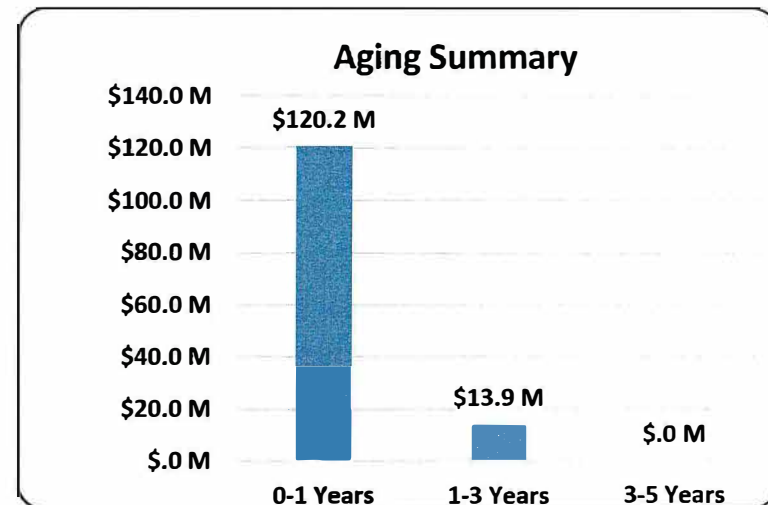
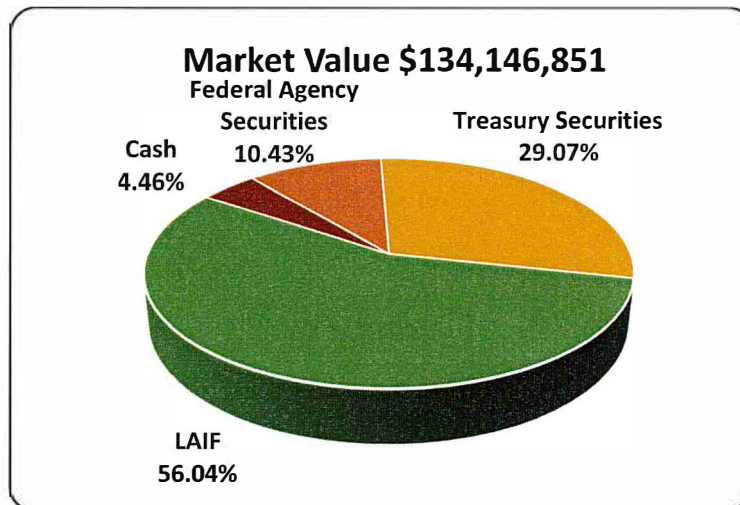
In February, the portfolio's yield to maturity (365-day equivalent) remained unchanged at 0.28%. The effective rate of return increased by 2 basis points to 0.26% for the month, and the average maturity of the portfolio decreased by 7 days to 19 days to maturity.

Economic News

In February 2021, the U.S. unemployment rate dropped to 6.2% from January's 6.3%. Job growth returned in February with the addition of 379,000 non-farm payroll jobs setting a positive tone heading into the spring and summer months and with the pace of vaccinations accelerating. Retail sales dropped by 3% in February following a robust January. Where January was fueled by end of year stimulus payments, February was impacted by harsh weather. Consumer confidence rose to a three-month high in February. Manufacturing activity continued its recovery in February, marking the 9th straight month of positive performance. The non-manufacturing/service sector slowed in February largely due to harsh winter storms in Texas and the South region. Consumer prices climbed by 0.4% in February as the cost of gasoline lead the way increasing 6.4%. The producer price index increased slightly by .5% in February. The Federal Reserve Chairman Jerome Powell has indicated that the Fed will not raise interest rates and allow inflation to rise above the 2% target before tightening of the monetary policy takes place.



PORTFOLIO HAS AMPLE LIQUIDITY AND IS EXCEEDING TREASURY BENCHMARKS AS OF FEBRUARY 28, 2021



**BENCHMARK COMPARISON AS OF FEBRUARY 28, 2021***3 Month T-Bill: 0.04%**1 Year T-Bill: 0.07%**6 Month T-Bill: 0.06%**LAIF: 0.407%**OCFA Portfolio: 0.26%***PORTFOLIO SIZE, YIELD, & DURATION**

	<u><i>Current Month</i></u>	<u><i>Prior Month</i></u>	<u><i>Prior Year</i></u>
<i>Book Value</i>	<i>\$134,346,510</i>	<i>\$154,694,509</i>	<i>\$137,309,170</i>
<i>Yield to Maturity (365 day)</i>	<i>0.28%</i>	<i>0.28%</i>	<i>1.75%</i>
<i>Effective Rate of Return</i>	<i>0.26%</i>	<i>0.24%</i>	<i>1.74%</i>
<i>Days to Maturity</i>	<i>19</i>	<i>26</i>	<i>16</i>



ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Summary
February 28, 2021

Orange County Fire Authority
 1 Fire Authority Road
 Irvine, Irvine, CA 92602
 (714)573-6301

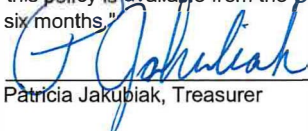
(See Note 1 on page 10)

(See Note 2 on page 10)

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Call/ Maturity	YTM/Call 360 Equiv.	YTM/Call 365 Equiv.
Federal Agency Coupon Securities	14,000,000.00	13,992,580.00	14,000,000.00	10.94	1,003	113	0.187	0.190
Treasury Discounts -Amortizing	39,000,000.00	38,999,130.00	38,998,915.00	30.47	69	21	0.055	0.055
Local Agency Investment Funds	75,000,000.00	75,170,348.85	75,000,000.00	58.59	1	1	0.401	0.407
	128,000,000.00	128,162,058.85	127,998,915.00	100.00%	131	19	0.272	0.276
Investments								
Cash and Accrued Interest								
Passbook/Checking	5,984,718.45	5,984,718.45	5,984,718.45		1	1	0.000	0.000
(not included in yield calculations)								
Accrued Interest at Purchase		73.89	73.89					
Subtotal		5,984,792.34	5,984,792.34					
Total Cash and Investments	133,984,718.45	134,146,851.19	133,983,707.34		131	19	0.272	0.276

Total Earnings	February 28 Month Ending	Fiscal Year To Date
Current Year	27,559.81	375,878.76
Average Daily Balance	138,620,965.94	147,667,771.93
Effective Rate of Return	0.26%	0.38%

"I certify that this investment report accurately reflects all pooled investments and is in compliance with the investment policy adopted by the Board of Directors to be effective on January 1, 2021. A copy of this policy is available from the Clerk of the Authority. Sufficient investment liquidity and anticipated revenues are available to meet budgeted expenditure requirements for the next thirty days and the next six months."


 Patricia Jakubiak, Treasurer

3/5/21

Cash and Investments with GASB 31 Adjustment:

Book Value of Cash & Investments before GASB 31 (Above)	\$ 133,983,707.34
GASB 31 Adjustment to Books (See Note 3 on page 10)	\$ 362,803.09
Total	\$ 134,346,510.43

ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Details - Investments
February 28, 2021

(See Note 1 on page 10) (See Note 2 on page 10)

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	YTM/Call 365	Days to Maturity	Maturity Date
Money Mkt Mutual Funds/Cash											
SYS528	528	Federated Treasury Obligations		07/01/2020	0.00	0.00	0.00	0.010	0.010	1	
Subtotal and Average			7,408,465.52		0.00	0.00	0.00		0.000	0	
Federal Agency Coupon Securities											
3133EMLE0	1020	Federal Farm Credit Bank		12/23/2020	14,000,000.00	13,992,580.00	14,000,000.00	0.190	0.190	113	09/22/2023
Subtotal and Average			14,000,000.00		14,000,000.00	13,992,580.00	14,000,000.00		0.190	113	
Treasury Discounts -Amortizing											
9127964F3	1019	US Treasury Bill		12/23/2020	12,000,000.00	12,000,000.00	11,999,940.00	0.060	0.062	3	03/04/2021
9127964N6	1021	US Treasury Bill		01/06/2021	9,000,000.00	8,999,910.00	8,999,745.00	0.060	0.062	17	03/18/2021
9127964P1	1022	US Treasury Bill		01/14/2021	12,000,000.00	11,999,520.00	11,999,380.00	0.060	0.062	31	04/01/2021
9127964Y2	1023	US Treasury Bill		02/26/2021	6,000,000.00	5,999,700.00	5,999,850.00	0.020	0.021	45	04/15/2021
Subtotal and Average			42,212,500.42		39,000,000.00	38,999,130.00	38,998,915.00		0.055	21	
Local Agency Investment Funds											
SYS336	336	Local Agency Invstmt Fund			75,000,000.00	75,170,348.85	75,000,000.00	0.407	0.407	1	
Subtotal and Average			75,000,000.00		75,000,000.00	75,170,348.85	75,000,000.00		0.407	1	
Total and Average			138,620,965.94		128,000,000.00	128,162,058.85	127,998,915.00		0.276	19	

ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Details - Cash
February 28, 2021

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	YTM/C 365	Days to Maturity
Money Mkt Mutual Funds/Cash										
SYS10033	10033	Revolving Fund		07/01/2020	20,000.00	20,000.00	20,000.00		0.000	1
SYS4	4	Union Bank		07/01/2020	5,964,718.45	5,964,718.45	5,964,718.45		0.000	1
Average Balance			0.00	Accrued Interest at Purchase		73.89	73.89			1
				Subtotal		5,984,792.34	5,984,792.34			
Total Cash and Investments			138,620,965.94		133,984,718.45	134,146,851.19	133,983,707.34		0.276	19

Orange County Fire Authority

In Service of Others!



ORANGE COUNTY FIRE AUTHORITY
Aging Report
By Maturity Date
As of March 1, 2021

Orange County Fire Authority
1 Fire Authority Road
Irvine, CA 92602
(714)573-6301

					Maturity Par Value	Percent of Portfolio	Current Book Value	Current Market Value
Aging Interval:	0 days	(03/01/2021 - 03/01/2021)	4 Maturities	0 Payments	80,984,718.45	60.44%	80,984,718.45	81,155,067.30
Aging Interval:	1 - 30 days	(03/02/2021 - 03/31/2021)	2 Maturities	0 Payments	21,000,000.00	15.67%	20,999,685.00	20,999,910.00
Aging Interval:	31 - 60 days	(04/01/2021 - 04/30/2021)	2 Maturities	0 Payments	18,000,000.00	13.43%	17,999,230.00	17,999,220.00
Aging Interval:	61 - 90 days	(05/01/2021 - 05/30/2021)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	91 - 120 days	(05/31/2021 - 06/29/2021)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	121 - 365 days	(06/30/2021 - 03/01/2022)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	366 - 1095 days	(03/02/2022 - 02/29/2024)	1 Maturities	0 Payments	14,000,000.00	10.45%	14,000,000.00	13,992,580.00
Aging Interval:	1096 days and	(03/01/2024 -)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Total for			9 Investment	0 Payments		100.00	133,983,633.45	134,146,777.30



NOTES TO PORTFOLIO MANAGEMENT REPORT

- Note 1: Market value of the LAIF investment is calculated using a fair value factor provided by LAIF. The MUFG Union Bank (formerly Union Bank) Trust Department provides market values of the remaining investments.
- Note 2: Book value reflects the cost or amortized cost before the GASB 31 accounting adjustment.
- Note 3: GASB 31 requires governmental entities to report investments at fair value in the financial statements and to reflect the corresponding unrealized gains/ (losses) as a component of investment income. The GASB 31 adjustment is recorded only at fiscal year-end. The adjustment for June 30, 2020 includes an increase of \$368,460 to the LAIF investment and a decrease of (\$5,657) to the remaining investments.
- Note 4: The Federated Treasury Obligations money market mutual fund functions as the Authority's sweep account. Funds are transferred to and from the sweep account to/from OCFA's checking account in order to maintain a target balance of \$1,000,000 in checking. Since this transfer occurs at the beginning of each banking day, the checking account sometimes reflects a negative balance at the close of the banking day. The negative closing balance is not considered an overdraft since funds are available in the money market mutual fund. The purpose of the sweep arrangement is to provide sufficient liquidity to cover outstanding checks yet allow that liquidity to be invested while payment of the outstanding checks is pending.



Local Agency Investment Fund (LAIF)

As of February 28, 2021, OCFA has \$75,000,000 invested in LAIF. The fair value of OCFA's LAIF investment is calculated using a participant fair value factor provided by LAIF on a quarterly basis. The fair value factor as of December 31, 2020 is 1.002271318. When applied to OCFA's LAIF investment, the fair value is \$75,170,349 or \$170,349 above cost. Although the fair value of the LAIF investment is higher than cost, OCFA can withdraw the actual amount invested at any time.

LAIF is included in the State Treasurer's Pooled Money Investment Account (PMIA) for investment purposes. The PMIA market valuation at February 28 2021 is included on the following page.



Fair Value Including Accrued Interest	\$	124,002,435,478.19
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Page 12



Orange County Fire Authority

Preliminary Investment Report

March 19, 2021



ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Summary
March 19, 2021

Orange County Fire Authority
1 Fire Authority Road
Irvine, Irvine, CA 92602
(714)573-6301

(See Note 1 on page 19)

(See Note 2 on page 19)

Investments	Par Value	Market Value	Book Value	% of Portfolio	Term	Days to Call/ Maturity	YTM/Call 360 Equiv.	YTM/Call 365 Equiv.
Federal Agency Coupon Securities	14,000,000.00	13,991,040.00	14,000,000.00	11.76	1,003	94	0.187	0.190
Federal Agency Disc. -Amortizing	12,000,000.00	11,999,520.00	11,999,031.66	10.08	91	83	0.035	0.036
Treasury Discounts -Amortizing	18,000,000.00	18,000,000.00	17,999,673.33	15.13	67	17	0.047	0.048
Local Agency Investment Funds	75,000,000.00	75,170,348.85	75,000,000.00	63.03	1	1	0.401	0.407
	119,000,000.00	119,160,908.85	118,998,704.99	100.00%	138	23	0.286	0.290
Investments								
Cash and Accrued Interest								
Passbook/Checking (not included in yield calculations)	13,657,188.36	13,657,188.36	13,657,188.36		1	1	0.000	0.000
Accrued Interest at Purchase		73.89	73.89					
Subtotal		13,657,262.25	13,657,262.25					
Total Cash and Investments	132,657,188.36	132,818,171.10	132,655,967.24		138	23	0.286	0.290

Total Earnings	March 19 Month Ending	Fiscal Year To Date
Current Year	18,145.31	394,024.07
Average Daily Balance	133,467,326.49	146,637,968.63
Effective Rate of Return	0.26%	0.37%

"I certify that this investment report accurately reflects all pooled investments and is in compliance with the investment policy adopted by the Board of Directors to be effective on January 1, 2021. A copy of this policy is available from the Clerk of the Authority. Sufficient investment liquidity and anticipated revenues are available to meet budgeted expenditure requirements for the next thirty days and the next six months."

Patricia Jakubiak, Treasurer

Cash and Investments with GASB 31 Adjustment:

Book Value of Cash & Investments before GASB 31 (Above)	\$ 132,655,967.24
GASB 31 Adjustment to Books (See Note 3 on page 19)	\$ 362,803.09
Total	\$ 133,018,770.33

ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Details - Investments
March 19, 2021

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	(See Note 1 on page 19)		(See Note 2 on page 19)		Stated Rate	YTM/Call 365	Days	Maturity Date
					Par Value	Market Value	Book Value	to Call/ Maturity				
Money Mkt Mutual Funds/Cash												
SYS528	528	Federated Treasury Obligations		07/01/2020	0.00	0.00	0.00	0.010		0.010	1	
Subtotal and Average			11,468,398.60		0.00	0.00	0.00			0.000	0	
Federal Agency Coupon Securities												
3133EMLE0	1020	Federal Farm Credit Bank		12/23/2020	14,000,000.00	13,991,040.00	14,000,000.00	0.190		0.190	94	09/22/2023
Subtotal and Average			14,000,000.00		14,000,000.00	13,991,040.00	14,000,000.00			0.190	94	
Federal Agency Disc. -Amortizing												
313385GT7	1024	Fed Home Loan Bank		03/12/2021	12,000,000.00	11,999,520.00	11,999,031.66	0.035		0.036	83	06/11/2021
Subtotal and Average			5,052,206.67		12,000,000.00	11,999,520.00	11,999,031.66			0.036	83	
Treasury Discounts -Amortizing												
9127964P1	1022	US Treasury Bill		01/14/2021	12,000,000.00	12,000,000.00	11,999,760.00	0.060		0.062	12	04/01/2021
9127964Y2	1023	US Treasury Bill		02/26/2021	6,000,000.00	6,000,000.00	5,999,913.33	0.020		0.021	26	04/15/2021
Subtotal and Average			27,946,721.23		18,000,000.00	18,000,000.00	17,999,673.33			0.048	17	
Local Agency Investment Funds												
SYS336	336	Local Agency Invstmt Fund			75,000,000.00	75,170,348.85	75,000,000.00	0.407		0.407	1	
Subtotal and Average			75,000,000.00		75,000,000.00	75,170,348.85	75,000,000.00			0.407	1	
Total and Average			133,467,326.49		119,000,000.00	119,160,908.85	118,998,704.99			0.290	23	

ORANGE COUNTY FIRE AUTHORITY
Portfolio Management
Portfolio Details - Cash
March 19, 2021

CUSIP	Investment #	Issuer	Average Balance	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	YTM/C 365	Days to Maturity
Money Mkt Mutual Funds/Cash										
SYS10033	10033	Revolving Fund		07/01/2020	20,000.00	20,000.00	20,000.00		0.000	1
SYS4	4	Union Bank		07/01/2020	13,637,188.36	13,637,188.36	13,637,188.36		0.000	1
Average Balance			0.00	Accrued Interest at Purchase		73.89	73.89			1
				Subtotal		13,657,262.25	13,657,262.25			
Total Cash and Investments			133,467,326.49		132,657,188.36	132,818,171.10	132,655,967.24		0.290	23

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ORANGE COUNTY FIRE AUTHORITY
Aging Report
By Maturity Date
As of March 22, 2021

Orange County Fire Authority
 1 Fire Authority Road
 Irvine, Irvine, CA 92602
 (714)573-6301

Page 18

					Maturity Par Value	Percent of Portfolio	Current Book Value	Current Market Value
Aging Interval:	0 days	(03/22/2021 - 03/22/2021)	4 Maturities	0 Payments	88,657,188.36	66.83%	88,657,188.36	88,827,537.21
Aging Interval:	1 - 30 days	(03/23/2021 - 04/21/2021)	2 Maturities	0 Payments	18,000,000.00	13.57%	17,999,720.00	18,000,000.00
Aging Interval:	31 - 60 days	(04/22/2021 - 05/21/2021)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	61 - 90 days	(05/22/2021 - 06/20/2021)	1 Maturities	0 Payments	12,000,000.00	9.05%	11,999,055.00	11,999,520.00
Aging Interval:	91 - 120 days	(06/21/2021 - 07/20/2021)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	121 - 365 days	(07/21/2021 - 03/22/2022)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Aging Interval:	366 - 1095 days	(03/23/2022 - 03/21/2024)	1 Maturities	0 Payments	14,000,000.00	10.55%	14,000,000.00	13,991,040.00
Aging Interval:	1096 days and after	(03/22/2024 -)	0 Maturities	0 Payments	0.00	0.00%	0.00	0.00
Total for			8 Investments	0 Payments		100.00	132,655,963.36	132,818,097.21



NOTES TO PORTFOLIO MANAGEMENT REPORT

- Note 1: Market value of the LAIF investment is calculated using a fair value factor provided by LAIF. The MUFG Union Bank Trust Department provides market values of the remaining investments.
- Note 2: Book value reflects the cost or amortized cost before the GASB 31 accounting adjustment.
- Note 3: GASB 31 requires governmental entities to report investments at fair value in the financial statements and to reflect the corresponding unrealized gains/ (losses) as a component of investment income. The GASB 31 adjustment is recorded only at fiscal year-end. The adjustment for June 30, 2020 includes an increase of \$368,460 to the LAIF investment and a decrease of (\$5,657) to the remaining investments.
- Note 4: The Federated Treasury Obligations money market mutual fund functions as the Authority's sweep account. Funds are transferred to and from the sweep account to/from OCFA's checking account in order to maintain a target balance of \$1,000,000 in checking. Since this transfer occurs at the beginning of each banking day, the checking account sometimes reflects a negative balance at the close of the banking day. The negative closing balance is not considered an overdraft since funds are available in the money market mutual fund. The purpose of the sweep arrangement is to provide sufficient liquidity to cover outstanding checks yet allow that liquidity to be invested while payment of the outstanding checks is pending.

GLOSSARY

INVESTMENT TERMS

Basis Point. Measure used in quoting yields on bonds and notes. One basis point is .01% of yield.

Book Value. This value may be the original cost of acquisition of the security, or original cost adjusted by the amortization of a premium or accretion of a discount. The book value may differ significantly from the security's current value in the market.

Commercial Paper. Unsecured short-term promissory notes issued by corporations, with maturities ranging from 2 to 270 days; may be sold on a discount basis or may bear interest.

Coupon Rate. Interest rate, expressed as a percentage of par or face value, that issuer promises to pay over lifetime of debt security.

Discount. The amount by which a bond sells under its par (face) value.

Discount Securities. Securities that do not pay periodic interest. Investors earn the difference between the discount issue price and the full face value paid at maturity. Treasury bills, bankers' acceptances and most commercial paper are issued at a discount.

Effective Rate of Return. Rate of return on a security, based on its purchase price, coupon rate, maturity date, and the period between interest payments.

Federal Agency Securities. Securities issued by agencies such as the Federal National Mortgage Association and the Federal Farm Credit Bank. Though not general obligations of the US Treasury, such securities are sponsored by the government and therefore have high credit ratings. Some are issued on a discount basis and some are issued with coupons.

Federal Funds. Funds placed in Federal Reserve banks by depository institutions in excess of current reserve requirements. These depository institutions may lend fed funds to each other overnight or on a longer basis. They may also transfer funds among each other on a same-day basis through the Federal Reserve banking system. Fed Funds are considered to be immediately available funds.

Fed Funds Rate. The interest rate charged by one institution lending federal funds to another.

Federal Open Market Committee. The branch of the Federal Reserve Board that determines the direction of monetary policy.

Local Agency Investment Fund (LAIF). A California State Treasury fund which local agencies may use to deposit funds for investment and for reinvestment with a maximum of \$75 million for any agency (*excluding bond funds, which have no maximum*). It offers high liquidity because

deposits can be converted to cash in 24 hours and no interest is lost. Interest is paid quarterly and the State's administrative fee cannot exceed 1/4 of a percent of the earnings.

Market value. The price at which the security is trading and could presumably be purchased or sold.

Maturity Date. The specified day on which the issuer of a debt security is obligated to repay the principal amount or face value of security.

Money Market Mutual Fund. Mutual funds that invest solely in money market instruments (short-term debt instruments, such as Treasury bills, commercial paper, bankers' acceptances, repurchase agreements and federal funds).

Par. Face value or principal value of a bond typically \$1,000 per bond.

Rate of Return. The amount of income received from an investment, expressed as a percentage. A *market rate of return* is the yield that an investor can expect to receive in the current interest-rate environment utilizing a buy-and-hold to maturity investment strategy.

Treasury Bills. Short-term U.S. government non-interest bearing debt securities with maturities of no longer than one year. The yields on these bills are monitored closely in the money markets for signs of interest rate trends.

Treasury Notes. Intermediate U.S. government debt securities with maturities of one to 10 years.

Treasury bonds. Long-term U.S. government debt securities with maturities of 10 years or longer.

Yield. Rate of return on a bond.

Yield-to-maturity. Rate of return on a bond taking into account the total annual interest payments, the purchase price, the redemption value and the amount of time remaining until maturity.

ECONOMIC TERMS

Conference Board Consumer Confidence Index. A survey that measures how optimistic or pessimistic consumers are with respect to the economy in the near future.

Consumer Price Index (CPI). A measure that examines the weighted average of prices of a basket of consumer goods and services, such as transportation, food and medical care. Changes in CPI are used to assess price changes associated with the cost of living.

Durable Goods Orders. An economic indicator released monthly that reflects new orders placed with domestic manufacturers for delivery of factory durable goods such as autos and appliances in the near term or future.

Gross Domestic Product. The monetary value of all the finished goods and services produced within a country's borders in a specific time period. It includes all of private and public consumption, government outlays, investments and exports less imports that occur within a defined territory.

Industrial Production. An economic indicator that is released monthly by the Federal Reserve Board. The indicator measures the amount of output from the manufacturing, mining, electric and gas industries.

ISM Institute for Supply Management (ISM) Manufacturing Index. A monthly index that monitors employment, production inventories, new orders and supplier deliveries.

ISM Non-manufacturing Index. An index based on surveys of non-manufacturing firms' purchasing and supply executives. It tracks economic data for the service sector.

Leading Economic Index. A monthly index used to predict the direction of the economy's movements in the months to come. The index is made up of 10 economic components, whose changes tend to precede changes in the overall economy.

National Federation of Independent Business Small Business Optimism Index. An index based on surveys of small business owners' plans and expectations regarding employment, capital, inventories, economic improvement, credit conditions, expansion, and earnings trends in the near term or future.

Producer Price Index. An index that measures the average change over time in the selling prices received by domestic producers for their output.

University of Michigan Consumer Sentiment Index. An index that measures the overall health of the economy as determined by consumer opinion. It takes into account an individual's feelings toward his or her own current financial health, the health of the economy in the short term and the prospects for longer term economic growth.



Orange County Fire Authority **AGENDA STAFF REPORT**

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 3A
Discussion Calendar

Communication with Auditors for Fiscal Year 2020/21 Financial Audit

Contact(s) for Further Information

Robert C. Cortez, Assistant Chief Business Services Department	robertcortez@ocfa.org	714.573.6012
Julie Nemes, Finance Manager/Auditor Business Services Department	julienemes@ocfa.org	714.573.6304
Bryan Gruber Lance, Soll & Lunghard, LLP	bryan.gruber@lslcpas.com	714.672.0022

Prior Board/Committee Action

Not Applicable.

Summary

This agenda item is submitted to provide an update to the Budget and Finance / Audit Committee on the Fiscal Year 2020/21 financial audit, including two-way communication between the Committee and the independent financial auditors in accordance with Statements on Auditing Standards (SAS) No. 114.

RECOMMENDED ACTION(S)

Receive and file the report.

Impact to Cities/County

Not Applicable

Fiscal Impact

Not Applicable

Background

The American Institute of Certified Public Accountants (AICPA) issues Statements of Auditing Standards (SAS), which address the guidelines auditors must follow while conducting audits of financial statements. In 2006, the AICPA issued SAS No. 114, The Auditor's Communication with Those Charged with Governance, which requires auditors and "those with power of governance" to engage in two-way communication regarding audit matters. Specific duties of "those with power of governance" (i.e., Board of Directors) may be delegated to a sub-group, such as an audit committee. The OCFA's Budget and Finance Committee serves as the Audit Committee. Two-way communication is needed in order to:

- Communicate the auditors' responsibilities (i.e., scope of the audit);
- Obtain information relevant to the audit;
- Provide timely observations arising from the audit that are relevant to the governing body's responsibilities in overseeing the financial reporting process; and
- Communicate any significant findings in writing.

The required two-way communication regarding audit matters is presented to this Committee via a written SAS No. 114 Auditor Communication Letter (Attachment 1) from OCFA's independent financial auditors Lance, Soll & Lunghard, LLP (LSL). In addition, a representative from the audit engagement team provides a presentation to the Committee at the beginning of the audit process. LSL is scheduled to begin its Fiscal Year 2020/21 interim audit fieldwork on May 3, 2021. Currently, LSL plans to conduct its interim audit fieldwork remotely due to the COVID-19 pandemic and will work with OCFA's Finance staff to coordinate that process. The auditors will also present the financial statements to the Committee and Board of Directors at the completion of the audit later this year.

Attachment(s)

1. SAS No. 114 Auditor Communication Letter from LSL



March 15, 2021

Via Email

Robert C. Cortez, Assistant Chief, Business Services
robertcortez@ocfa.org

Board of Directors
Orange County Fire Authority
1 Fire Authority Road
Irvine, CA 92602

We are engaged to audit the financial statements of the governmental activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of Orange County Fire Authority (OCFA) for the year ended June 30, 2021. Professional standards require that we provide you with the following information related to our audit. We would also appreciate the opportunity to meet with you to discuss this information further since a two-way dialogue can provide valuable information for the audit process.

**Our Responsibilities under U.S. Generally Accepted Auditing Standards,
Government Auditing Standards, and the Uniform Guidance**

As stated in our engagement letter dated March 15, 2021, our responsibility, as described by professional standards, is to express opinions about whether the financial statements prepared by management with your oversight are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles. Our audit of the financial statements does not relieve you or management of your responsibilities.

In planning and performing our audit, we will consider OCFA's internal control over financial reporting in order to determine our auditing procedures for the purpose of expressing our opinions on the financial statements and not to provide assurance on the internal control over financial reporting. We will also consider internal control over compliance with requirements that could have a direct and material effect on a major federal program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with the Uniform Guidance.

As part of obtaining reasonable assurance about whether OCFA's financial statements are free of material misstatement, we will perform tests of its compliance with certain provisions of laws, regulations, contracts, and grants. However, providing an opinion on compliance with those provisions is not an objective of our audit. Also, in accordance with the Uniform Guidance, we will examine, on a test basis, evidence about OCFA's compliance with the types of compliance requirements described in the U.S. Office of Management and Budget (OMB) Compliance Supplement applicable to each of its major federal programs for the purpose of expressing an opinion on OCFA's compliance with those requirements. While our audit will provide a reasonable basis for our opinion, it will not provide a legal determination on OCFA's compliance with those requirements.

Generally accepted accounting principles provide for certain required supplementary information (RSI) to supplement the basic financial statements. Our responsibility with respect to management's discussion and analysis, the schedule of proportionate share of the net pension liability, the schedule of changes in the net pension liability and related ratios, the schedule of changes in the net other post-employment benefits (OPEB) liability and related ratios, the schedule of money weighted rate of return, and the schedules of plan contributions, which supplement the basic financial statements, is to apply certain limited procedures in accordance with generally accepted auditing standards. However, the RSI will not be audited and, because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance, we will not express an opinion or provide any assurance on the RSI.

We have been engaged to report on the combining and individual fund statements and schedules which accompany the financial statements but are not RSI. Our responsibility for this supplementary information, as described by professional standards, is to evaluate the presentation of the supplementary information in relation to the financial statements as a whole and to report on whether the supplementary information is fairly stated, in all material respects, in relation to the financial statements as a whole.

We have not been engaged to report on the introductory or statistical sections of the Comprehensive Annual Financial Report, which accompany the financial statements but are not RSI. Our responsibility with respect to this other information in documents containing the audited financial statements and auditor's report does not extend beyond the financial information identified in the report. We have no responsibility for determining whether this other information is properly stated. This other information will not be audited, and we will not express an opinion or provide any assurance on it.

Planned Scope, Timing of the Audit, and Other

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested.

Our audit will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Material misstatements may result from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. We will generally communicate our significant findings at the conclusion of the audit. However, some matters could be communicated sooner, particularly if significant difficulties are encountered during the audit where assistance is needed to overcome the difficulties or if the difficulties may lead to a modified opinion. We will also communicate any internal control related matters that are required to be communicated under professional standards.

We will include the financial information for plan assets for the retiree medical plan held in trust with Orange County Employees Retirement System (the Trust) and include the opinion of the group auditor. The component auditors will perform the work on the financial information of the Trust that will be used as audit evidence for the referenced component unit audit opinion.

We expect to begin our audit on approximately May 3, 2021 and issue our report on approximately October 15, 2021. Bryan S. Gruber, CPA, is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.



Page 3

This information is intended solely for the use of the Board of Directors and management of OCFA and is not intended to be, and should not be, used by anyone other than these specified parties.

Very truly yours,

Lance, Solt & Loughard, LLP



Orange County Fire Authority
AGENDA STAFF REPORT

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 3B
Discussion Calendar

**Update on Public Works Procurement Procedures to
Incorporate Best Practices**

Contact(s) for Further Information

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Business Services Department

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Sara Kennedy, Purchasing Manager

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Summary

This agenda item is submitted to provide information regarding the updated public works project related solicitation forms and contracts to incorporate best practices.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Receive and file the report.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

At the November 19, 2020 meeting of the OCFA Board of Directors, the Board rejected all bids for the Electrical Improvement and Fire Training Prop Replacement portions of the Drill Grounds Improvement public works project.¹ In addition, the Board directed staff to conduct a pre-qualification process followed by a new invitation for bids.

In an effort to ensure proper execution of the Board's directive, staff conducted a survey of public works procurement policies from several Orange County cities. Since OCFA has not conducted this type of pre-qualification step in past projects, the survey was intended to provide examples that staff could replicate from other agencies utilizing industry best practices and also ensure that future public works solicitations issued by OCFA will align with common practice within Orange County. The survey highlighted that while some agencies conduct a pre-qualification process for specialized, complex projects typically valued over five million dollars, most cities do not pre-

¹ "Public works" in general refers to construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds. Public works contracting is subject to the requirements in the California Public Contract Code.

qualify; rather, they conduct a review of contractor qualifications concurrent with the Invitation For Bids (IFB). When the agencies do conduct a pre-qualification, the Request for Statements of Qualifications (RFSQ) process and scoring closely mirror the model questionnaire that is published by the California Labor Commissioner.

In alignment with those agencies surveyed, Staff will utilize the Public Works solicitation processes and thresholds below for all future standard delivery (design-bid-build) construction solicitations:

Concurrent Qualification (<i>Less than \$5,000,000</i>)	
<u>Solicitation</u>	<u>Purpose</u>
IFB	<p>Solicitation issued to hire the contractor who will build the project. One-step process: Qualifications are evaluated concurrently with bid pricing. <i>Per CA PCC 22034 (projects up to \$200,000) and CA PCC 22032 (projects over \$200,000)</i></p> <p>Plans, specifications, and contract award are brought to the Board of Directors for adoption and approval if value exceeds \$200,000.</p>
Pre-Qualification (<i>Greater than \$5,000,000</i>)	
<u>Solicitation</u>	<u>Purpose</u>
<u>Step One</u> RFSQ	Solicitation to pre-qualify construction contractors to be eligible to submit a bid to build the project. <i>Per CA PCC 20101</i>
<u>Step Two</u> IFB	<p>Solicitation to hire the contractor who will build the project. IFB is sent only to pre-qualified contractors. <i>Per CA PCC 22034 (projects up to \$200,000) and CA PCC 22032 (projects over \$200,000)</i></p> <p>Plans, specifications, and contract award are brought to the Board of Directors for adoption and approval.</p>

Staff, in conjunction with legal counsel, is finalizing updates to the OCFA's public works solicitation and contract forms to incorporate best practices. These additions include a more robust questionnaire to aid in determining a contractor's responsibility, along with revised bid pricing sheets that allow for a greater in-depth analysis of various components of a contractor's pricing.

Attachment(s)

1. Updated Public Works Solicitation and Contract Forms



ORANGE COUNTY FIRE AUTHORITY FORMAL INVITATION FOR BIDS

DRAFT

[PROJECT DESCRIPTION] FOR PROJECTS EXCEEDING \$200,000

DATE**Solicitation No. XXNNNN**

The Orange County Fire Authority is requesting bids to establish a construction agreement for _____, as specified herein.

THIS PROJECT IS CONSIDERED A PUBLIC WORK.

Pursuant to SB 854, no contractor or subcontractor may be awarded a contract for a public works project unless registered with the CA Department of Industrial Relations per California Labor Code section 1725.5. This project is a public work and is subject to compliance monitoring and enforcement.

MANDATORY REQUIREMENTS:

- Meet Minimum Qualifications
- Attendance at Job Walk on **DATE**
- Contractors' License: _____
- Registration with the California Department of Industrial Relations
- Bid Bond - 10% of Bid Amount (*All Bidders*)
- Faithful Performance Bond – 100% of Agreement Price (*Awarded Contractor Only*)
- Payment Bond – 100% of Agreement Price (*Awarded Contractor Only*)

BID SUBMITTALS:

- Bids will be received no later than **11:00 A.M. on DATE**
- **Only paper bids will be accepted for this solicitation**
- Bids may be hand delivered or mailed to Orange County Fire Authority, Purchasing Department, 1 Fire Authority Road, Building C, Irvine, CA 92602 no later than the date and time specified.
- One (1) original hard copy and one (1) duplicate hard copy shall be sent to the attention of the Purchasing Section, within said time limit, in a sealed envelope.
- The envelope should include the Bidder's Business Name, Solicitation Number, and the Due Date.

LATE BIDS WILL NOT BE ACCEPTED.

Any questions concerning this Formal Invitation for Bids or the specifications should be submitted on-line via the Q&A Module available through PlanetBids before **4:00 P.M. on DATE**. OCFA will publish a response to all inquiries through the e-procurement system and/or may issue an addendum as a result.

[BUYER], [TITLE]
[EMAIL] | [PHONE]

Table of Contents

SECTION 1: NOTICE INVITING BIDS	3
1A: ORANGE COUNTY FIRE AUTHORITY NOTICE INVITING SEALED BIDS	3
1B: SOLICITATION INFORMATION	4
SECTION 3: INSTRUCTIONS TO BIDDERS	9
SECTION 4: PROPOSAL DOCUMENTS	18
4A: TRANSMITTAL PAGE	19
4B: BIDDER'S BOND	20
4C: CERTIFICATION OF BID	22
4D: NON-COLLUSION AFFIDAVIT	24
4E: CONTRACTOR'S LICENSING CERTIFICATION	25
4F: PROPOSED SUBCONTRACTORS	27
4G: DESIGNATION OF SURETIES	28
4H: BIDDER'S CERTIFICATION OF COMPLIANCE WITH	29
4I: CERTIFICATION OF SITE EXAMINATION	30
4J: BID SHEETS	31
4K: PROJECT APPROACH AND TIMELINE	32
4L: LIST OF PROJECT REFERENCES	33
4M: QUALIFICATIONS QUESTIONNAIRE	34
4N: PARTY AND PARTICIPANT DISCLOSURE FORMS	35
SECTION 5: CONTRACT DOCUMENTS	40
5A: TRANSMITTAL PAGE TWO – BID AWARD DOCUMENTS	41
5B: FAITHFUL PERFORMANCE BOND	42
5C: PAYMENT BOND	44
5D: AWARD CERTIFICATIONS	46
5E: IRS FORM W9	47
5F: CONTRACT AGREEMENT	48
5F: GENERAL CONDITIONS	52
SECTION 6: TECHNICAL SPECIFICATIONS	110
6A: [NAME OF REPORT/DRAWINGS]	111
6B: [NAME OF REPORT/DRAWINGS]	112
6C: [NAME OF REPORT/DRAWINGS]	113
6D: [NAME OF REPORT/DRAWINGS]	114
6E: [NAME OF REPORT/DRAWINGS]	115

SECTION 1: NOTICE INVITING BIDS

**1A: ORANGE COUNTY FIRE AUTHORITY NOTICE INVITING SEALED BIDS
FOR CONSTRUCTION OF PROJECT NAME**

=====

ORANGE COUNTY FIRE AUTHORITY REQUEST FOR QUALIFICATIONS: SCOPE: Construct a _____. For official bid documents visit: <https://www.planetbids.com/portal/portal.cfm?CompanyID=14773>. A MANDATORY job walk will be held ____ AT 11:00 A.M. Bid submittals will be accepted until ____ AT 11:00 A.M.

=====

Published: Orange County Register

FIRST PUBLICATION DATE: [Click or tap to enter a date.](#)

SECOND PUBLICATION DATE: [Click or tap to enter a date.](#)

1B: SOLICITATION INFORMATION**1. ABBREVIATIONS**

IFB: Invitation for Bids

OCFA: Orange County Fire Authority

DIR: California Department of Industrial Relations

CSLB: California Contractors State License Board

PCC: California Public Contract Code

2. OBJECTIVE

The Orange County Fire Authority is requesting bids to establish a construction agreement for the **DESCRIPTION** of **LOCATION** in **CITY**, as specified herein. Project work will be coordinated by the OCFA Property Management section.

3. MANDATORY SITE INSPECTION

A mandatory job walk for prime contractors will be held on **DAY, DATE, TIME** at **LOCATION** located at **ADDRESS**.

Contractor's representative must attend the entirety of the job walk. **Late arrivals will not be granted access to the site, nor permitted to attend the job walk.** This informational meeting will be held to allow for site inspection and questions or clarifications concerning OCFA's IFB process and subsequent contract award. Prospective Bidders should be familiar with the IFB prior to attending the job walk.

- **INSERT COVID INSTRUCTIONS/REQUIREMENTS FOR SITE INSPECTION**

4. CONTRACTOR MINIMUM QUALIFICATIONS

Bidder must meet the following minimum qualifications in order to have its response considered:

- **Current and valid _____ Contractor's License issued by the California Contractor State License Board**
- **Current and valid California Department of Industrial Relations registration**
- **Minimum _____ years' experience providing the same or similar services**

5. DUE DATE

Bids will be received no later than **11:00 AM on DATE**. Late submittals will not be accepted. There will be a public opening of the bids on the specified due date and time in the Purchasing Office at the OCFA's Regional Fire Operations and Training Center located at 1 Fire Authority Road, Irvine, CA 92602. If attending the bid opening, please allow time to check in at the Reception Desk.

6. SUBMITTAL INSTRUCTIONS

The Bid Response Forms are available for download on OCFA's online bidding platform, PlanetBids. Bids must be prepared using the response forms included in this IFB document. Bids shall be executed by an authorized signatory. Contractors are to fill in all blank spaces (insert "N/A" where the answer is not applicable). Contractors are to initial all interlineations, annotations, deletions, alterations, erasures and other modifications on the forms. Deviations in the form may result in the bid being deemed non-responsive. **Only paper bids will be accepted for this solicitation.**

Bids may be hand delivered or mailed to Orange County Fire Authority, Purchasing Department, 1 Fire Authority Road, Building C, Irvine, CA 92602 no later than the date and time specified in Section 5 above. One (1) original hard copy and one (1) duplicate hard copy shall be sent to the attention of the Purchasing Section, within said time limit, in a sealed envelope. The envelope should include the Bidder's Business Name, Solicitation Number, and the Due Date. (Failure to include a duplicate hard copy will not cause an otherwise responsive bid to be deemed non-responsive.)

Any vendor who wishes his or her bid to be considered for award is responsible for ensuring that it is complete and received by the Purchasing Office on or before the due date and time. **Facsimile, electronic or e-mail bids will not be considered.**

7. INQUIRIES

Any questions related to the IFB shall be directed to the Purchasing Manager, Sara Kennedy. Questions and comments must be submitted via this bid's Q&A module on the PlanetBids website no later than **4:00 P.M. on DATE**. The inquirer's name, company, address, phone number should be included. Verbal interpretations or clarifications on the part of OCFA will be without legal effect. Only responses submitted in writing via the Q&A module or addendum will be binding.

8. SCHEDULE OF IMPORTANT DATES

Invitation for Bid Issue Date

Mandatory Job Walk

Final Day to Submit Questions

Deadline to Submit Bid Response

9. CONTRACTOR RESPONSIBILITIES

9.1 MATERIAL AND LABOR

Contractor shall provide all permits, material, labor, tools and supplies to complete the project as described herein. See Attachment Two for detailed information on these requirements and additional components that must be included in Contractor's bid and pricing.

9.2 CSLB LICENSE

Contractor and all subcontractors shall possess a valid California A, B, or specialty Contractor's license, as required by California law, at the time of bid submission, pursuant to California Public Contract Code Section 3300 and Business and Professions Code Section 7028.15. The successful contractor and all subcontractors must maintain the license throughout the duration of the project.

9.3 PREVAILING WAGE AND COMPLIANCE MONITORING

Contractor and all subcontractors shall conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hour notice, payroll records, and apprentice and trainee employment requirements, for all Services on the above Project, including, without limitation, the State labor compliance monitoring and enforcement by the Compliance Monitoring Unit of the Department of Industrial Relations. The successful contractor and all subcontractors must maintain DIR registration throughout the duration of the project.

9.4 STANDARD SPECIFICATIONS

OCFA relies on the standard specifications, CSI and Greenbook applicable in the jurisdiction where the project is located, as modified by the local jurisdiction.

9.5 BUSINESS LICENSE REQUIREMENTS

Contractor and all subcontractors shall conform to the requirements of the city in which the project is located (or the requirements of the County if the project is located within an unincorporated area) and shall maintain active business license(s) as required by the jurisdiction(s) in which the project is located. The successful contractor and all subcontractors must remain in compliance with these requirements throughout the duration of the project.

9.6 WARRANTY

In addition to any warranties specified in the drawings and any manufacturer's warranty, Contractor shall warrant the workmanship and manufacturing for a minimum of one year.

10. OCFA RESPONSIBILITIES

OCFA will coordinate with training operations to ensure Contractor has access to necessary areas to perform work. OCFA shall be responsible for the registration of the project with the CA DIR subsequent to contract award.

11. DELIVERABLES**11.1 PROJECT COMPONENTS****11.2 SPECIFICATIONS****11.2.1 MINIMUM SPECIFICATIONS**

The purpose of the information provided herein is to establish the minimum requirements for the supplies, materials, and equipment used for this project. It is not the intention of OCFA to exclude suppliers of similar or equal products of the types specified. Provided specifications, brands, and/or manufacturers describe OCFA expectations for the equipment, supplies and materials to be acquired.

11.2.2 EQUIVALENT ALTERNATE ITEMS**11.2.2.1 EQUIPMENT SUBMITTALS**

As noted throughout Section 6, deviations from the specifications provided herein are not preferred but in some instances may be accepted. OCFA retains the sole right to determine whether proposed deviations to the specified items are acceptable. Any bidder offering items or equipment as equivalent alternatives to those items specified must submit documentation in accordance with the requirements outlined in Section 6 to substantiate that the item is equal no less than ten (10) business days prior to the bid deadline. Failure to do so may result in the bid that includes such alternative(s) being deemed non-responsive. As part of the evaluation of proposed alternate items, OCFA may request additional product information or product samples. Such information or samples must be submitted at no expense to OCFA by an agreed-upon due date for inspection and approval prior to contract award. Failure to comply with the request, or failure of the proposed alternate product to meet the required specifications, may be cause for OCFA to deem the bid that includes such alternative(s) to be non-responsive.

11.2.2.1 ADDITIONAL SUBMITTALS

Contractor shall submit for approval all items and documentation prior to beginning work in accordance with the requirements outlined in Section 6. In addition to the requirements specified in Section 6, any equivalent alternate items offered as a submittal during the course of construction must include documentation to substantiate that the item is equal. As part of the evaluation of proposed alternate items, OCFA may request additional product information or product samples. Such information or samples must be submitted at no expense to OCFA by an agreed-upon due date for inspection and approval prior to installation. Failure to comply with the request, or failure of the proposed alternate product to meet the required specifications, may be cause for OCFA to deem the Contractor to have caused a delay in the project, to be remedied by the assessment of liquidated damages, as described in the Contract Documents (see Section 5).

11.2.3 MATERIALS

Materials shall be pure, unadulterated, first quality and shall be delivered to the project in original unbroken packages bearing the maker's name and brand number. Materials shall comply with all

requirements described in Section 6. Materials shall be submitted for approval prior to use. Contractor must furnish additional stock of materials, as specified in Section 6.

OCFA intends to purchase and keep as inventory commonly replaced items for the purpose of expediting future repairs. Should Contractor or subcontractors utilize this inventory to perform repairs, use of these items will not void or otherwise negatively affect the warranty. Contractor or subcontractors must replace the stock at no cost to OCFA.

11.3 PROJECT EXECUTION

11.3.1 WORKMANSHIP

Contractor shall:

- a. Perform work under conditions best suited to produce the specified deliverables.
- b. Correct all work that does not comply with the intent of the specification and/or does not meet the approval of OCFA.
- c. Protect all adjacent areas and surfaces from damage from work performed (i.e. automobiles, sidewalks, asphalt, concrete, plants, etc.).
- d. Coordinate with the OCFA before using noisy, motorized equipment.
- e. Take all necessary steps to protect the public and all property concerned.

11.3.2 CLEAN-UP

Contractor shall, at completion of work each day, remove all debris and rubbish resulting from this project and leave work spaces in a clean condition subject to OCFA approval.

11.3.3 PROTECTION

Contractor shall protect work of other trades, correct damage by cleaning, repairing or replacing, and repainting, as approved by OCFA.

11.3.4 REPAIR

At completion of work, Contractor shall repair and/or restore damaged work of other trades.

11.3.5 ACCEPTANCE DOCUMENTATION

Upon completion of work, Contractor shall provide the documents specified in Attachment Two for final review and acceptance by OCFA.

11.3.6 HEALTH AND SAFETY

Contractor shall ensure compliance at all times with the Health and Safety requirements in Section 86 of the Contract Agreement.

11.4 SCHEDULES, TIMELINES, AND MEETINGS

11.4.1 COORDINATION OF WORK

Prior to beginning work, Contractor shall prepare a schedule and submit to OCFA for approval. Contractor shall coordinate the commencement of all work with OCFA so as not to cause inconvenience to the facility. Contractor parking, along with the placement of all trailers, equipment and materials must be coordinated with OCFA in advance.

All work at the location must be coordinated with OCFA in a manner that shall accommodate the requirements of OCFA personnel. Contractor shall post notices in conspicuous places at least three to five days in advance warning occupants what date work will begin. Work, deliveries or efforts which may impede existing circulation roadways shall be scheduled at least seven (7) days in advance.

11.4.2 HOURS OF WORK

Work shall be performed Monday through Friday between the hours of 7:00 AM and 5:00 PM. Overtime and after-hours work is not permitted, unless otherwise coordinated with and approved by the city in which the project is located.

11.4.3 PROJECT TIMELINE

OCFA anticipates that

- Project work will begin ___ days after the agreement and all other required award documents are received and approved by OCFA
- Project will be complete within ___ days

12. MEETINGS

Meetings between OCFA and Contractor will include, at a minimum, the following:

12.1 PRE-AWARD MEETING

This meeting will aid OCFA in determining responsibility of Contractor and to finalize the specifications and services to be provided.

12.2 PRE-CONSTRUCTION JOB WALKS

These meetings with OCFA, the staff of the city in which the project is located, and others as necessary and/or required by law will be coordinated by the Contractor.

12.3 PROJECT STATUS MEETINGS

Weekly meetings held in person, unless otherwise determined by OCFA.

12.4 ACCEPTANCE

Meetings regarding project acceptance and warranty punch list items.

12.5 ADDITIONAL

Other meetings deemed necessary by OCFA for contract compliance.

SECTION 3: INSTRUCTIONS TO BIDDERS

13.1 AMENDMENT OF INVITATION FOR BID

Notification via email will be sent to vendors listed as "Prospective Bidders" on PlanetBids in the event that a Q&A set or amendment to the IFB is released. The bidder shall acknowledge receipt of an amendment to this Invitation for Bid on the bid submittal. The OCFA reserves the right to revise the bid documents prior to the bid opening date. Revisions, if any, shall be made by written Addenda.

13.1.1 Pursuant to Public Contract Code Section 4104.5, if OCFA issues an Addendum later than seventy-two (72) hours prior to the deadline for submission of bids, and the Addendum requires material changes, additions or deletions to the description of the work to be performed or the content, form or manner of submission of bids, OCFA will extend the deadline for submission of bids by at least seventy-two (72) hours. Otherwise, OCFA may determine, at its sole discretion, whether an Addendum requires that the date set for opening bids be postponed. Announcement of a new date, if any, will be made by Addenda. All bidders will be notified by e-mail when an addendum is posted to PlanetBids.

All Addenda issued before the time bids are due shall form part of the contract documents. It is the bidder's responsibility to be familiar with Addenda issued. OCFA will deem any bid that fails to acknowledge all Addenda to be non-responsive. Bidders must acknowledge the Addenda in writing on the form provided in the bid documents.

13.2 INTERPRETATION OF BID DOCUMENTS

Discrepancies in, and/or omissions from the Specifications or other bid documents or questions as to their meaning shall be immediately brought to the attention of the Purchasing Manager by submission of a written request for interpretation or correction thereof no later than the deadline specified for questions specified in Section 7 of the Notice Inviting Bids. The person submitting the request will be responsible for its prompt delivery.

Any interpretation of the bid documents will be made only by addendum duly issued electronically to each bidder registered on the prospective bidder's list. The OCFA will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the bid documents to any bidder, and no bidder should rely on any such oral interpretation.

14. DISPUTES RELATING TO THIS INVITATION FOR BID

In the event a dispute arises concerning any aspect of this bid, including specifications and/or process, the party bringing the dispute shall submit a written request for resolution to the Purchasing Department prior to the IFB's due date and time.

In the event a dispute arises regarding this IFB's Recommendation for Award or Denial of Award, the party bringing the dispute must do so in accordance with OCFA's **Purchasing Ordinance, Article IX. Legal and Contractual Remedies**, which can be found online under "Doing Business with OCFA" at <https://www.ocfa.org/Uploads/Purchasing/OCFA%20Purchasing%20Ordinance.pdf>.

15. WITHDRAWAL OF BID

15.1 PRIOR TO BID DUE DATE AND TIME

At any time prior to the specified due date specified in IFB Section 5, an Offeror may formally withdraw the bid by a written letter, facsimile or electronic mail from the Offeror or an authorized representative to the OCFA Purchasing Manager, provided such letter, facsimile or electronic mail is actually and timely received by the OCFA Purchasing Manager. **Telephonic or oral withdrawals shall not be considered.**

15.2 AFTER BID DUE DATE AND TIME

In accordance with California Public Contract Code sections 5100-5110, Bidder shall not be relieved of the obligations of its bid unless by consent of OCFA, nor shall any change be made in the bid because of mistake. Bids may be withdrawn for mistake upon mutual written agreement of Bidder and OCFA, or if all of the following conditions apply:

- A mistake is made in the bid; and
- Written notice is provided to OCFA within five (5) working days from the date of the public opening specifying in the notice in detail how the mistake occurred. Telephonic or oral withdrawals will not be considered; and
- The mistake makes the bid materially different than Bidder intended it to be; and
- The mistake was made in filling out the bid and was not due to error in judgment or to carelessness in inspecting the site of the work, or in reading the plans or specifications.

Any bidder who claims a mistake or who forfeits its bid security (Bidder's Bond) shall be prohibited from participating in further bidding on the project on which the mistake was claimed or bid security was forfeited.

16. INDEMNIFICATION

Bidder agrees to protect, defend, indemnify, save and hold harmless the OCFA and its officers, officials, employees and volunteers from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person (Bidder's employees included), and for injury to any property, including consequential damages of any nature resulting there from, arising out of or in any way connected with the Bidder's submittal.

17. RESERVATIONS (RIGHTS RESERVED TO OCFA)

OCFA reserves the right to reject any or all bids or any part thereof; to rebid the solicitation; to reject non-responsive or non-responsible bids; to reject unbalanced bids; to reject bids where the terms, prices, and/or awards are conditioned upon another event; to reject individual bids for failure to meet any requirement; to award by item, part or portion of an item, group of items, or total; to make multiple awards; to investigate the qualifications of any bidder under consideration; to modify or amend this IFB in writing; to waive minor irregularities, defects, omissions, technicalities or form errors in any bid. Waiver of one irregularity does not constitute waiver of any other irregularity. OCFA may seek clarification of the bid from the bidder at any time, and failure to respond is cause for rejection. OCFA is required to make an award that is in the best interest of the OCFA. All decisions on compliance, evaluation, terms and conditions shall be made solely at the OCFA's discretion and made to favor the OCFA. OCFA may cancel this solicitation at any time.

The OCFA may reject any bid which, in its sole opinion, does not accurately reflect the cost to perform the work as compared to other bids received and/or to project estimates. In addition, because the OCFA may elect to include or exclude any of the bid items and alternate bid items (if applicable) at its sole and absolute discretion, each bidder must ensure that each bid items contain a proportionate share of profit, overhead and other costs or expenses which will be incurred by the bidder. The OCFA may deem any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items as non-responsive. No contract will be executed unless the bidder is licensed in accordance with the provisions of the State law.

18. INSPECTION OF SITE/MANDATORY MEETING AND JOB WALK

Each prospective bidder is responsible for becoming familiar with the conditions of the project site as well as those relating to the construction and labor of the project, to fully understand the facilities, conditions, difficulties and restrictions which may impact the completion of the project. Attendance by a representative of each prospective contractor at the mandatory meeting as stated in the request for informal bid is required. **Any bid received by a contractor not represented at the mandatory meeting will be rejected and deemed non-responsive.**

19. CONTRACTOR AND SUBCONTRACTOR LICENSING REQUIREMENTS

Bidder and all listed Subcontractors shall possess valid California Contractor's licenses, as required herein and as appropriate for each specialty subcontracted at the time of bid submission, pursuant to California Public Contract Code Section 3300 and Business and Professions Code Section 7028.15. Licenses must be maintained throughout the duration of the contract resulting from this IFB.

Pursuant to Section 7028.15 of the Business and Professions Code, the OCFA shall consider any bid submitted by a contractor not currently licensed in accordance with California law and pursuant to the requirements found in the bid documents to be nonresponsive, and the OCFA shall reject the bid. The OCFA shall have the right to request evidence of all valid license(s) currently held by the bidder and each of the subcontractors listed in the bid before awarding the contract. In such cases, Bidders shall provide evidence of valid licenses satisfactory to the OCFA within five (5) calendar days. Pursuant to Public Contract Code Section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code Section 2717(b) in order to supply mined material for this contract.

20. SB 854 DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

No contractor or subcontractor may be listed on an offer for a public works project unless registered with the California Department of Industrial Relations pursuant to California Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only under California Labor Code Section 1771.1(a). No contractor or subcontractor may be awarded a contract for public work, or engage in the performance of any public works project unless registered with the California Department of Industrial Relations pursuant to California Labor Code Section 1725.5. Pursuant to SB 854, the DIR registration number of each subcontractor must be identified on the bid; **failure to do so may result in the bid being deemed non-responsive.**

The contract resulting from this solicitation is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. OCFA reports all public works contracts to the DIR subsequent to contract execution.

The OCFA will not recognize any claim for additional compensation because of the payment by the Contractor of any wage rate in excess of the prevailing wage rate set forth in the contract. The possibility of wage increases is one of the elements to be considered by the Contractor in determining bid pricing, and will not under any circumstances be considered as the basis of a claim against the OCFA on the contract resulting from this solicitation.

21. PREVAILING WAGE

This project is a public work in the State of California, funded in whole or in part with public funds. Therefore, the applicable prevailing wage rates will be enforced. The work is subject to the payment of not less than prevailing wages under California Labor Code Section 1770 et seq. Contractor must comply with all related provision of the California Labor Code if awarded the agreement, including but not limited to:

- The provisions of California Labor Code Section 1775 relating to payment of prevailing wages, and
- Section 1777.5 relating to employment of apprentices, and
- Section 1811-1813 relating to the payment of overtime.

Failure to comply with the applicable prevailing wage, overtime, and apprenticeship requirements may result in penalties.

Contractors are hereby notified that the Director of Industrial Relations has ascertained the general prevailing rate of per diem wages and the rates for overtime and holiday work in the locality in which the work is to be performed for each craft, classification or type of worker needed to perform the work under the contract which will be awarded to the successful contractor.

Additional information is available at the Department of Industrial Relations website at:

<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>.

Contractors are further notified that this project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Additional information on the Compliance Monitoring Unit requirements can be found at:

<https://www.dir.ca.gov/Public-Works/PublicWorksEnforcement.html>.

22. DEBARMENT OF CONTRACTORS

In accordance with the provisions of the Labor Code, contractors or subcontractors may not perform work on a public works project with a subcontractor who is ineligible to perform work on a public project pursuant to Section 1777.1 or Section 1777.7 of the Labor Code and Federal "Excluded Parties List System". Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract. Any public money that is paid to a debarred subcontractor by the Contractor for the Project shall be returned to the OCFA. The Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project. In order to prohibit the procurement of any goods or services ultimately funded by Federal awards from debarred, suspended or otherwise excluded parties, each Contractor will be screened at the time of response to ensure the Contractor, its principal and their named subcontractors are not debarred, suspended or otherwise excluded by the United States Government in compliance with the requirements of 2 Code of Federal Regulations (CFR) 200.12 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

23. CONTRACT

A response to this IFB is an offer to contract with OCFA based upon the terms, conditions, and specifications contained within this document, all Addenda, and the Construction Services Agreement, attached hereto as Attachment One. Submission of a bid confers on the bidder no right to an award or to a subsequent contract. No binding contract will exist between the bidder and the OCFA unless and until the OCFA executes a written contract or purchase order.

24. BID DOCUMENTS & FORMS

Bid submittals are to be prepared using the bid forms which are included in this IFB Document. Bids shall be executed by an authorized signatory. As a condition of bidding and in accordance with the provisions of Section 20101 of the California Public Contract Code, prospective bidders are required to submit all the bid forms listed in the Bidder's Checklist. Failure to do so may result in the rejection of the bid.

25. PREPARATION OF BID

All bids shall incorporate the forms provided in this IFB document. It is permissible to copy these forms as required. Facsimiles or electronic mail bids shall not be considered.

The Bid form and any solicitation amendments must be signed and returned with the bid. The forms submitted shall be signed by a person authorized to submit an offer. Authorized signature on the Bid forms shall constitute an irrevocable offer to provide services specified herein. Offeror shall submit any additional requested documentation, signifying intent to be bound by the terms of the agreement.

- The authorized person signing the bid shall initial all interlineations, annotations, deletions, alterations, erasures and other modifications on the bid.
- Periods of time, stated as days, shall be in calendar days.
- It is the responsibility of all Offerors to examine the entire Request for Bid package and seek clarification of any requirement that may not be clear and to check all responses for accuracy before submitting a bid. Negligence in preparing a bid confers no right of withdrawal after the due date and time.

- OCFA shall not reimburse the cost of developing, presenting, submitting or providing any response to this solicitation.
- Offeror must list any subcontractors to be utilized in the performance of the services specified herein. For each subcontractor, details on respective qualifications must be included.
- Each bidder shall submit its bid in strict conformity with the requirements of the bid documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a bid may render it non-responsive and may cause its rejection. Bidders shall not delete, modify, supplement printed matter on the bid forms.
- **Verbal, telephonic, facsimile, email or other electronic bids or modifications will not be considered.**

26. BID CERTIFICATION

By signature on the Bid Response Forms, Bidder certifies:

- The Bidder has thoroughly examined and become familiar with the requirements of this IFB;
- Clear understanding of the rules as defined in this IFB and compliance with all terms and conditions specified herein;
- The Bidder is an authorized and/or certified retailer and/or installer of the specified items;
- The submission of the bid did not involve collusion or other anti-competitive practices;
- The bid is compliant with all state and federal laws;
- The Bidder will not discriminate against any employee or applicant for employment in violation of Federal or State law;
- The Bidder has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, meal or service to any Director, officer, or employee of OCFA in connection with the submitted offer;
- That the individual signing the submittal is an authorized agent for the Bidder and has the actual authority to legally bind the Bidder to the Contract;
- That its principal and named subcontractors are not debarred, suspended or otherwise excluded by the United States Government, in compliance with the requirements of 7 Code of Federal Regulations (CFR) 3016.35, 28 CFR 66.35, 29 CFR 97.35, 34 CFR 80.35, 45 CFR 92.35 and Executive Order 12549.

27. ACCEPTANCE PERIOD

Unless otherwise specified herein, bids are firm and may be accepted by OCFA at any time within 180 days of bid opening.

28. BID OPENING

All the bids opened by the OCFA will be subject to further evaluation with respect to responsiveness of the bid and for purposes of determining that the bidder is responsible.

29. SUBLETTING AND SUBCONTRACTING.

Pursuant to the Subletting and Subcontracting Fair Practices Act (commencing with Section 4100 of the Public Contract Code), bidders are required to list in their proposal the name, business address, California contractor license number, and public works contractor registration number issued pursuant to Section 1725.5 of the Labor Code of each subcontractor who will perform work or labor or render services in or about the construction of the work or improvement, or a subcontractor who specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the Plans and Specifications in excess of 1/2 of 1% of the prime Contractor's total bid or \$10,000, whichever is greater. If a subcontractor's California contractor license number or public works contractor registration number are submitted incorrectly in the bid, it will not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected subcontractor's California contractor license number is submitted to OCFA within 24 hours after the bid opening.

If the Bidder fails to list a subcontractor for a portion of work or if the Bidder lists more than one subcontractor of the same portion of work in excess of 1/2 of 1% of the total bid or \$10,000, whichever is greater, the Bidder agrees that it is fully qualified to perform that portion of work itself, and that the Bidder shall perform that portion of work itself. If after award of the contract, the Bidder actually subcontracts that portion of work, except as provided in Public Contract Code Section 4107 or 4109, the Bidder shall be subject to the penalties listed in Section 4111 of the Public Contract Code. It is the OCFA's intent for the Subletting and Subcontracting Fair Practices Act to apply to all phases of the work.

29.1 NO INCREASE IN BID COST DUE TO SUBSTITUTION OF SUBCONTRACTOR.

In the event that a subcontractor is substituted in any manner for any reason, any increased cost related to such substitution shall be the sole responsibility of the Contractor. Such substitution shall not cause or result, directly or indirectly, in any increase in the bid price. This subsection shall not be construed to be prior consent to substitution of subcontractors, nor to authorize any substitution that is prohibited by the Subletting and Subcontracting Fair Practices Act.

30. PRICING

Contractors shall provide itemized pricing. No aggregate bids will be considered. The bid must state the amount for which the contractor offers to supply all labor, materials, equipment, tools, transportation, services and applicable taxes to perform all work specified. Bids shall not contain any conditions, limitations or provisions for the work to be done. Alternative bids will not be considered unless requested. The contractor shall set forth for each item of work, in clearly legible figures, a unit item price and a total for each item in the respective spaces provided. In case of a variation between the unit price and the totals shown by the contractor, the unit price will take precedence. In case of discrepancy between the numerical lump sum price and the written lump sum price, the written lump sum price shall prevail.

31. TAXES

No mention shall be made in the proposal of Sales Tax, Use Tax, or any other tax, as all amounts set forth in the bid will be deemed and held to include any such taxes that may be applicable. Bidder acknowledges and agrees that OCFA shall not be responsible for the payment of any increase in any Sales Tax, Use Tax, or any other tax that takes effect after award.

32. COMPLIANCE WITH LAWS

All bids shall comply with current and applicable federal, state, and local laws relative thereto.

33. CRITERIA FOR EVALUATION AND AWARD

The OCFA will award the contract to the lowest responsive, responsible bidder as required by law. The OCFA evaluates three categories of information: responsiveness, responsibility, and price. Bids must meet the following responsiveness and responsibility criteria in order to be considered for award:

- a) **RESPONSIVENESS:** OCFA will determine whether the bid complies with the instructions for submitting bids including completeness of bid which encompasses the inclusion of all required attachments and submissions. The OCFA will reject any bids that are submitted late. Failure to meet the specifications, project timeline, product availability, or other requirements may result in rejection.
- b) **RESPONSIBILITY:** OCFA will determine whether the bidder is one with whom it can or should do business. Factors that OCFA may evaluate to determine whether a contractor is a "responsible bidder" for purposes of the Public Contract Code include, but are not limited to: excessively high or low priced bids, past performance, references (including those found outside the bid), compliance with applicable laws - including tax laws, business standing, bidder's record of performance and integrity - e.g. has the bidder been delinquent or unfaithful to any contract with OCFA, whether the bidder is qualified legally to contract with the OCFA, financial stability and the perceived ability to perform completely as specified. A bidder must at all times have financial

resources sufficient, in the opinion of the OCFA, to ensure performance of the contract and must provide proof upon request. OCFA staff may also use Dun & Bradstreet and/or any generally available industry information to assist in making such determinations. The OCFA reserves the right to inspect and review bidder's facilities, equipment and personnel and those of any identified subcontractors, and by submitting a bid, bidder consents thereto. The OCFA will determine whether any failure to supply information, or the quality of the information, will result in rejection.

- c) PRICE: OCFA will then evaluate bids that have met the requirements above for price, quality of product, life cycle cost, maintenance, warranty, etc.

34. GROUNDS FOR DISQUALIFICATION

OCFA may disqualify a submittal for any of the following reasons:

- Contact regarding this procurement is made with any OCFA Director, officer or employee other than those in the Purchasing Department from the time of issuance until the end of the dispute period;
- Evidence of collusion, directly or indirectly, among bidders regarding the amount, terms, or conditions of this solicitation is found;
- Evidence of submitting incorrect information in the response to this solicitation or misrepresenting or failing to disclose material facts during the award process is found;
- Submittal of added terms, conditions, or agreements with the bid document;
- Offering of gifts or souvenirs, even of minimal value, to OCFA Directors, officers or employees;
- The existence of any lawsuit, unresolved contractual claim or dispute between the Bidder and OCFA;
- Evidence of the Bidder's inability to successfully complete the responsibilities and obligations of the bid is found;
- Bidder's default under any OCFA agreement.
- No bidder shall be allowed to make, submit or be interested in more than one bid. No person, firm, corporation, or other entity may submit a sub-proposal to a bidder, or quote prices of materials to a bidder when also submitting as a prime on the same project.

35. PUBLIC RECORD

All bids submitted in response to this IFB shall become the property of OCFA and shall become a matter of public record available for review when required by law, including but not limited to the California Public Records Act.

36. CLAYTON ACT AND CARTWRIGHT ACT

In accordance with Section 7103.5 of the Public Contract Code, in entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to OCFA all rights, and interest in and all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgment by the parties.

37. INSURANCE

The successful bidder shall procure the insurance in the form and in the amount specified in the Contract Documents, including but not limited to the General Conditions. Failure to do so may result in forfeiture of the bid guarantee. No time extensions or extra payments shall be made to contractor for delays it may encounter in obtaining such coverage.

Contractor shall not commence work under the agreement until he/she has obtained all required insurance, including any and all endorsements, and the insurance has been approved by the OCFA as

to form, amount, and carrier, nor shall Contractor allow any subcontractor to commence any work until all insurance required of the subcontractor has been obtained and approved.

38. NOTICE OF INTENT TO AWARD/EXECUTION OF CONTRACT

A notification of OCFA's intent to award contract ("Notice of Intent to Award") will be sent to the successful Offeror(s). Following receipt of the Notice of Intent to Award, and within fourteen (14) calendar days of the notice, the successful Offeror(s) shall complete and/or submit the items listed in Exhibit **X**: Transmittal Page – Bid Award Documents to the Purchasing & Materials Manager or designee.

The successful contractor or any designated subcontractors shall not perform any work on the project prior to attending the pre-construction conference and executing the appropriate certification. In case of failure of the Offeror(s) to execute and return all required documents in a form satisfactory to OCFA and within the time allowed, the OCFA may, at its option, consider that the Offeror(s) has/have abandoned the contract.

39. SUBSTITUTION OF SECURITIES

In conformance with Public Contract Code Section 22300, which is incorporated herein by this reference, the Contractor may substitute securities for any monies retained by the OCFA to ensure performance under the Contract or, in the alternative, may request payment of retention earned directly to an escrow agent.

At the request and expense of the Contractor, the Contractor has the option to deposit securities, which have been approved by the OCFA, with a State or Federally chartered bank as the escrow agent or require the OCFA to deposit 5% of each progress payment with the escrow agent. Said securities will be used as a substitute for retention earnings required to be withheld by the OCFA pursuant to the construction contract. Said securities shall have no obligation to any other construction contract for substitution of securities in lieu of retention. When the Contractor deposits the OCFA approved securities with the escrow agent, the escrow agent shall notify the OCFA within 10 calendar days of the deposit. Said securities shall be evaluated quarterly by the escrow agent to verify the current market value. If the current market value of said securities falls below the required amount, the escrow agent shall notify the Contractor and require additional securities and/or cash to be submitted for OCFA approval, and to be held in the escrow account to meet the Contractor's obligations. The escrow agent shall hold said securities until such time as the escrow agent receives written notification from the OCFA that the Contractor has satisfactorily completed his Contract obligations.

The type of securities deposited and the method of release shall be approved by the OCFA's Office of General Counsel.

If the Contractor chooses not to exercise its rights under Public Contract Code Section 22300, the full five percent (5%) retention will be deducted from all payments. The final retention will be authorized for payment thirty-five (35) days after the date of recordation of the Notice of Completion, if no stop notices have been filed. The OCFA may withhold from release of the final retention amounts authorized under Public Contracts Code Section 7107 and/or 125% of the cumulative amounts identified in all stop notices.

40 AWARD AND EXECUTION OF CONTRACT. If a bid bond is submitted with a 10% of Bid designation for the amount as noted in the OCFA Approved Bid Bond form, a revised Bid Bond with numerical dollar values, both in words and with digits, shall be submitted to the OCFA within three (3) working days of bid opening.

Within seven (7) calendar days after the date of the Notice of Apparent Low Bidder, the Contractor shall execute and return the following documents to the OCFA:

- All required evidence of insurance
- Two (2) Original Signed Contract Agreements

Within fourteen (14) calendar days after the date of the Notice of Award, the Contractor shall execute and return the following documents to the OCFA:

- | | |
|-----------------------------|-------------------------------------|
| • Faithful Performance Bond | • Water Pollution Control Plan |
| • Material and Labor Bond | • Form W-9 |
| • Construction Schedule | • Encroachment Permit Application |
| • Traffic Control Plan | • Construction Materials Submittals |

FAILURE TO COMPLY WITH ALL OF THE ABOVE WILL RESULT IN ANNULMENT OF THE AWARD AND FORFEITURE OF THE PROPOSAL GUARANTEE AT THE SOLE DISCRETION OF OCFA.

The Contract Agreement shall not be considered binding upon the OCFA until executed by the authorized OCFA officials.

SECTION 4: PROPOSAL DOCUMENTS**BID SUBMITTAL**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the Bidder submit the following documents, organized in the manner specified below. All Bidders are expected to provide detailed answers where requested. Additional information, if provided, should be separately identified in the bid. **Failure to submit these documents may result in the bid being deemed non-responsive.**

- ☐ **Transmittal Page One – IFB Response Forms** (*Exhibit 4A*)
- ☐ **Original Bidder's Bond** (*Exhibit 4B*)
- ☐ **Certification of Bid** (*Exhibit 4C*)
- ☐ **Non-Collusion Affidavit** (*Exhibit 4D*)
- ☐ **Contractor's Licensing Statement** (*Exhibit 4E*)
- ☐ **List of Subcontractors** (*Exhibit 4F*)
- ☐ **Designation of Sureties** (*Exhibit 4G*)
- ☐ **Bidder's Certification of Compliance with Insurance Requirements** (*Exhibit 4H*)
- ☐ **Certification of Site Examination** (*Exhibit 4I*)
- ☐ **Bid Sheets** (*Exhibit 4J*)
- ☐ **Project Approach and Schedule** (*Exhibit 4K*)
- ☐ **List of Project References** (*Exhibit 4L*)
- ☐ **Qualifications Questionnaire** (*Exhibit 4M*)
- ☐ **Party and Participant Disclosure Forms** (*Exhibit 4N*)

4A: TRANSMITTAL PAGE**TO:** Orange County Fire Authority**FROM:** _____

(Legal Name of Contractor)

PROJECT: **[PROJECT NAME]**

The contractor will accept in full payment for the work specified herein the following total lump sum amount, inclusive of all applicable taxes and markup (transferred from Exhibit 4K: Schedule of Values):

BID LUMP SUM:**NUMERICAL:** \$ _____**WRITTEN:** _____**ACKNOWLEDGMENT OF ADDENDA:**

No.: _____ Dated: _____ No.: _____ Dated: _____
No.: _____ Dated: _____ No.: _____ Dated: _____

BIDDER'S CHECKLIST:

Bidder certifies that the following documents are included in its Bid:

- | | | |
|---|--|--|
| <input type="checkbox"/> Transmittal Page (<i>Exhibit 4A</i>) | <input type="checkbox"/> List of Subcontractors (<i>Exhibit 4F</i>) | <input type="checkbox"/> Project Approach and Schedule (<i>Exhibit 4K</i>) |
| <input type="checkbox"/> Bidder's Bond (<i>Exhibit 4B</i>) | <input type="checkbox"/> Designation of Sureties (<i>Exhibit 4G</i>) | <input type="checkbox"/> List of Project References (<i>Exhibit 4L</i>) |
| <input type="checkbox"/> Certification of Bid (<i>Exhibit 4C</i>) | <input type="checkbox"/> Bidder's Certification of Compliance with Insurance Requirements (<i>Exhibit 4H</i>) | <input type="checkbox"/> Qualifications Questionnaire (<i>Exhibit 4M</i>) |
| <input type="checkbox"/> Contractor's Licensing Statement (<i>Exhibit D</i>) | <input type="checkbox"/> Certification of Site Examination (<i>Exhibit 4I</i>) | <input type="checkbox"/> Party and Participant Disclosure Forms (<i>Exhibit 4N</i>) |
| <input type="checkbox"/> Non-Collusion Affidavit (<i>Exhibit E</i>) | <input type="checkbox"/> Bid Sheets (<i>Exhibit 4J</i>) | |

MINIMUM QUALIFICATIONS:

Bidder Meets the Minimum Qualifications as follows:

CSLB License #: _____ **Expiration:** _____**DIR Registration #:** _____ **Expiration:** _____**Number of Years of Experience:** _____**SIGNATURE OF CONTRACTOR:** _____**PRINTED NAME:** _____ **TITLE:** _____

4B: BIDDER'S BOND

(10% of Agreement Price)

Bidders must use this form, NOT a surety company form

KNOW ALL PERSONS BY THESE PRESENTS:

That the undersigned, _____ as Principal ("Principal"), and _____ as Surety ("Surety"), a corporation organized and existing under and by virtue of the laws of the State of _____ and authorized to do business as a surety in the State of California, are held and bound unto the Orange County Fire Authority ("OCFA") of Orange County, State of California as Obligee, in the sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that whereas the Principal has submitted a bid to the OCFA for all work specifically described in the accompanying bid;

NOW, THEREFORE, if the Principal is awarded the Project and, within the time and manner required under the Bid Documents, after the prescribed forms are presented to Principal for signature, enters into a written contract ("Agreement"), in the prescribed form in accordance with the bid, and files two bonds, one guaranteeing faithful performance and the other guaranteeing payment for labor and materials as required by law, and meets all other conditions to the contract between the Principal and the Obligee becoming effective, or if the Principal shall fully reimburse and save harmless the Obligee from any damage sustained by the Obligee through failure of the Principal to enter into the Agreement and to file the required performance and labor and material bonds, and to meet all other conditions to the Agreement between the Principal and the Obligee becoming effective, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect. The full payment of the sum stated above shall be due immediately if Principal fails to submit and execute the Agreement award documents as required in the Invitation for Bid Document within the timeline specified therein.

Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or the call for bids, or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation under this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or the call for bids, or to the work, or to the specifications.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorneys' fee to be fixed by the Court.

If the OCFA awards the bid, the security of unsuccessful bidder(s) shall be returned within sixty (60) days from the time the award is made. Unless otherwise required by law, no bidder may withdraw its bid for ninety (180) days after the date of the bid opening.

[Signature Page Follows]

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20____.accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, this certificate must be signed and filed with the awarding body prior to performing any work under this Contract:

CONTRACTOR:

(Affix Corporate Seal)

Principal

By

Print Name and Title of Signatory

SURETY:

(Affix Corporate Seal)

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Attach Notary acknowledgments for all signatures. Attach Power of Attorney Attach Power of Attorney if executed by Attorney-in-Fact. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.

4C: CERTIFICATION OF BID

In responding to IFB **NNXXXX [Project Title]**, the undersigned Bidder(s) certifies the following:

1. Bidder agrees to provide all necessary labor, materials, equipment, and services to OCFA per the specifications contained herein and that all furnished labor is able to work in harmony with all other elements of labor employed or to be employed on the work.
2. Bidder further agrees to the terms and conditions specified herein, the following terms and conditions that are a part of this IFB, and the resulting Construction Services Agreement. **If there are any exceptions to or deviations from the terms of the Contract Documents (Section 5), they must be stated in an attachment included with the bid.** Where Bidder wishes to propose alternatives to the OCFA's contractual requirements, these should be thoroughly explained. While exceptions will be considered, OCFA reserves the right to determine that an offer is non-responsive based upon any exceptions taken. OCFA's governing body reserves the right to deny any material exceptions to the contract. If no contractual exceptions are noted, Bidder will be deemed to have accepted the form of the contract requirements set forth in Section 5.
3. The Bidder hereby certifies that the individual signing the submittal is an authorized agent for the Bidder and has the OCFA to legally bind the Bidder to the Contract.
4. The undersigned has reviewed the work outlined in the documents and fully understands the scope of work required, understands the construction and project management function(s) as described, and that each contractor who is awarded a contract shall be in fact the prime contractor, not a subcontractor, to the OCFA, and agrees that its offer, if accepted by the OCFA, will be the basis for the contractor to enter into a contract with the OCFA.
5. The undersigned had notified the OCFA in writing any discrepancies or omission or of any doubt, questions, or ambiguities about the meaning of any of the IFB documents.
6. By submitting this Offer Form and signing below, the liquidated damages clause of the Agreement is hereby acknowledged.
7. It is understood that the OCFA reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of one hundred eighty (180) days.
8. Contractor expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California False Claims Act, Cal. Gov. Code, §12650 et seq.), the OCFA will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the contractor may be subject to criminal prosecution.
9. Labor Code Section 1735 requires that no discrimination be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex of such persons, except as provided in Government Code Section 12940. Bidder certifies that it does not discriminate in its employment with regard to the factors set forth in Labor Code Section 1735; that it is in compliance with all federal, state and local directives and executive orders regarding non-discrimination in employment; and that it agrees to demonstrate positively and aggressively the principle of equal employment opportunity in employment.
10. The Bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager: (1) is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency; (2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years; (3) does not have a proposed debarment pending; and (4)

has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

To the Orange County Fire Authority:

Contractor hereby certifies to the OCFA that all representations, certifications, and statements made by the contractor, as set forth in this offer form, are true and correct and are made under penalty of perjury. The Undersigned hereby offers and shall furnish the services in compliance with all terms, scope of work, conditions, specifications, and amendments in the Request for Proposal which is incorporated by reference as fully set forth herein. The representations herein are made under penalty of perjury.

LEGAL NAME OF CONTRACTOR: _____**SIGNATURE OF CONTRACTOR:** _____**PRINTED NAME:** _____**TITLE:** _____**CONTRACTOR ADDRESS:** _____**CITY:** _____**STATE:** _____**ZIP CODE:** _____**IF CONTRACTOR IS A CORPORATION, AFFIX CORPORATE SEAL AND COMPLETE THE FOLLOWING:****NAME OF CORPORATION:** _____**DATE OF INCORPORATION:** _____**PRESIDENT:** _____**TREASURER:** _____**SECRETARY:** _____**MANAGER:** _____**SUBSCRIBED AND SWORN TO BEFORE ME**
THIS _____ **DAY OF** _____ **20**_____**BY** _____**(Print Name)**_____
(Signature of Notary Public)_____
(Signature)**(Attach Jurat)****TITLE** _____**(SEAL)****(SEAL)**

4D: NON-COLLUSION AFFIDAVIT

STATE OF CALIFORNIA)
) SS
COUNTY OF)

In conformance with Public Contract Code Section 7106, the party making the foregoing bid declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that such bid is genuine and not collusive or sham; that said bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____ [date], at _____ [city], _____ [state]."

Signed _____

Title

Subscribed and sworn to before me
this _____ day of _____, 20____.

Signature of Notary Public

(SEAL)

4E: CONTRACTOR'S LICENSING CERTIFICATION

If the contractor is a sole proprietorship or another entity that does business under a fictitious name, the bid shall be in the real name of the respondent with a designation following showing "DBA (the fictitious name)," provided however, that no fictitious name shall be used unless there is a current registration with the Orange County Recorder. If the bid is submitted by a corporation, provide an additional attachment that states the names of the officers who can sign an agreement on behalf of the corporation and whether more than one officer must sign. If the bid is by a partnership or a joint venture, state the names and addresses of all general partners and joint venture parties.

The undersigned certifies that the contractor is licensed in accordance with the laws of the State of California to do the type of work required. Contractor further certifies that it is regularly engaged in the general class and type of work called for in this Request for Informal Bid. The successful contractor and subcontractors are required to hold the State of California Contractor's License(s) and DIR registration as required by SB854. Please complete and/or provide all requested information.

CONTRACTOR'S**LICENSE NO:** _____ **CLASS:** _____ **EXPIRATION:** _____**CA DIR REGISTRATION NUMBER:** _____ **EXPIRATION:** _____**CONTRACTOR TELEPHONE:** _____ **CONTRACTOR FAX:** _____**BUSINESS ADDRESS:** _____**LENGTH OF TIME IN BUSINESS:** _____**LENGTH OF TIME AT CURRENT LOCATION:** _____**NUMBER OF EMPLOYEES:** _____ **NUMBER OF CURRENT CLIENTS:** _____

*If the contractor operates as a sole proprietorship:***NAME OF INDIVIDUAL CONTRACTOR:** _____**SIGNATURE OF OWNER:** _____**BUSINESS ADDRESS:** _____

*If the contractor operates under a partnership:***NAME OF FIRM:** _____**PARTNER NAME:** _____ **PARTNER TITLE:** _____**PARTNER ADDRESS:** _____**SIGNATURE OF PARTNER:** _____**PARTNER NAME:** _____ **PARTNER TITLE:** _____**PARTNER ADDRESS:** _____**SIGNATURE OF PARTNER:** _____

If contractor operates under a corporation:

NAME OF CORPORATION: _____

CORPORATION ORGANIZED UNDER THE LAWS OF THE STATE OF CALIFORNIA:

_____ **SIGNATURE OF CORPORATION PRESIDENT**

_____ **SIGNATURE OF THE CORPORATION SECRETARY**

_____ **DATE**

Management person responsible for direct contact with OCFA:

NAME: _____ **TITLE:** _____

TELEPHONE: _____ **E-MAIL:** _____

Person responsible for the day-to-day servicing of the account/project.

NAME: _____ **TITLE:** _____

TELEPHONE: _____ **E-MAIL:** _____

SUBSCRIBED AND SWORN TO BEFORE ME **BY** _____
THIS _____ **DAY OF** _____ **20**____ **(Print Name)**

(Signature of Notary Public)

(Signature)

(Attach Jurat)

TITLE _____

(SEAL)

(SEAL)

4F: PROPOSED SUBCONTRACTORS

Bidder acknowledges and agrees that under Public Contract Code section 4100, et seq., Bidder must clearly set forth the name and location of each subcontractor who will perform work or labor or render service to the bidder in or about the construction of the work in an amount in excess of one-half of one percent (0.5%) of bidder's total bid and the kind of work that each will perform. This is to include any subcontractor that will specially fabricate and install a portion of work according to detailed drawings contained in the plans and specifications in the amount greater than one half of one percent (.05%) of the Contractor's total bid.

Furthermore, Bidder acknowledges and agrees that under Public Contract Code section 4100, et seq., if bidder fails to list as to any portion of work, or if bidder lists more than one subcontractor to perform the same portion of work (i.e. bidder must indicate what portion of the work each subcontractor will perform), bidder must perform that portion itself or be subjected to penalty under applicable law. If alternate bids are called for and Bidder intends to use subcontractors different from or in addition to those subcontractors listed for work under the base bid, Bidder must list subcontractors that will perform work in an amount in excess of one half of one percent (0.5%) of bidder's total bid, including alternates.

In case more than one subcontractor is named for the same kind of work, the Contractor is to state the portion of work that each subcontractor will perform. Bidders or suppliers of materials only do not need to be listed. If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

Subcontractor Name					
Address					
DIR Registration No.		CSLB No.		Class	
Phone		Email			
Percent of Total Contract					
Specific Scope of Work					
Subcontractor Name					
Address					
DIR Registration No.		CSLB No.		Class	
Phone		Email			
Percent of Total Contract					
Specific Scope of Work					
Subcontractor Name					
Address					
DIR Registration No.		CSLB No.		Class	
Phone		Email			
Percent of Total Contract					
Specific Scope of Work					
Subcontractor Name					
Address					
DIR Registration No.		CSLB No.		Class	
Phone		Email			
Percent of Total Contract					
Specific Scope of Work					
Subcontractor Name					
Address					
DIR Registration No.		CSLB No.		Class	
Phone		Email			
Percent of Total Contract					
Specific Scope of Work					

4G: DESIGNATION OF SURETIES

The following are the names, addresses and phone numbers for all brokers and sureties from whom Bidder intends to procure insurance and bonds.

Name	
Address	
Phone No.	
Name	
Address	
Phone No.	
Name	
Address	
Phone No.	
Name	
Address	
Phone No.	

**4H: BIDDER'S CERTIFICATION OF COMPLIANCE WITH
INSURANCE REQUIREMENTS FOR PUBLIC WORKS CONSTRUCTION**

BIDDER agrees, acknowledges and is fully aware of the insurance requirements as specified in the INSTRUCTIONS TO BIDDERS FOR <<PROJECT NAME>> AND IN THE SPECIAL PROVISIONS FOR <<PROJECT NAME>> and accepts all conditions and requirements contained therein.

BIDDER acknowledges that ACORD forms will not be accepted when policy forms or endorsements are required.

BIDDER acknowledges that some insurance companies may be unwilling to issue all of the policy coverage and endorsements required in the conditions and requirements. It is BIDDER's responsibility to ensure that it will be able to provide evidence of all required types and amounts of insurance and all policy endorsements required hereunder.

BIDDER represents and warrants that, prior to signing below, BIDDER has confirmed with BIDDER's insurer(s) or insurance broker(s) that all required evidence of the types and amounts of insurance, and all required endorsements of insurance coverage, will be timely provided to OCFA in accordance with the conditions and requirements. Failure to provide all required evidence of insurance and endorsements when required will constitute a material breach of the agreement.

Bidder

By

Date

4I: CERTIFICATION OF SITE EXAMINATION

By signing below, Bidder certifies each of the following:

1. Bidder is fully informed of the conditions relating to the construction of the work and the employment of labor thereon
2. The specifications for the work show conditions as they are believed to exist. The conditions shown do not constitute a representation or warranty express or implied by the OCFA, its officers or agents that such conditions actually exist.
3. Bidder has thoroughly examined the site for the work described herein and attended the mandatory pre- bid inspection of the building(s) and site(s), conducted by the OCFA. Failure to attend the mandatory pre-bid inspection shall be cause for rejection of the bid.
4. Bidder has observed the designated Contractor work areas, material equipment storage areas, access routes, as well as the ability to protect existing surface and subsurface improvements. No claim for allowance of time or money will be allowed for such matters.
5. Bidder is competent, knowledgeable, and has special skills with respect to the nature, extent, and inherent conditions of the work to be performed.
6. Bidder acknowledges that there are certain peculiar and inherent conditions existent in the construction of the work that may create, during the work, unusual or peculiar unsafe conditions hazardous to persons and property and expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the work with respect to such hazards.

To the Orange County Fire Authority:

I certify that I have examined the site and the bid is complete and there will be no requests for additional payment for failure to examine the site thoroughly.

Date of Site Examination:

Company Name:

Signature:

Printed Name / Title of Company Representative:

Date:

4J: BID SHEETS

Cost Analysis: The bid information is relevant to a determination of whether the pricing offered is fair and reasonable in light of the Scope of Services to be provided. **Failure to submit the information in the format requested may result in the bid being deemed non-responsive.**

Instructions: - Input your information in the blank cells as follows:

- Insert a description for each Line
- Insert the lump sum subtotal for each category
- Add all categories to arrive at the Project Grand Total

CATEGORY I: Labor		
Line	Description	
1		
SUBTOTAL LABOR:		
CATEGORY II: Permanent & Non-Permanent Materials/Supplies		
Line	Description	
2		
SUBTOTAL MATERIALS:		
CATEGORY III: EQUIPMENT		
Line	Description	
3		
SUBTOTAL EQUIPMENT:		
CATEGORY IV: OVERHEAD & INDIRECT COSTS		
Line	Description	
4		
SUBTOTAL OVERHEAD:		
PROJECT SUBTOTAL		
CATEGORY V: PROFIT		
Line	Description	% Profit
5	Provide the percentage of the project subtotal (above) that will be assessed as profit:	
SUBTOTAL PROFIT (IN DOLLARS)		
CATEGORY VI: PERMITS/FEES		
Line	Description	Estimated Permits/Fees
6	Provide an estimate of the permits and fees for the project. These fees will be reimbursed at actual cost or may be paid directly to the regulating agency by OCFA.	
SUBTOTAL PERMITS/FEES		
PROJECT GRAND TOTAL		

4K: PROJECT APPROACH AND TIMELINE

Failure to provide the information requested below may result in the bid being deemed non-responsive:

1. Submit a Rough Construction Schedule. This will be the basis for the approved Construction Schedule.
2. Submit a Rough Schedule of Values, including mobilization and field office costs, in a format consistent with AIA Document G703 – 1992. This will be the basis for the approved Schedule of Values.
3. Submit a narrative explanation of the proposed Construction Schedule and Schedule of Values. The narrative should include project phases and major project milestones.

4L: LIST OF PROJECT REFERENCES

The Bidder must demonstrate knowledge of public construction techniques and must possess a working ability to perform a similar scope of construction work for other public agencies. The information provided below may be used to determine whether the bid is submitted by a “responsible bidder” for purposes of the Public Contract Code, as stated in this IFB document. The OCFA expressly reserves the right to reject the bid of any bidder who has failed to complete three (3) similar projects of substantially the same type of work in a timely or satisfactory manner. **Failure to provide the requested information may cause your bid to be rejected as non-responsive.**

1. Submit the following information for three public agencies for which the Bidder has performed similar work within the past three (3) years:

- a) Agency Name
- b) Address
- c) Contact Name and Title
- d) Telephone Number
- e) Email Address
- f) Project Name
- g) Project Value
- h) Description of Scope of Work

2. References will be asked the following information:

- a) Did the Contractor perform the work as agreed?
- b) Did the Contractor perform the work within the allocated time frame?
- c) Were you satisfied with the Contractor's performance?
- d) Would you recommend the Contractor for a future contract?
- e) Did you have easy accessibility to the Contractor?

4M: QUALIFICATIONS QUESTIONNAIRE

The information and documents provided below may be used to determine the responsibility of Bidder's submittal, as stated in Section 33 of this IFB document. **Failure to provide the requested information may cause your bid to be rejected as non-responsive.**

1. Provide the names, titles, addresses, and phone numbers of all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest in this proposal:
2. Provide the dates of any voluntary or involuntary bankruptcy judgments against any principal having an interest in this proposal.
3. Provide all current and prior DBA's, aliases, and fictitious business names for any principal having an interest in this proposal.
4. For each violation of labor law determined by any Federal, State or local agency to have been committed by the Bidder or any principal having an interest in this proposal, identify any measures that have been imposed by, or agreed upon with, the Federal, State or local agency as punishment for past violations or to prevent future violations.
5. State the title and date, and attach a copy of, each written threat, bid depository, claim, lawsuit, discipline or other written action by the Contractor State License Board against the Bidder or any principal having an interest in this proposal.
6. Identify the following information about each claim asserted against the Bidder or any principal having an interest in this proposal relating to industrial safety within the past eight (8) years: name of the agency/entity asserting the claim; the date of the claim; the date of the alleged violation giving rise to the claim; the claim number, if any. Attach a copy of the claim.
7. Has the Bidder or any principal having an interest in this proposal been disqualified from bidding on, or from finishing, any other public works project in the past 8 years? If so, for each such disqualification, identify: who was disqualified; which public agency disqualified; the date of the disqualification; the alleged basis for the disqualification;
8. Has the Bidder or any principal having an interest in this proposal: (a) filed (voluntarily or involuntarily) for bankruptcy protection; (b) been sued or arbitrated a dispute; been involved in a contract termination involving a public works project; or (c) failed to complete work required by a construction contract? If so, provide detailed information.
9. Please submit an attachment detailing the following information about all current projects:
 - a) Project Name
 - b) Description of Bidder's Work
 - c) Completion Date
 - d) Project Cost

4N: PARTY AND PARTICIPANT DISCLOSURE FORMS

Campaign Contributions Disclosure: In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Offeror is required to complete the attached Party and Participant Disclosure Forms and submit as part of the proposal, **if applicable**.

Offeror is required to submit only one copy of the completed form(s) as part of its proposal. This/these form(s) should be included in the original RFP. The Offeror and subcontractors must complete the form entitled "Party Disclosure Form". Lobbyists or agents representing the Offeror in this procurement must complete the form entitled "Participant Disclosure Form". Reporting of campaign contributions is a requirement from the proposed submittal date up and until the OCFA Board of Directors takes action.

**ORANGE COUNTY FIRE AUTHORITY
BOARD OF DIRECTORS**

David John Shawver, Chair
City of Stanton

Ross Chun, Director
City of Aliso Viejo

Frances Marquez, Director
City of Cypress

John O'Neill, Director
City of Garden Grove

Don Sedgwick, Director
City of Laguna Hills

Noel Hatch, Director
City of Laguna Woods

Shelley Hasselbrink, Director
City of Los Alamitos

Carol Gamble, Director
City of Rancho Santa Margarita

Troy Bourne, Director
City of San Juan Capistrano

Joe Kalmick, Director
City of Seal Beach

Vince Rossini, Director
City of Villa Park

Eugene Hernandez, Director
City of Yorba Linda

Michele Steggell, Vice Chair
City of La Palma

Sunny Park, Director
City of Buena Park

Joseph Muller, Director
City of Dana Point

Anthony Kuo, Director
City of Irvine

Sandy Rains, Director
City of Laguna Niguel

Mark Tettemer, Director
City of Lake Forest

Ed Sachs, Director
City of Mission Viejo

Kathy Ward, Director
City of San Clemente

Jessie Lopez, Director
City of Santa Ana

Letitia Clark, Director
City of Tustin

Tri Ta, Director
City of Westminster

Donald Wagner, Director
County of Orange

Lisa Bartlett, Director
County of Orange

PARTY DISCLOSURE

The attached Party Disclosure Form must be completed and submitted by the Offeror and subcontractors with the proposal by all firms subject to the campaign contribution disclosure requirements stated in Section VI this solicitation. It is anticipated that a recommendation for award of this contract will be presented to the Board of Directors of OCFA for approval. (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 contract award, 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 the solicitation is 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 contract award.
- 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 contract award or proceeding, that board member or alternate must disqualify himself or herself from the decision. However, disqualification is not required if the board member or alternate returns the campaign contribution within 30 days from the time the director knows, or should have known, about both the contribution and the fact that you are a party in the proceeding. The Party Disclosure Form should be completed and filed with your proposal, or with the first written document you file or submit after the proceeding commences.
 - 1. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements¹ for use, including all entitlements for land use, all contracts² (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.

This notice summarizes the major requirements of Government Code Section 84308 of the Political Reform Act and 2 Cal. Adm. Code Sections 18438-18438.8 as it relates to contract awards.

¹ Entitlement for the purposes of this form refers to contract award. ² All Contracts for the purposes of this form refer to the contract award of this specific solicitation.

PARTY DISCLOSURE FORM

Party's Name: _____

Party's Address: _____

Party's Telephone: _____

Solicitation Title and Number: _____

Based on the party disclosure information provided, are you or your firm subject to party disclosures?
No ☐ If no, check the box and sign below. Yes ☐ If yes, check the box, sign below and complete the form.

Date: _____

Signature of Party and/or Agent

To be completed only if campaign contributions have been made in the preceding twelve (12) months. Attach additional copies if needed.

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

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

Name of Member: _____

Name of Contributor (if other than Party): _____

Date(s): _____

Amount(s): _____

PARTICIPANT (AGENT) DISCLOSURE

The Participant Disclosure Form must be completed by lobbyists or agents representing the Offeror in this procurement. It is anticipated that a recommendation for award of this contract will be presented to the Board of Directors of OCFA for approval.

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

- A. If you are a participant in a proceeding involving any contract award, you are prohibited from making a campaign contribution of more than \$250 to any Board member. This prohibition begins on the date you begin to actively support or oppose an application for contract award pending before OCFA or any of its affiliated agencies, and continues until three months after a final decision is rendered on the application or proceeding by the Board of Directors. No Board member may solicit or accept a campaign contribution of more than \$250 from you and/or your agency during this period if the Board member knows or has reason to know that you are a participant.
- B. The attached disclosure form must be filed if you or your agent has contributed more than \$250 to any Board member for OCFA or any of its affiliated agencies during the 12-month period preceding the beginning of your active support or opposition (The disclosure form will assist the Board members in complying with the law).
- C. If you or your agent have made a contribution of more than \$250 to any Board member during the 12 months preceding the decision in the proceeding, that Board member must disqualify himself or herself from the decision. However, disqualification is not required if the Board member returns the campaign contribution within 30 days from the time the Board member knows, or should have known, about both the contribution and the fact that you are a participant in the proceeding

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

1. An individual or entity is a "participant" in a proceeding involving an application for a license, permit or other entitlement for use if:
 - a. The individual or entity is not an actual party to the proceeding, but does have a significant financial interest in the OCFA's or one of its affiliated agencies' decisions in the proceeding;
AND
 - b. The individual or entity, directly or through an agent, does any of the following:
 - i. Communicates directly, either in person or in writing, with a Board member of OCFA or any of its affiliated agencies for the purpose of influencing the Board member's vote on the proposal;
 - ii. Communicates with an employee of OCFA or any of its affiliated agencies for the purpose of influencing a Board member's vote on the proposal; or
 - iii. Testifies or makes an oral statement before the Board of Directors of OCFA or any of its affiliated agencies.
2. A proceeding involving "a license, permit, or other entitlement for use" includes all business, professional, trade and land use licenses and permits, and all other entitlements for use, including all entitlements for land use; all contracts (other than competitively bid, labor, or personal employment contracts) and all franchises.
3. Your "agent" is someone who represents you in connection with a proceeding for this proposed involving a contract award. If an agent acting as an employee or member of a law, architectural, engineering, or consulting firm, or a similar business entity or corporation, both the business entity or corporation and the individual are agents.
4. To determine whether a campaign contribution of more than \$250 has been made by a participant or his or her agent, contributions made by the participant within the preceding 12 months shall be aggregated with those made by the agent within the preceding 12 months or the period of the agency, whichever is shorter. Campaign contributions made to different Board members are not aggregated.

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

PARTICIPANT (AGENT) DISCLOSURE FORM

Prime's Firm Name: _____

Party's Name: _____

Party's Address: _____

Party's Telephone: _____

Solicitation Title and Number:

Based on the participant disclosure information provided, are you or your firm subject to participant disclosures?

No ☐ If no, check the box and sign below. Yes ☐ If yes, check the box, sign below and complete the form.

Date: _____

Signature of Party and/or Agent***To be completed only if campaign contributions have been made in the preceding twelve (12) months. Attach additional copies if needed.***

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

Name of Board**Member:** _____**Name of Contributor (if other than Party):** _____**Date(s):** _____**Amount(s):** _____**Name of Board****Member:** _____**Name of Contributor (if other than Party):** _____**Date(s):** _____**Amount(s):** _____

SECTION 5: CONTRACT DOCUMENTS

CONTRACT SUBMITTALS (SUCCESSFUL BIDDER ONLY)

Within fourteen calendar days (14) of the issuance of the Notice to Proceed, the successful Bidder must submit the documents below. Failure to do so may result in the contract being deemed abandoned.

- ☐ **Transmittal Page Two – Bid Award Documents** (Exhibit 5A)
- ☐ **Original Performance Bond** (Exhibit 5B)
- ☐ **Original Payment (Labor and Materials) Bond** (Exhibit 5C)
- ☐ **Award Certifications** (Exhibit 5D)
- ☐ **IRS Form W9** (Exhibit 5E)
- ☐ **All required Insurance Certificates and Endorsements**
- ☐ **Signed Contract Agreement** (Exhibit 5F)

5A: TRANSMITTAL PAGE TWO – BID AWARD DOCUMENTS**TO:** Orange County Fire Authority**FROM:**_____
(Legal Name of Contractor)**PROJECT:** **[PROJECT TITLE]****AWARDED CONTRACTOR'S CHECKLIST:**

The awarded Contractor is required to provide the following documents:

- | | | |
|---|---|--|
| <input type="checkbox"/> Transmittal Page (<i>Exhibit K</i>) | <input type="checkbox"/> Award Certifications (<i>Exhibit N</i>) | <input type="checkbox"/> Signed Agreement |
| <input type="checkbox"/> Performance Bond (<i>Exhibit L</i>) | <input type="checkbox"/> W9 (<i>Exhibit O</i>) | |
| <input type="checkbox"/> Payment Bond (<i>Exhibit M</i>) | <input type="checkbox"/> Insurance Certificates | |

TO THE OCFA:

Signature below acknowledges that, should the Contractor fail to provide the above documents in a form satisfactory to OCFA within fourteen days of the issuance of the Notice of Award, OCFA may, at its option, consider the Contractor to have abandoned the agreement, upon which the full payment of the sum stated in the Bidder's Bond shall be due immediately.

SIGNATURE OF CONTRACTOR:**PRINTED NAME:****TITLE:**

5B: FAITHFUL PERFORMANCE BOND

(100% of Agreement Price)

Bidders must use this form, NOT a surety company form

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Orange County Fire Authority, ("OCFA") and _____ ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

IFB XXNNNN – [PROJECT TITLE]

("Contract") which Contract dated [DATE], and all of the Bid Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, said Principal is required under the terms of the Contract to furnish a bond for the faithful performance of the Contract.

NOW, THEREFORE, the Principal and _____ ("Surety") are held and firmly bound unto the Board of the OCFA in the penal sum of [WRITE OUT AMOUNT] DOLLARS (\$[AMOUNT]), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the OCFA all damages the OCFA incurs as a result of the Principal's failure to perform all the work required to complete the Project.

The condition of the obligation is such that, if the above bounden Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract and any alteration thereof made as therein provided, on his or its part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the OCFA, its trustees, officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Contract, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract, during which time Surety's obligation shall continue if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the OCFA from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the OCFA's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract or to the work or to the specifications.

[Signature Page Follows]

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20__ in accordance with Article 5, commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, this certificate must be signed and filed with the awarding body prior to performing any work under this Contract:

CONTRACTOR:

(Affix Corporate Seal)

Principal

By

Print Name and Title of Signatory**SURETY:**

(Affix Corporate Seal)

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Attach Notary acknowledgments for all signatures. Attach Power of Attorney Attach Power of Attorney if executed by Attorney-in-Fact. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.

5C: PAYMENT BOND
Contractor's Labor & Material Bond
(100% of Agreement Price)
Bidders must use this form, NOT a surety company form

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the governing board ("Board") of the Orange County Fire Authority, ("OCFA") and _____, ("Principal") have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

IFB XXNNNN – [PROJECT TITLE]

("Contract") which Contract dated [DATE], and all of the Bid Documents attached to or forming a part of the Contract, are hereby referred to and made a part hereof; and

WHEREAS, pursuant to law and the Contract, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Contract is awarded in an amount equal to one hundred percent (100%) of the Contract price, to secure the claims to which reference is made in sections 9000 through 9510 and 9550 through 9566 of the Civil Code, and division 2, part 7, of the Labor Code.

NOW, THEREFORE, the Principal and, _____ ("Surety") are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the sum of [WRITE OUT AMOUNT] DOLLARS (\$[AMOUNT]), lawful money of the United States, being a sum not less than the total amount payable by the terms of Contract, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of his or its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal or any of his or its subcontractors of any tier under Section 13020 of the Unemployment Insurance Code with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney's fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under section 9100 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise it shall be and remain in full force and affect.

And the Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of Contract or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

[Signature Page Follows]

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the ____ day of _____, 20__.

CONTRACTOR:

(Affix Corporate Seal)

Principal

By

Print Name and Title of Signatory

SURETY:

(Affix Corporate Seal)

Surety

By

Name of California Agent of Surety

Address of California Agent of Surety

Telephone Number of California Agent of Surety

Attach Notary acknowledgments for all signatures. Attach Power of Attorney Attach Power of Attorney if executed by Attorney-in-Fact. The California Department of Insurance must authorize the Surety to be an admitted Surety Insurer.

5D: AWARD CERTIFICATIONS**Prevailing Wage:**

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hour notice, payroll records, and apprentice and trainee employment requirements, for all Services on the above Project, including, without limitation, the State labor compliance monitoring and enforcement by the Compliance Monitoring Unit of the Department of Industrial Relations, if this Project is subject to a labor compliance.

Workers' Compensation:

In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, this certificate must be signed and filed with the awarding body prior to performing any work under this Contract. CA Labor Code section 3700 in relevant part provides that every employer except the State shall secure the payment of compensation in one or more of the following ways: (1) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this state; (2) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees. I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this contract.

Date: _____**Legal Name of
Contractor:** _____**Signature:** _____**Printed Name:** _____**Title:** _____

5E: IRS FORM W9

Form W-9 (Rev. October 2018) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification ► Go to www.irs.gov/FormW9 for instructions and the latest information.	Give Form to the requester. Do not send to the IRS.																																																																								
1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.																																																																										
2 Business name/disregarded entity name, if different from above																																																																										
Print or type. See Specific Instructions on page 3.	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.																																																																									
	<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate																																																																									
	<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.																																																																									
	<input type="checkbox"/> Other (see instructions) ► _____																																																																									
4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>																																																																										
5 Address (number, street, and apt. or suite no.) See instructions.		Requester's name and address (optional)																																																																								
6 City, state, and ZIP code																																																																										
7 List account number(s) here (optional)																																																																										
Part I Taxpayer Identification Number (TIN)																																																																										
Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see <i>How to get a TIN</i> , later.																																																																										
Note: If the account is in more than one name, see the instructions for line 1. Also see <i>What Name and Number To Give the Requester</i> for guidelines on whose number to enter.																																																																										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="10" style="text-align: center;">Social security number</td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> <tr> <td colspan="3"></td> <td style="text-align: center;">-</td> <td colspan="3"></td> <td style="text-align: center;">-</td> <td colspan="3"></td> </tr> <tr> <td colspan="10" style="text-align: center;">or</td> </tr> <tr> <td colspan="10" style="text-align: center;">Employer identification number</td> </tr> <tr> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> <td style="width: 20px; height: 20px;"></td> </tr> <tr> <td colspan="3"></td> <td style="text-align: center;">-</td> <td colspan="7"></td> </tr> </table>			Social security number																							-				-				or										Employer identification number																							-							
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Part II Certification																																																																										
Under penalties of perjury, I certify that:																																																																										
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and																																																																										
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and																																																																										
3. I am a U.S. citizen or other U.S. person (defined below); and																																																																										
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.																																																																										
Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.																																																																										
Sign Here	Signature of U.S. person ► _____	Date ► _____																																																																								
General Instructions																																																																										
Section references are to the Internal Revenue Code unless otherwise noted.																																																																										
Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9 .																																																																										
Purpose of Form																																																																										
An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.																																																																										
<ul style="list-style-type: none"> • Form 1099-DIV (dividends, including those from stocks or mutual funds) • Form 1099-MISC (various types of income, prizes, awards, or gross proceeds) • Form 1099-B (stock or mutual fund sales and certain other transactions by brokers) • Form 1099-S (proceeds from real estate transactions) • Form 1099-K (merchant card and third party network transactions) • Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition) • Form 1099-C (canceled debt) • Form 1099-A (acquisition or abandonment of secured property) 																																																																										
Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.																																																																										
If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.																																																																										

5F: CONTRACT AGREEMENT

THIS CONTRACT AGREEMENT (hereinafter "Agreement" or "Contract" or "Contract Agreement") is made and entered into for the above identified Project this _____ day of _____, 20_____, BY AND BETWEEN THE **ORANGE COUNTY FIRE AUTHORITY** (hereinafter "OCFA"), and _____, as CONTRACTOR.

WITNESSETH that OCFA and CONTRACTOR have mutually agreed as follows:

[SECTIONS 1 – 40 are set forth in the Solicitation Information and Instructions to Bidders above.]

41 – PROJECT MANUAL

This Contract consists of the Project Manual. The Project Manual includes the following component parts thereof, each of which is a part of this Contract:

- (1) **XXNNNN - Notice Inviting Bids**
- (2) **XXNNNN - Instructions to Bidders**
- (3) **XXNNNN - Bid Documents**
- (4) **XXNNNN - Contract Documents**
- (5) **XXNNNN - Technical Specifications**
- (6) Any and all addenda and other supplemental notices and agreements issued by OCFA clarifying, amending, or extending the work contemplated as may be required to ensure its completion in an acceptable manner

All of the above component documents of the Project Manual are complementary and Work required by one of the above documents shall be done as if required by all. In the event of conflict among the component documents of the Project Manual, the conflict shall be resolved as set forth in Section 52 of the General Conditions.

42 - CONTRACT PRICE

OCFA shall pay to Contractor as full consideration for the faithful performance of the Contract, the sum of _____ (**\$**_____). This sum is the total amount stipulated in the Bid. Payment shall be made as set forth in the General Conditions.

43 – CONTRACTOR'S COMMITMENT TO FURNISH MATERIALS AND WORK

For and in consideration of the payments and agreements to be made and performed by OCFA, CONTRACTOR agrees to furnish all materials and perform all work required for the above identified Project, and to fulfill all other obligations as set forth in the aforesaid Contract Documents.

44 – CONTRACTOR'S COMMITMENT TO PRICES

CONTRACTOR agrees to receive and accept the prices set forth in the Proposal as full compensation for furnishing all materials, performing all work, and fulfilling all obligations hereunder. Said compensation shall cover all expenses, losses, damages, and consequences arising out of the nature of work during its progress or prior to its acceptance including those for well and faithfully completing the work and the whole thereof in the manner and time specified in the aforesaid Contract Documents; and also including those arising from actions of the elements, unforeseen difficulties or obstructions encountered in the prosecution of the work, suspension or discontinuance of the work, and all other unknowns or risks of any description connected with the work.

44.1 - NO INCREASE IN BID COST DUE TO SUBSTITUTION OF SUBCONTRACTOR. In the event that a subcontractor is substituted in any manner for any reason, any increased cost related to such substitution shall be the sole responsibility of the Contractor. Such substitution shall not cause or result, directly or indirectly, in any increase in the bid price. This subsection shall not be construed to be prior consent to substitution of subcontractors, nor to authorize any substitution that is prohibited by the Subletting and Subcontracting Fair Practices Act.

45 – PAYMENT TO CONTRACTOR

OCFA hereby promises and agrees to employ, and does hereby employ, CONTRACTOR to provide the materials, do the work, and fulfill the obligations according to the terms and conditions herein contained and referred to, for the prices aforesaid, and hereby contracts to pay the same at the time, in the manner, and upon the conditions set forth in the Contract Documents.

46 - WORKER'S COMPENSATION

CONTRACTOR acknowledges the provisions of the Labor Code requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of that Code, and certifies compliance with such provisions.

47 – PRINCIPAL INTERESTS

CONTRACTOR affirms that the signatures, titles, and seals set forth hereinafter in execution of this Agreement represent all individuals, firm members, partners, joint ventures, and/or corporate officers having a principal interest herein.

48 – COMPLIANCE WITH FEDERAL IMMIGRATION AND NATIONALITY ACT

CONTRACTOR hereby represents and warrants that it will comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. Section 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONTRACTOR so employ such unauthorized aliens for the performance of any work and/or services under this Agreement, and should any liability or sanctions be imposed against OCFA for such use of unauthorized aliens, CONTRACTOR hereby agrees to defend and indemnify OCFA against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, or penalties which arise out of or are related to such employment, together with any and all costs, including attorneys' fees, incurred by OCFA.

49 – CERTIFICATION RE DEBARMENT

CONTRACTOR confirms that neither CONTRACTOR nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts from United States (U.S.) federal government procurement or nonprocurement programs, or are listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs (<http://www.sam.gov/>) issued by the U.S. General Services Administration. "Principals" means officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager, plant manager, head of a subsidiary, division or business segment, and similar positions). CONTRACTOR will provide immediate written notification to OCFA if, at any time prior to award, CONTRACTOR learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. This certification is a material representation of fact upon which reliance will be placed when OCFA executes this Agreement. If it is later determined that CONTRACTOR knowingly rendered an erroneous certification, in addition to the other remedies available to OCFA, OCFA may terminate this Agreement for default by CONTRACTOR.

50 - INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR (at CONTRACTOR's sole cost and expense) shall defend (with legal counsel acceptable to OCFA in OCFA's sole discretion), indemnify, protect, and hold harmless the INDEMNIFIED PARTIES and each of them against all CLAIMS which arise out of, pertain to, or are related to CONTRACTOR's performance under, or failure to perform under, the Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit CONTRACTOR's indemnification obligation or other liability hereunder. Notwithstanding the foregoing, such obligation to defend, indemnify, protect, and hold harmless the INDEMNIFIED PARTIES shall not apply to the extent such CLAIMS arise from the sole negligence or willful misconduct of the OCFA.

As used herein, "INDEMNIFIED PARTIES" refers to OCFA and its appointed officials, officers, employees, agents, representatives, attorneys and volunteers.

As used in this Section 50, "CLAIMS" refers to any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration awards, settlements, damages, demands, orders, penalties, and expenses including legal costs, expert fees and attorney fees, including but not limited to CLAIMS arising from injuries to or death of persons (CONTRACTOR's employees included), or for damage to property, including property owned by OCFA.

51 – COMPLIANCE WITH WORK RULES

CONTRACTOR shall be familiar with, observe, and comply at all times during the term of this Agreement with any work rules for contractors as may be established and promulgated by the OCFA Fire Chief, which work rules shall be additional terms and conditions for providing the work and services to the OCFA pursuant to this Agreement, as may be updated and/or amended from time to time at the sole discretion of the Fire Chief.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first written.

ORANGE COUNTY FIRE AUTHORITY:

CONTRACTOR:

[NAME], CHAIR
OCFA BOARD OF DIRECTORS

(CORPORATION (NAME - TYPE))

BY: _____
(PRINT)

ATTEST:

(SIGNATURE)

MARIA D. HUIZAR,
CLERK OF THE AUTHORITY

(TITLE)

BY: _____
(PRINT)

APPROVED AS TO FORM:

(SIGNATURE)

DAVID E. KENDIG
GENERAL COUNSEL

(TITLE)

NOTE:

SIGNATURES OF CORPORATE OFFICIALS MUST BE NOTARIZED, ATTACH JURAT.

5F: GENERAL CONDITIONS**ORANGE COUNTY FIRE AUTHORITY GENERAL CONDITIONS****51 Definitions**

As used in these General Conditions and in the Project Manual generally, the following terms have the meaning indicated:

Acts of God: An earthquake in excess of a magnitude of 3.5 on the Richter Scale or a tidal wave.

Addendum: A written or graphic instrument issued by Project Manager on behalf of the OCFA prior to the execution of the Contract which sets forth additions, deletions, or other revisions to the Project Manual or clarifications thereof.

Authority: The Orange County Fire Authority, a California Joint Powers Authority.

Board of Directors: The governing body of the Orange County Fire Authority.

Change Order: A written Modification executed by both parties (except in the event of a unilateral Change Order as herein provided) and consisting of additions, deletions or other changes to the Contract. A Change Order may be accompanied by and/or may identify additional or revised Drawings, sketches or other written instructions which become and form a part of the Project Manual by virtue of the executed Change Order. Except as otherwise provided in Subparagraph 1.1.5., a Change in the Work, or a change in the Contract Time or the Contract Sum shall only be approved by written Change Order.

Construction Contract or Contract: The written "Contract Agreement" covering the performance of the Work and the furnishing of labor, materials, tools, and equipment in the construction of the Work. The term "Construction Contract" also includes the Project Manual.

Contract Directive: A written document issued by the Project Manager and consisting of additions, deletions, clarifications, interpretations, or other written instructions issued by the Project Manager with respect to the performance of the Work or the activities of the Contractor on the Job Site or the property of OCFA. A Contract Directive can be a response to a Request for Information; however, all responses to Requests for Information need not be Contract Directives. A Contract Directive may become the subject of a Change Order only if such Directive involves a substantial change in the Work, or a change in the Contract Time or the Contract Amount, approved as a Change Order by the Project Manager.

Contractor's Construction Schedule: The detailed schedules, based on a critical path method ("CPM"), prepared by the Contractor, presenting an orderly and realistic plan for completion of the work required in the Project Manual. The Contractor's Construction Schedule shall also include the completion dates of the Milestones and a final proposal narrative as described in the Project Manual.

Contractor: The person or entity awarded the Contract to perform the work.

Day: All references to days in the Project Manual refer to calendar day unless otherwise specifically indicated.

Design Professional: Officers, employees, and consultants, the architectural and engineering firm, a party to the design-build entity responsible for the overall design of the Project.

Excusable Labor Dispute: Any labor dispute directed against an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor, or any subcontractor or supplier, and which prevents Contractor from obtaining labor or materials necessary for the performance of the Work and that actually delays the performance of the Work; provided, however, that suitable substitute labor or materials are not reasonably obtainable.

Excusable Transportation Delay: Any labor dispute directed at an entire industry, or any labor dispute that is not directed solely against the Project, the Contractor, or any subcontractor or supplier, or other delay not within the reasonable control of the Contractor which prevents the transportation of necessary materials to the Project and actually delays the performance of Work; provided, however, that suitable substitute transportation for such materials is not reasonably available.

Fire Chief: The Fire Chief of the OCFA or the Fire Chief's Designee.

Laws: Each and every Federal, state, and local law, ordinance, code, rule, and regulation, as well as the lawful order or decree of any public or quasi-public authority and each of their respective inspectors or officials, including but not limited to all applicable building codes, bearing on or otherwise applicable to the Project. The term "Laws" also includes any and all conditions of approval of each and every entitlement or permit issued or approved by the Local Jurisdictions.

Local Jurisdictions: Any governmental agency with land use authority over the Project or part of the Project and each regulatory agency or authority with jurisdiction over the project, and their respective inspectors and representatives.

Modification or Contract Modification: (1) a written amendment to this Contract signed by both Parties; (2) a Change Order; or (3) a Contract Directive or other written interpretation or order issued as a response to a Request for Information or otherwise issued by the Project Manager pursuant to the terms of the Project Manual. Contractor acknowledges that the execution on its behalf of any such Modification by any one person with apparent authority shall be binding against the Contractor. A Modification may be made only after execution of the Contract. No Contract Directive or response to a Request for Information shall be construed as a Change Order or other Modification unless it expressly so states.

Non-Conformance Notice: A notice issued by the Project Manager documenting that the work or some portion thereof has not been performed in accordance with the requirements of the Project Manual.

Notice to Proceed: The written notice of the OCFA to the Contractor to commence work under the Contract.

OCFA: The Orange County Fire Authority, a California Joint Powers Authority.

Plans: The drawings, supplemental drawings, or reproductions thereof, the project plans, standard plans, profiles, cross-sections, and all graphic depictions, which show the location, character, dimensions, and details of the work to be performed and contained in the Project Manual.

Project: The Project is the performance, construction, installation, and completion of the entire scope of all work as described in the Contract Documents.

Project Manager: The person or persons designated by the OCFA to serve as the Project Manager of the project.

Project Manual: Defined in Section 41 of the Contract Agreement.

Provide: To furnish, fabricate, complete, deliver, install, and erect including all labor, materials, equipment, apparatus, appurtenances, and expenses, necessary to complete in place, ready for operation or use under the terms of the Project Manual.

Regulatory Agency – A Federal, State or local governmental agency that has regulatory jurisdiction over one or more aspects of the Project. (Examples may include, but are not limited to the Regional Water Quality Control Board, the California Coastal Commission, or the South Coast Air Quality Management Board.)

Related Work: Work performed by the OCFA or by any separate Contractor retained or hired by the OCFA, related to the completion of the Project and which is not required to be performed by the Contractor pursuant to this Contract and the Project Manual.

Requests for Information: A written request from the Contractor or one of the Subcontractors to the Project Manager seeking an interpretation or a clarification of some requirement of the Project Manual. Contractor shall clearly and concisely set forth in writing the issue for which Contractor seeks clarification or interpretation and why a response is needed from the Project Manager. Contractor shall set forth Contractor's interpretation or understanding of the Project Manual's requirements along with reasons why Contractor reached such an understanding. Responses from the Project Manager will not change any requirements of the Project Manual unless so noted in the Request for Information response.

Scheduled Completion Date: The number of days specified in the Construction Schedule for completion of the Project.

Site or Sites: The land on which the Project will be constructed as specifically described in the Project Manual.

Specifications: The directives, provisions, and requirements contained in Project Manual, however such may be labeled or otherwise described.

Subcontractor: A person or organization having a direct contract with the Contractor to perform any of the Work at the Site or to supply any materials, equipment, or supplies to be incorporated in, or utilized in connection with, the Work and as used herein shall include the Subcontractor's authorized representative.

Substantial Completion of the Project: occurs when all of the following are achieved: (1) substantial completion of all Work; and (2) suitable to meet the requirements for the issuance of a certificate of occupancy and receipt of all other required approvals of construction from the Local Jurisdictions; and (3) in strict accordance with the Project Manual; and (4) such that OCFA may fully utilize the Project for the use for which it is intended. Early occupation of the Project by OCFA does not constitute Substantial Completion of the Project if one or more of the four factors above has not yet been achieved. (See Section General Conditions, Section 74.)

Supplemental Agreements: The written agreements covering alterations, amendments, or extensions to the Construction Contract and include contract change orders.

Work: All the work specified, indicated, shown, or contemplated in the Construction Contract to construct the Project, including all alterations, amendments, or extensions thereto made by contract change order or other written orders of the Project Manager, including each activity, labor, task, service, acquisition, purchase, installation, or action of any kind required to be performed under the terms of this Contract and as specified in the Project Manual.

52 The Project Manual

- 52.1 The Project Manual is defined in **Section 41** of the Contract Agreement. The Contractor has examined carefully the site of the work contemplated, the plans and specifications, and the proposal and contract forms therefor. The submission of a bid shall be conclusive evidence that the Contractor has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and scope of work to be performed, the quantities of materials to be furnished and as to the requirements of the proposal, plans, specifications and the Construction Contract. The Contractor warrants and represents that, in executing the Contract and undertaking the Work, it has not relied upon any oral inducement or representation by OCFA, Project Manager, or any of their officers or agents as to the nature of the Work, the Site, the Project conditions or otherwise.
- 52.2 All parts and provisions of the Project Manual are complementary, and what is required by any one shall be as binding as if required by all. If the Project Manual does not specifically allow the Contractor a choice as to quality or cost of items to be furnished, but could be interpreted to permit such choice, subject to confirmation or approval by Project Manager, they shall be construed to require the Contractor to provide the best quality. Words and abbreviations which have well-known technical or trade meanings are used in the Project Manual in accordance with such recognized meanings.
- 52.3 Where conflict exists within or between parts of the Project Manual, or between the Project Manual and either applicable industry standards or applicable codes, ordinances, or other legal requirements, the more stringent requirements shall apply; otherwise, the following order of precedence shall be used: the Construction Contract; the Special Conditions of the Contract for Construction; these General Conditions of the Construction Contract; the balance of the Project Manual, and the Drawings. If the Contractor is required to perform any extra or corrective Work to comply with the preceding sentence, it shall not be entitled to an increase in the Contract Sum or Contract Time, and no claim shall result from such compliance. Subject to confirmation or approval by OCFA, more detailed Drawings take precedence over less detailed scaled Drawings, figured dimensions on the Drawings take precedence over scaled dimensions, and otherwise noted matters on the drawings take highest precedence.
- 52.4 Drawings take precedence over graphic representations. Contractor shall bring or submit to the Project Manager any such conflicts as soon as Contractor or its Subcontractors discover or learn about such apparent conflicts in the form of an RFI.
- 52.5 The organization of the Specifications into divisions, sections, and articles, and the arrangement of Drawings, are not intended to influence the Contractor in its division of the Work among Subcontractors or its establishment of the extent of the Work to be performed by any trade.
- 52.6 The Contractor shall request in writing that Project Manager provide any interpretations or clarifications necessary for the proper execution, coordination or progress of the Work. Such interpretations shall be issued by Project Manager in writing for implementation by the Contractor. The Contractor shall make all such requests for interpretation or clarification in writing.
- 52.7 The Project Manual reflects conditions as they are believed to exist, but it is not intended or to be inferred that the conditions as shown thereon constitute a representation by or on behalf of Authority that such conditions actually exist. The Contractor shall inspect the Site and conduct any tests or surveys it deems necessary or desirable prior to the commencement

of the Work and shall accept full responsibility for any loss sustained by it as a result of any variances between the conditions as shown on the Project Manual and the actual conditions revealed during the progress of the Work or otherwise. The Contract Sum shall in no event be increased by reason of any such variance unless otherwise specifically provided herein.

52.8 The Contractor shall develop and maintain current "as-built" Plans to be provided to Project Manager in accordance with the Construction Contract and Section 01770 of the Project Manual. Project Manager may inspect and copy such Plans at any time during the course of the Work.

52.9 The intent of the plans and specifications is to prescribe the details for the construction and completion of the work which the Contractor undertakes to perform in accordance with the terms of the Construction Contract. Where the plans or specifications describe portions of the work in general terms, but not in complete detail, it is understood that only the best general practice is to prevail and that only materials and workmanship of the first quality are to be used. Unless otherwise specified, the Contractor shall provide all labor, materials, tools, equipment, and incidentals, and do all the work involved in executing the contract in a satisfactory and workmanlike manner.

53 Contract Bonds.

Both the Faithful Performance Bond and the Material and Labor Bond shall each be for not less than one hundred percent (100%) of the total Contract amount. The Material and Labor Bond shall remain in force until thirty-five (35) days after the date of recordation of the Notice of Completion. The Faithful Performance Bond will be held for one year after the date of recordation of the Notice of Completion.

Prior to the acceptance of any bond, the OCFA shall verify that the surety is an admitted surety in the State of California. If requested by the OCFA, the Contractor shall provide other information specified in the Code of Civil Procedure Section 995.660 to enable the OCFA to verify the sufficiency of the bond.

Should any bond become insufficient, the Contractor shall correct the insufficiency within ten (10) calendar days after receiving notice from the OCFA. The Contractor shall provide the OCFA with evidence of the correction within ten (10) calendar days of said correction. Should any surety at any time be unsatisfactory to the OCFA, written notice will be given to the Contractor to that effect. No further payments shall be deemed due or will be payable under the Contract until Contractor submits an acceptable bond from a surety accepted by the OCFA. Changes to the work or extensions of time made pursuant to the Contract Agreement shall in no way release the Contractor or the surety from its obligations. Notice of such changes or extensions shall be waived by the surety.

54 OCFA AND OCFA'S REPRESENTATIVES

54.1 The work will be under the general direction of the Fire Chief. The Project Manager is the authorized representative of the Fire Chief and has complete charge of the work, and shall exercise full control of the work, so far as it affects the interest of the OCFA.

54.2 The provisions in this General Conditions or elsewhere in the Contract Documents regarding approval or direction by the Fire Chief, the OCFA, the Board of Directors, or the Project Manager, or action taken pursuant thereto, are not intended to and shall not relieve the Contractor of responsibility for the accomplishment of the work, either as regards sufficiency or the time of performance, except as expressly otherwise provided herein.

54.3 The Project Manager is the OCFA's exclusive representative and agent to the Contractor with respect to this Project during construction and until the completion of the Project. The

OCFA's communications with the Contractor shall be exclusively through the Project Manager.

- 54.4 Project Manager shall at all times have access to the work whenever it is in preparation or progress. The Contractor shall provide safe facilities for such access.
- 54.5 The OCFA shall not be responsible for or have control or charge of the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents.
- 54.6 The OCFA will not be responsible for the failure of the Contractor to plan, schedule, and execute the work in accordance with the approved schedule or the failure of the Contractor to meet the Contract Documents completion dates or the failure of the Contractor to Schedule and coordinate the work of Contractor's own trades and subcontractors or to coordinate with other Separate Contractors.
- 54.7 The OCFA will not be responsible for the acts or omissions of the Contractor, or any subcontractor, or any Contractor's or subcontractor's agents or employees, or any other persons performing any of the work.
- 54.8 The Project Manager has the authority to disapprove or reject work on behalf of the OCFA when, in the Project Manager's opinion, the work does not conform to the Contract Documents. Whenever, in the Project Manager's reasonable opinion, it is considered necessary or advisable to ensure the proper implementation of the intent of the Contract Documents, the Project Manager has the authority to require special inspection or testing of any work in accordance with the provisions of the Contract Documents whether or not such work shall then be fabricated, installed, or completed.
- 54.9 The Project Manager has the authority to require special inspection or testing of the work. However, neither the Project Manager's authority nor any decision made by the Project Manager in good faith whether to exercise or not to exercise such authority shall give rise to any duty or responsibility of the OCFA to the Contractor, or any subcontractor, or any of their agents, or employees, or any other person performing any portion of the work.
- 54.10 The Project Manager has the authority and discretion, but not the obligation, to call, schedule, and conduct job meetings to be attended by the Contractor and representatives of Contractor's subcontractors, to discuss such matters as safety, procedures, progress, problems, and scheduling.
- 54.11 The Project Manager will establish procedures to be followed for processing all submittals, Change Orders, Progress payments, other project reports, documentation, and test reports.
- 54.12 The Project Manager will review all requests for changes and shall implement the processing of Change Orders including application for extensions of time.
- 54.13 The Project Manager will review and process all Progress Payment Requests by the Contractor including Final Progress Payment Requests.
- 54.14 Nothing contained in the Project Manual shall create any contractual relationship between Project Manager and the Contractor.
- 54.15 Except as otherwise provided in the Project Manual, and until the Contractor is notified in writing to the contrary, all actions to be taken by, all approvals, notices, consent, directions and instructions to be given by, all notices and other matters to be delivered to, all

determinations and decisions to be made by and, in general, all other action to be taken by, or given to, OCFA shall be taken, given and made by, or delivered or given to, Project Manager in the name of and on behalf of OCFA. Only those so designated are authorized to grant on behalf of OCFA any approval, consent or waiver with respect to the Project Manual or the Work, or to otherwise act for OCFA in any capacity whatsoever.

54.16 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Project Manual either by the activities or duties of the Project Manager in its administration of the Contract, including, without limitation, by any inspections or tests required, or by approvals or other similar action with regard to shop drawings or submittals (of any type), or by the activities of persons other than the Contractor with respect to the Project. Further, notwithstanding the fact that a dispute, controversy or other question may have arisen between the parties hereto relating to the execution or progress of the Work, the interpretation of the Project Manual, the payment of any monies, the delivery of any materials or any other matter whatsoever, the Contractor shall not be relieved of its obligations to pursue the Work diligently under the Project Manual pending the determination of such dispute, controversy, or other question.

54.17 OCFA reserves the right, but assumes no duty, to establish and enforce standards, and to change the same from time to time, for the safety and protection of persons and property, with which the Contractor shall comply, and to review the efficiency of all protective measures taken by the Contractor. The exercise of or failure to exercise any or all of these acts by OCFA shall not relieve the Contractor of its duties and responsibilities under the Project Manual, and OCFA shall not thereby assume, nor be deemed to have assumed, such duties or responsibilities of the Contractor.

55 CONTRACTOR

55.1 Composition: If the Contractor hereunder is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

55.2 Examination of Plans, Specifications, and Site of Project: In addition to the representations and warranties contained in the Contract, the Contractor acknowledges that prior to execution of the Contract it has thoroughly reviewed and inspected the Project Manual, and satisfied itself regarding any error, inconsistency, discrepancy, ambiguity, omission, insufficiency of detail or explanation. OCFA shall not be responsible for any costs, nor liable to the Contractor for any damage, resulting from any such matter that the Contractor reasonably should have discovered. The Contractor shall perform no portion of the Work at any time which is not as provided or specified in the Project Manual or, where required, shop drawings, product data, or samples, for such portions bearing the Design Professional's appropriate action stamp. Work performed in violation of this provision shall be at the Contractor's risk

55.3 Contractor Certification: Contractor certifies and agrees that all the terms, conditions, and obligations of the Project Manual, the location and condition of the Site, and the conditions under which the work is to be performed have been thoroughly reviewed and investigated and Contractor enters into this Contract based upon Contractor's review and investigation of all such matters. Contractor certifies and agrees that Contractor is in no way relying upon any opinions or representations of OCFA or the OCFA's officers, employees, agents, and consultants, including but not limited to, the Project Manager and the Design Professional.

55.4 Preparation of Documents: The Contractor shall carefully review and where appropriate or as may be required in the Scope of Work or at the direction of the Project Manager prepare drawings, specifications, and other instructions and shall at once report to Project Manager

any error, inconsistency, or omission which Contractor may discover. Except as otherwise specifically provided hereinafter under warranties, the Contractor shall not be an agent for the OCFA.

- 55.5 **Superintendence:** The Contractor shall maintain on the site, during all construction activity, a competent superintendent and any necessary assistants, all satisfactory to the Project Manager. The superintendent shall not be changed except with the consent of the Project Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ, in which case he/she shall be replaced immediately and in no case more than 24 hours with a superintendent acceptable to the Project Manager. The superintendent shall represent the Contractor and all directions given to the superintendent shall be as binding as if given to the Contractor. The Contractor shall provide Project Manager with complete work history profiles of management staff associated with this Project for Project Manager's review.
- 55.6 **Licenses and Certificates:** The Contractor represents and warrants that it has all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, and any local jurisdiction, and all other appropriate governmental agencies, and agrees to maintain these licenses and permits in effect for the duration of this Contract. Further, Contractor warrants that its employees, agents, and contractors and subcontractors shall conduct themselves in compliance with all applicable laws and licensure requirements now in effect or as subsequently enacted or modified, as promulgated by any local, state, or federal governmental entities, including, without limitation, compliance with laws applicable to non-discrimination, harassment, and ethical behavior. Contractor shall notify the Project Manager immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of any appeal, any such permits, licenses, approvals, certificates, waivers, and exemptions. Such inability shall be cause for termination of this Contract.
- 55.7 **Materials and Equipment:** The Contractor shall cause all materials and equipment to be delivered to the Site in accordance with any schedule or schedules therefore established from time to time and approved by Project Manager and, in any event, in a manner which will assure the timely progress and completion of the Work but will not encumber the Site unreasonably. Materials delivered to the Site for incorporation in the Work shall not be removed from the Site without the consent of Project Manager. The Contractor shall give, or shall require its Subcontractors to give, full and accurate quality, performance and delivery status reports, in a form satisfactory to Project Manager, regarding any materials and equipment, or such other data with respect thereto as may be requested by Project Manager, and shall obtain for Project Manager the written assurances of any manufacturer that its material or equipment is designed, and appropriate, for the use intended. The Contractor warrants to OCFA that all materials and equipment furnished under this Contract shall be new unless otherwise specified in the Project Manual and that all Work shall be of good quality, free from faults and defects and in conformance with the Project Manual. All Work not so conforming to these standards may be considered defective. All warranties and guarantees from Subcontractors (including, without limitation, manufacturers) shall be assignable to OCFA regardless of whether it is so stated therein, and the Contractor agrees to assign all such warranties and guarantees to the OCFA.
- 55.8 **Completion Schedule:** The Contractor shall prepare and submit, for Project Manager's approval, a Construction Schedule for the work which shall provide for expeditious and practicable execution of the work for completion within the Contract Time. This schedule shall be coordinated with the entire Project Construction Schedule to the extent required by the Contract Documents.

- 55.9 Reports by Contractor: Daily reports of the site and construction activities shall be provided to Project Manager. The reports shall follow the OCFA approved format including, but not limited to, information regarding trades at work, manpower, weather conditions, construction progress, and solutions to problems.
- 55.10 Contractor Responsibility: The Contractor shall supervise and direct the Work, using its best skill and attention. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences, coordination, scheduling and procedures, for all cleanup and for all safety and weather precautions and programs, in connection with the Work. Contractor shall be solely responsible for the work and the Project as described in the Contract Documents. Contractor shall have complete control over the construction methods, techniques, and procedures, except as may be specifically provided in the Contract Documents. Contractor shall, at its sole cost and expense, perform all labor and services and furnish all material, tools, appliances, and equipment necessary and proper for performing and completing the Work of the Project in strict compliance with the terms and conditions of the Project Manual. Contractor shall provide all labor, materials, and equipment in conformity with the Project Manual and other directions as may be provided by the Project Manager. Contractor shall, at its sole cost and expense, prepare and fully comply with all provisions of the Quality Assurance/Quality Control Program as provided in the Project Manual.
- 55.11 Ongoing Oversight: Contractor shall keep itself continuously informed of the progress of the Work and the Related Work and will attend all meetings related to the Work and the Related Work as specified in the Project Manual and as identified in the Contractor's Construction Schedule. Contractor further agrees to work in a prompt, efficient, expert, and diligent manner and to furnish sufficient manpower to complete the Work in accordance with the Contractor's Construction Schedule. Contractor shall prosecute the Work diligently to completion. Contractor shall be responsible for the coordination and scheduling of all Work and the Related Work.
- 55.12 Ongoing Self-Inspection: Contractor shall, at its sole cost and expense, inspect its work to determine strict conformance to the requirements of the Project Manual. (This obligation of the Contractor is in addition to the Contractor's obligations to make repairs or to remedy deficient or unacceptable work as may be required under this Contract or any other provision of the Project Manual.) If some of the work performed on the Project does not comply with the requirements of the Project Manual, Contractor shall repair or replace such defective work at its sole cost and expense. Contractor shall gain no protection or right of reliance on the Project Manager's or Fire Chief's inspection of the work. If it is determined that the Project Manager or Fire Chief inspected work and failed to call defects or non-conforming items to the attention of Contractor, the OCFA shall not be deemed to have waived the requirements of the Project Manual or accepted the work.
- 55.13 Monitoring and Compliance: The Project Manager shall, at all times, have safe access to the Project site and its related work during its construction, and shall be furnished with every reasonable facility for ascertaining that the materials and the workmanship are in accordance with the requirements and intentions of Contract Documents. All work done and all materials furnished shall be subject to Project Manager inspection. In the event the Project Manager finds or determines that the work or material are not in accordance with the requirements and the intentions of the Contract Documents, the Project Manager shall issue a Non-Conformance Notice. Upon receipt of a Non-Conformance Notice the Contractor shall provide a written Response to the Non-Conformance Notice within five (5) working days after receipt of the Notice. The Contractor's response shall detail either (a) why Contractor believes that the work was performed in accordance with the Project Manual or (b) what corrective action Contractor intends to take, at its sole cost and expense, to

correct the non-conforming work. If Contractor disputes issuance of the Notice, the Project Manager has five- (5) working days in which to respond by either (a) withdrawing the Notice of Non-Conformance or (b) directing the Contractor to correct the work. Such determination of the Project Manager shall be final and conclusive of the matter. If directed to correct the work, Contractor shall do so within five (5) working days after receipt of such direction from the Project Manager, or such other time as may be agreed in writing from the Project Manager.

- 55.14 **Inspectors:** In addition to the Project Manager, inspectors of Local Jurisdictions are authorized to enforce strict compliance with the terms and conditions of the Contract and the Project Manual and to determine the acceptability of materials and workmanship. Inspectors are authorized to reject work or materials if they determine that such work or materials do not conform to the requirements of the Contract and the Project Manual. Whenever an inspector determines that some work installed by the Contractor, or any Subcontractor or supplier at any tier does not conform to the requirements of the Contract, a Notice of Non-Conformance will be issued to record this determination. In the event of a dispute between the Contractor and an inspector concerning non-conforming work, the Contractor shall pursue the issue in accordance with the requirements of Subsection M above this Section 1.03 of this contract, relating to Non-Conforming Work. Inspectors other than the Project Manager are not authorized to issue or direct changes to the requirements of the Contract. In the event that the Contractor believes some direction given by an inspector does constitute a change to the requirements of the Contract, Contractor shall within two (2) days provide written notice to the Project Manager detailing the direction given, by whom, when and under what circumstances, and why the Contractor believes that such direction constitutes a change to the requirements of the Contract. Failure to provide such written notice to the Project Manager within the specified timeframe shall constitute a waiver of claim with respect to the direction received by the Contractor.
- 55.15 **Remedy and Repair of Work:** The inspection of the work or materials shall not relieve the Contractor of any of the Contractor's obligations to fulfill the Construction Contract as prescribed. Work and materials not meeting the requirements shall be made good, and unsuitable work or materials may be rejected, notwithstanding that the work or materials have been previously inspected by the Project Manager or that payment therefor has been included in a progress payment. All work which has been rejected as indicated in a Non-Conformance Notice shall be remedied, or removed and replaced by the Contractor in an acceptable manner, and no compensation will be allowed to the Contractor for the removal, replacement or remedial work. Payment shall not be made on any portion of the work for which a Non-Conformance Notice has been issued and the work not corrected to the satisfaction of the Project Manager.
- 55.16 **Failure to Comply:** Upon failure of the Contractor to comply promptly with any order of the Project Manager made under Paragraphs L, M, N, and O above, the Project Manager, with the approval of the Fire Chief, may cause rejected or unauthorized work to be remedied, removed, or replaced, and to deduct the costs from any moneys due or to become due the Contractor.
- 55.17 **Contractor Liabilities:** The Contractor shall be responsible to OCFA for the acts and omissions of its employees. The Contractor shall be held responsible for all damages resulting from its employees or its subcontractors or agents from all errors, omissions, or negligence in the performance of the work and completion of the Project.
- 55.18 **Deficiencies in Contract Documents:** Contractor covenants and agrees that Contractor, its employees, agents, subcontractors, and suppliers have an affirmative duty and obligation to promptly disclose to the Project Manager any deficiency, error, or inconsistency in the

Contract Documents and any of the plans and specifications contained therein, so that Project Manager, the OCFA, and the Design Professional can affect any required or necessary modification or clarification thereof in a timely and cost effective manner. In this regard and in furtherance of the Contractor's obligations, the Contractor agrees not to take advantage of errors or omissions in the Project Manual. It is the duty of the Contractor to promptly notify the Project Manager in writing of any design, materials, or specified method that the Contractor believes may prove defective or insufficient. If the Contractor believes that a defect or insufficiency exists in design, materials, or specified methods and fails to promptly notify the Project Manager in writing of this belief, the Contractor thereby waives any right to assert that defect or insufficiency in design, materials, or specified method at any later date in any legal or equitable proceeding against the OCFA, or in any subsequent arbitration or settlement conference between the OCFA and the Contractor. The Project Manager, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any work done by the Contractor after the Contractor becomes aware that a defect or insufficiency exists in design, materials, or specified method which is directly or indirectly affected by such alleged defect or insufficiency in design, materials, or specified method will be at the Contractor's own risk and the Contractor shall bear all costs arising therefrom.

- 55.19 Ongoing Duty to Disclose: If the Contractor, either before commencing work or in the course of the work, finds any discrepancy within the Project Manual, or between the Project Manual and the physical conditions at the Site, or finds an error or omission on the Plans, Specifications, or in any survey, the Contractor shall promptly notify the Project Manager in writing of such discrepancy, error, or omission. If the Contractor observes that the Project Manual is at variance with any applicable law, regulation, order, or decree, the Contractor shall promptly notify the Project Manager in writing of such conflict. The Project Manager, on receipt of such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, work done by the Contractor after the discovery of such error, discrepancy, or conflict which is directly or indirectly affected by such error, discrepancy, omission, or conflict will be at the Contractor's own risk and the Contractor shall bear all costs arising therefrom.
- 55.20 Duty to Coordinate: The Contractor shall be responsible for coordinating any work carried on at the Site by other parties or by the OCFA, including the Related Work, simultaneously with the Work. The compensation to be paid to Contractor under this Contract includes any costs which the Contractor may incur as a result of coordinating the Work with such other work, including the Related Work. In no case shall the Contractor be entitled to extra compensation from the OCFA for damages suffered as a result of work being carried on at the Site by other parties or the OCFA simultaneously with the construction work for this Project. Nevertheless, if such work results in a delay to the Contractor's work beyond reasonable time allocations afforded to such work and Related Work identified on the Contractor's Construction Schedule as approved by the Project Manager, the Contractor may be eligible for an extension of time as specified in this Contract.
- 55.21 Failure to Pay for Labor or Materials: If Contractor fails to pay for labor or materials when due, OCFA may settle such claims by making demand upon the surety to this Agreement. In the event of the failure or refusal of the surety to satisfy said claims, OCFA may settle any claims directly and deduct the amount of payments from the Contract price and any amounts due to Contractor. In the event OCFA receives a stop notice from any laborer or material supplier alleging non-payment by Contractor, OCFA shall be entitled to deduct all of its costs and expenses incurred relating thereto, including but not limited to administrative and legal fees.

- 55.22 Compliance with Laws: The Contractor shall, at its cost and expense, comply with all Laws, as any may now exist or be hereafter changed or added. It shall be the responsibility of the Contractor to familiarize itself with all such Laws, and any performance of the Work by or on behalf of the Contractor which is not in compliance with the Laws shall be at the Contractor's sole risk and expense. The Contractor shall notify OCFA prior to execution of the Contract (and, without limiting the continuous duty of the Contractor to advise the OCFA) of any instances where the Contract Documents are, or where the Contractor believes the Contract Documents are, not in compliance with the Laws.
- 55.23 Ongoing Responsibility: Any work or material not specified in the Project Manual but which by fair implication, in the judgment of the Project Manager, should be included therein, shall be accomplished, furnished, or provided by the Contractor as part of the Project Manual.
- 55.24 Taxes, Fees, and Licenses: The Contractor shall pay, or cause to be paid, all import duties and sales, consumer, use, excise, value added and ad valorem taxes required to be paid in connection with the Work or upon materials, tools or equipment brought to the Site or used in the Work. If any of the foregoing taxes are not paid in a timely manner, OCFA may withhold the amount of any such taxes from any amounts owing to the Contractor under the Project Manual, submit the amount so withheld to the appropriate taxing authority on behalf of the Contractor or its Subcontractors or Sub-subcontractors and offset said amount against the Contract Sum. The Contractor shall secure and pay for all governmental fees, permits and licenses which OCFA is not specifically required to provide and pay for under the Project Manual.
- 55.25 Tests: If the Project Manual, or any laws, ordinances, rules, regulations, or any orders or decrees of any public or quasi-public authority having jurisdiction, or common practice in the industry, require or dictate that the Contractor have any portion of the Work inspected, tested or approved, the Contractor shall advise Project Manager in a timely manner (in writing, if practicable) of its readiness and of the date arranged so that Project Manager may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests and approvals except as otherwise specified. Project Manager may require any special inspection, testing or approval of the Work not included under above, or any more stringent inspection, testing or approval thereof, in which event it shall instruct the Contractor to order such inspection, testing or approval, and the Contractor shall advise Project Manager in a timely manner (in writing, if practicable). If such inspection or testing reveals any failure of the Work or the performance thereof to comply with the more stringent of: (a) the requirements of the Project Manual; (b) applicable industry standards; or (c) applicable laws, ordinances, codes, rules, regulations or orders or decrees of any public or quasi-public authority having jurisdiction, or reveals any defect in the Work, the Contractor shall bear the costs of such inspection or testing and all costs to correct the Work to the satisfaction of Project Manager, which, if incurred by OCFA, may be offset by OCFA against any amounts then or thereafter due to the Contractor. If such inspection or testing proves that the Work was performed properly, OCFA shall bear the costs of such inspection or testing. Required certificates of inspection, testing or approval shall be secured by the Contractor and promptly delivered by it to the Project Manager.
- 55.26 General: The duties and responsibilities of the Contractor as set forth in this Section 1.03 are in addition to, and not in lieu of, other duties and responsibilities of the Contractor enumerated elsewhere in the Project Manual.

56 - RESPONSIBILITIES OF THE CONTRACTOR

56.1 CONTRACTOR'S EQUIPMENT AND FACILITIES.

56.1.1 General.

56.1.1.1 Conduct of the Work. The Contractor shall behave, at all times, in a courteous, professional manner. While on site, or entering or exiting the site, there shall be no extraneous activity that might cause disruption to the Project site, surrounding areas, or residents. Failure to comply may result in the suspension of work, or removal of contractor's staff from the Project.

56.1.1.2. Noise Levels. A noise level limit of 86 dbA Max at a distance of fifty feet (50') shall apply to all construction equipment on or related to the job whether owned by the Contractor or not. The use of excessively loud warning signals shall be avoided except in those cases required for the protection of personnel. In addition to those requirements, all work shall comply with all applicable noise ordinances at all times.

56.2 COOPERATION AND COLLATERAL WORK.

The Contractor is advised as to the possibility of other construction projects within the proposed construction zone by the OCFA, other governing agencies or private enterprises. In the event of such projects, the Contractor shall coordinate with the applicable parties as to the extent of any time required to complete their work and shall schedule its work and conduct its operations so as to permit access and time as required for the concurrent work. The Contractor shall immediately notify the Engineer in the event of a delay in scheduling caused solely by this concurrent work. Payment for the above, if any, shall be deemed as included in the items of work as shown on the proposal bid sheet and no additional compensation will be allowed.

56.3 PROJECT SITE MAINTENANCE.**56.3.1. Cleanup and Dust Control.**

The Contractor shall keep adjacent properties clean and free of rubbish and debris in a timely manner as necessary and/or as directed by the Engineer.

The Contractor shall implement effective handling, storage, usage, and disposal practices to control material pollution and manage waste and nonstormwater at the job site before they come in contact with storm drain systems and receiving waters.

56.3.1.1 Construction Cleaning

The Contractor shall:

- (a) Initiate and maintain a daily program to prevent accumulation of debris on-site and along access roads and haul routes. Maintain areas under Contractor's control free of waste materials, debris, weeds 6" high, and rubbish. Maintain site in a clean and orderly condition.
- (b) Provide suitable covered containers for deposit of debris and rubbish. Dispose of accumulation of extraneous materials, prohibit overloading of trucks to prevent spillages on access and haul routes and provide daily inspection of haul routes to enforce requirements.
- (c) The Contractor shall supply self-loading motorized street sweepers equipped with a functional water spray system as part of his daily program.
- (d) Schedule at a minimum, weekly collection and disposal of debris. Provide additional collections and disposals of debris whenever the weekly schedule is inadequate to prevent accumulation.

The Contractor shall remove debris from closed or remote spaces prior to closing the space, control cleaning operations to minimize dust and other particulates and immediately remove clay and earth which adhere to the paved surface of the roadway. Remove by hand scraping, washing, sweeping, and/or other method(s) which will leave a clean non-skid surface without impairing, injuring or loosening the surface.

The Contractor is required to control dust throughout the life of the Contract. The control may be required by job conditions or Engineer. In any case, the Contractor shall use water or other effective means to control the dust. No chemical agents may be used without written authorization from the Agency. The Contractor shall be solely responsible for safety problems, accidents or any other complications or claims arising from inadequate dust control.

No separate payment will be made for any work performed or material used to control dust resulting from the Contractor's performance of the work, or by public traffic, either inside or outside the right-of-way. Full compensation for such dust control will be considered as included in the price paid for the various items of work involved.

No separate payment will be made for any work performed or material used in cleaning the Project. Full compensation for such cleaning shall be considered as included in the price paid for the various items of work involved and no additional compensation will be allowed therefore.

57 Subcontracts

57.1 Licensed Subcontractors: The Contractor shall comply with the provisions of the Subletting and Subcontracting Fair Practices Act (the "Act") (Public Contracts Code Section 4100 et seq.). The Contractor shall not terminate the employment of a Subcontractor or Sub-subcontractor engaged in the Work prior to the expiration of that subcontract without complying with the Act. The Contractor shall in all respects select the subcontractors in the manner provided under law. Each subcontractor selected for the work shall be licensed in the State of California in the subcontractor's particular field.

57.2 Transactions: Transactions with subcontractors shall be made through the Contractor. OCFA may assign to the Contractor any contracts or purchase orders entered into between OCFA and any other person or organization in any way related to the Project or the Work, at any time, in which event the Contractor shall assume full responsibility for such person or organization and its portion of the Work as if such person or organization was originally a Subcontractor. Such assignment may occur by Change Order or other Modification to the Contract, and any increase in the Contract Sum shall be governed by Section 01200 of the Project Manual.

57.3 Writing: All subcontracts and sub-subcontracts shall be in writing. Each subcontract and sub-subcontract shall contain a reference to this Contract and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby. Each Subcontractor must agree, for the benefit of OCFA, to be bound by, and to require each of its Subcontractors to be bound by, such terms and conditions to the full extent applicable to its portion of the Work.

57.4 Responsibility: The Contractor shall be fully responsible to the OCFA for the acts and omissions of subcontractors and all persons directly or indirectly employed by them as Contractor is for the acts and omissions of Contractor and of persons directly or indirectly employed by Contractor and shall pay each subcontractor promptly the amount allowed Contractor on account of such subcontractor's work to the extent of such subcontractor's interest therein.

- 57.5 Incompetent or Disorderly Conduct: If any Subcontractor or person employed by the Contractor shall appear to the Project Manager to be incompetent or to act in a disorderly or improper manner, such person shall be discharged immediately on the request of the Project Manager, and that person shall not again be employed on the work.
- 57.6 Mandatory Subcontract Terms: Each subcontract shall provide for its termination by the Contractor if, in Project Manager's opinion, the Subcontractor fails to comply with the requirements of the Project Manual insofar as the same may be applicable to its portion of the Work; and each Subcontractor shall be required to insert a similar provision in each of its sub-subcontracts. In the event of any such failure by a Subcontractor or Sub-subcontractor to comply with the requirements of the Project Manual, such Subcontractor or Sub-subcontractor, as the case may be, shall be removed immediately from the Work and shall not again be employed on the Work. The Contractor shall be responsible for all costs and expenses arising out of, and shall indemnify OCFA on account of, any such failure by a Subcontractor or Sub-subcontractor (specifically including, without limitation, a failure to pay for labor (including applicable fringe benefits) or materials).
- 57.8 Contractual Relations: Nothing contained in this Contract shall create any contractual relationship between OCFA or the Project Manager or the Design Professional on the one hand, and a subcontractor on the other.

58 Drawings And Specifications

- 58.1 Checking: The Contractor, as part of this Contract, shall agree not to take advantage of errors or omissions in the Contract Documents, including any plans and specifications thereto. It is the duty of the Contractor to promptly notify the Project Manager in writing of any design, materials, or specified method that the Contractor believes may prove defective or insufficient. If the Contractor believes that a defect or insufficiency exists in design, materials, or specified methods and fails to promptly notify the Project Manager in writing of this belief, the Contractor thereby waives any right to assert that defect or insufficiency in design, materials, or specified method at any later date in any legal or equitable proceeding against the OCFA, or in any subsequent arbitration or settlement conference between the OCFA and the Contractor. The Project Manager, on receipt of any such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, any work done by the Contractor after the Contractor becomes aware that a defect or insufficiency exists in design, materials, or specified method which is directly or indirectly affected by such alleged defect or insufficiency in design, materials, or specified method will be at the Contractor's own risk and the Contractor shall bear all costs arising therefrom.
- 58.2 Discrepancy in Contract Documents: If the Contractor, either before commencing work or in the course of the work, finds any discrepancy within the Contract Documents, or between the Contract Documents and the physical conditions at the Project site, or finds an error or omission on the plans, specifications, or in any survey, the Contractor shall promptly notify the Project Manager in writing of such discrepancy, error, or omission. If the Contractor observes that the Contract Documents is at variance with any applicable law, regulation, order, or decree, the Contractor shall promptly notify the Project Manager in writing of such conflict. The Project Manager, on receipt of such notice, will promptly investigate the circumstances and give appropriate instructions to the Contractor. Until such instructions are given, work done by the Contractor after the discovery of such error, discrepancy, or conflict which is directly or indirectly affected by such error, discrepancy, omission, or conflict will be at the Contractor's own risk and the Contractor shall bear all costs arising therefrom.

- 58.3 Implication: Any work or material not specified in the Contract Documents but which by fair implication, in the judgment of the Project Manager, should be included therein, shall be accomplished, furnished, or provided by the Contractor as part of the Contract Documents.
- 58.4 Precedence: Figures marked on drawings shall in general be followed in reference to scale measurements. Large scale drawings shall in general govern small scale drawings. Specifications and schedules shall govern over drawings. The Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors. When measurements are affected by conditions already established, the Contractor shall take measurements notwithstanding the giving of scale or figure dimensions in the drawings. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of discrepancy in the Plans or Specifications, the matter shall be immediately submitted to the Project Manager, without whose decision Contractor shall not adjust said discrepancy save only at Contractor's own risk and expense. The decision of the Project Manager shall be final.
- 58.5 Shop Drawings: The Contractor shall establish, implement, and supervise the submission of shop drawings and other submittals (of any type) in accordance with the Schedule and any Milestones. The Contractor shall note any variances between any such shop drawings or other submittals and the Project Manual for the benefit of OCFA at the time of submission. No approval or other similar action regarding any such submission shall be binding in any way upon OCFA.
- 58.6 Drawings and Specifications at the Site: The Contractor shall keep available at the site for ready reference a complete set of all contract drawings, details, supplementary drawings and approved shop drawings, a complete copy of the specifications with all addenda, bulletins, amendments, and copies of Project correspondence. The Contractor shall maintain on the site a complete "as built" record set of prints. In addition, the Contractor shall keep on the site as required a copy of each manufacturer's current printed recommendations. Contractor shall also submit a copy to the Project Manager.
- 58.7 Deviations: Deviations from the drawings and the dimensions therein given, whether or not error is believed to exist, shall be made only after written authority is obtained from the Project Manager.

59 Divisions Of The Specifications

- 59.1 For convenience, the work as described in the Contract Documents are arranged in several divisions and sections, but such separations shall not be considered as the limits of the work required for any subcontract or trade: the terms and conditions of such limitations are wholly between the Contractor and his subcontractors, and the OCFA will not be responsible for any division of work by subcontractors. The Contractor will be solely responsible for all subcontract arrangements of work regardless of the location of provisions in the specifications.
- 59.2 Schedules of work included in the sections, where listed, are given for convenience only, and shall not be considered as a comprehensive list of items or work necessary to complete the work of any section.
- 59.3 Where devices or items or parts thereof are referred to in the singular, it is intended that such reference shall apply to as many soon devices, items, or parts as are required to properly complete the work.

- 59.4 Each section of the specifications is covered by applicable requirements of the Contract Documents and other related sections as if therein written.

60 Site Conditions

- 60.1 Existing Site Conditions: Information respecting the site of the work given in drawings or specifications has been obtained by OCFA's representatives and is believed to be reasonably correct, but the OCFA does not warrant either the completeness or accuracy of such information, and it is the responsibility of the Contractor to verify all such information.
- 60.2 Changed Conditions: The Contractor shall promptly, and before such conditions are disturbed, notify the Project Manager in writing of:
- 60.2.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the Contract Documents; or
- 60.2.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents. The Project Manager shall promptly investigate the conditions, and if, as a result, finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for performance an equitable adjustment shall be made and the Contract Documents modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless Contractor has given notice as above required.
- 60.3 Public Utility Facilities on Project Site: Pursuant to Government Code, Section 4215, the Contractor shall be compensated for the costs of locating and repairing damage to public utility facilities on the Project site which was not due to failure of Contractor to exercise reasonable care, and removing or relocating main or trunk line utility facilities located on the Project site, if such work is required in the Contract Documents or the Project Manager. Such compensation shall also cover the cost of Contractor's equipment necessarily idled during such work. This provision shall not be deemed to require compensation when the presence of existing service laterals or appurtenances can be inferred from the presence of visible facilities such as buildings, meter and junction boxes, on or adjacent to the construction site. If the Contractor discovers such unidentified utility facilities during construction, Contractor shall immediately notify the Project Manager and the utility in writing.
- 60.4 Space at Site: The Contractor shall be allowed reasonable space at the site of the work as available and access thereto and shall confine Contractor operations to the space assigned. The work shall be done without interference with the ordinary use of the fire station. The Contractor shall cooperate with other Contractors of the OCFA and shall not commit or permit any act which will interfere with the performance of work by any other Contractor or employees of the OCFA whether at the site or not.

61 Conditions Affecting The Work

The 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 the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional expense to the OCFA. The OCFA assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the Contract Documents, unless such understanding or representations by the OCFA are expressly stated in the Contract Documents.

62 OCFA's Property On Site

All fixtures, facilities, equipment, vehicles, furniture, and all other personal property of the OCFA located at the job site which are removed in the course of construction of the Project remain the property of the OCFA unless express provision to the contrary is made in the Contract Documents, and the Contractor shall exercise reasonable care to prevent loss or damage to said property and shall deliver promptly such property to the place designated by the Project Manager.

63 Protection

- 63.1 The Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work, all material and supplies, and temporary facilities against loss or damage from whatever cause, shall protect the property of OCFA and third parties from loss or damage from whatever cause, and shall comply with the requirements of OCFA and its insurers and with all applicable laws, codes, rules and regulations with respect to the prevention of loss or damage to property as a result of fire or other hazards.
- 63.2 The Project Manager may, but shall not be required to, make periodic patrols of the Site as a part of its normal security and safety program. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities and OCFA shall not assume same, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the Contractor by the Contract.
- 63.3 Until final acceptance of the Work by OCFA, the Contractor shall have full and complete charge and care of and, except as otherwise provided in this Subparagraph, shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (specifically including OCFA-furnished supplies, equipment or other items to be utilized in connection with, or incorporated in, the Work), materials, equipment, and supplies, from any cause whatsoever, subject to the limitations set forth below.
- 63.4 The Contractor shall rebuild, repair, restore, replace, and make good all losses of, and injuries or damages to, the Work or any portion thereof (specifically including OCFA-supplied, equipment or other items to be utilized in connection with, or incorporated in, the Work), material, equipment, and supplies before final acceptance of the Work. Such rebuilding, repair, replacement, or restoration shall be at the Contractor's sole cost and expense.
- 63.5 Contractor shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. Contractor shall comply with the provisions of the Construction Safety Orders issued by the State Division of Occupational Safety & Health. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.
- 63.6 The Contractor shall maintain continuously adequate protection of all work from damage and shall protect the OCFA's property from injury or loss arising in connection with the Contract Documents. Contractor shall make good any such damage, injury, or loss, except such as may be directly due to errors in the Contract Documents or caused by agents or representatives of the OCFA. Contractor shall adequately protect adjacent property as provided by law and the Contract Documents, and shall maintain reasonable security of the site at all times, if necessary. Contractor shall limit visitors to the site to those necessary for construction and inspections. Visitors for other purposes shall be referred to the Project Manager. Contractor's and subcontractors' employees shall possess means of identification at all times as required by the Project Manager while on the job site.

- 63.7 In an emergency affecting the safety of life or of the work or of adjoining property the Contractor, without special instruction or authorization from the OCFA, is hereby permitted to act at Contractor's discretion to prevent such threatened loss or injury. Contractor shall so act if directed or instructed by the Project Manager. Any dispute as to compensation claimed by the Contractor on account of emergency work shall be determined by agreement as hereinafter set forth.
- 63.8 The Project Manager may notify the Contractor of any noncompliance with the foregoing provisions and the action to be taken. The Contractor shall, after receipt of such notice, immediately correct such conditions. Such notices, when delivered to the Contractor or Contractor's representative at the site of the work, shall be deemed sufficient for said purpose. Failure of receipt of such notice from the Project Manager shall not relieve the Contractor of responsibility.
- 63.9 If the Contractor fails or refuses to comply promptly, the Project Manager may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to any such stop order shall be made the subject of a claim for extension of time or for excess costs or damages to the Contractor. The Contractor will be responsible for ensuring that his subcontractors comply with the provisions of this Section 63.
- 63.10 Surface or Subsurface water or other fluid shall not be permitted to accumulate in excavations or under the structures. Should such conditions develop or be encountered, the water or other fluid shall be controlled and suitably disposed of by means of temporary pumps, piping, drainage lines and ditches, dams or other methods approved in writing by OCFA. The proposed location and coordination of temporary channels and conduits conducting accumulated water from the Site shall be submitted to Project Manager for its prior written approval. All such work shall be done at the sole expense of the Contractor, and in accordance with the Federal National Pollutant Discharge Elimination System (NPDES) and the NPDES General Construction Permit which includes the Contractor's Storm Water Pollution Prevention Plan (SWPPP) pursuant thereto.

64 Payments

The OCFA shall make payments upon the contract price in accordance with the Contract Documents.

65 Assignment

The Contract Documents, and any portion thereof, may not be assigned by the Contractor. Claims for monies due or to become due the Contractor from the OCFA under the Contract Documents may be assigned, with the written consent of the Board of Directors, to a bank, trust company, or other financing institution and may thereafter be further assigned or reassigned to any such institution. To effect such assignments, the Contractor, or Contractor's assignee, shall submit a written request to the Board of Directors enclosing a letter from the proposed assignee indicating that it will accept such assignment. Any attempted assignment contrary to provisions of this paragraph shall be void.

66 Other Contracts

The Board of Directors may undertake or award other contracts for additional work or other work, and the Contractor shall fully cooperate with such other contractors and OCFA employees and carefully fit Contractor's own work to such additional work as may be directed by the Project Manager. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by OCFA employees.

67 Warranty / Warranty Work

- 67.1 One-Year Warranty: The Contractor agrees to maintain and guarantees for a period of twelve (12) months from the date of the issuance of the certificate of acceptance of the Project or the issuance of a temporary certificate of occupancy as requested by the Fire Chief in the Fire Chief's sole discretion, whichever event occurs first, (and for such additional or extended periods for portions of the Work as provided in the Project Manual), that the completed work is free from all defects due to faulty materials, equipment or workmanship and that Contractor shall promptly make whatever adjustments or corrections which may be necessary to cure any defects, including repairs or any damage to the Site, Project, Work, or any system installed therein resulting from such defects. .
- 67.2 Warranty Work / Normal Response Time: In the event of failure to comply with the above-mentioned conditions within one (1) week after being notified in writing, the OCFA is hereby authorized to proceed to have the defects remedied and made good at the expense of the Contractor who hereby agrees to pay the cost and charges therefore immediately on demand.
- 67.3 Warranty Work / Emergency Response Time: If in the opinion of the OCFA, defective work creates a dangerous condition, affects the OCFA's essential operations / essential use of the facility, affects the safety or preservation of property or personnel, or requires immediate correction or attention to prevent further loss to the OCFA, the Contractor shall be required to take corrective action within 24 hours after personal or telephonic notice by the OCFA's Property Management Section. If the Contractor cannot be contacted or does not comply with the OCFA's request for correction within 24 hours (or a reasonable time as determined by the OCFA), the OCFA may, notwithstanding the provisions of this Section 67, proceed to make such correction, the cost of which shall be charged against the Contractor.
- 67.4 Failure to Take Corrective Action: Failure by the Contractor to take corrective action as specified above shall constitute a material breach of this agreement and will result in the OCFA taking whatever corrective action it deems necessary including termination of this agreement. All costs resulting from such action by the OCFA will be claimed against Contractor or, if necessary, the Contractor's Performance Bond. The Contractor's Performance Bond shall remain in full force and effect through the warranty period.
- 67.5 Alternative Remedy: In the event that the Contractor fails to make adjustments, repairs, corrections or other work made necessary by such defects, or to properly maintain and service the Project, the OCFA may do so and charge the Contractor the cost incurred. The performance bond shall remain in full force and effect through the guarantee period or, at the option of the Contractor, a warranty bond in the amount of one hundred percent of the Contract price may be substituted for the performance bond. Such warranty bond must be in a form approved by OCFA General Counsel, be issued by a surety authorized by the State Insurance Commissioner to transact business in the State of California as a surety, and must have and maintain, throughout the warranty period, at least an "A-" policyholder's rating, or better, and a financial rating of "Class VII," or better, in accordance with the most current A.M. Best's Rating Guide.
- 67.6 All Inclusive Remedies: The Contractor's obligations under this clause are in addition to the Contractor's other express or implied assurances of this Contract, Project Manual, or state law and in no way diminish any other rights that the OCFA may have against the Contractor for faulty materials, equipment, or work.

68 Extra Work And Changes

68.1 The Contract price as set forth in the Contract and the Contractor's Bid, includes compensation for all work performed by Contractor, unless Contractor obtains a written change order signed by the Project Manager specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in this Section 1.16. OCFA shall extend the time fixed in the Contract Documents for completion of the Project by the number of days reasonably required for Contractor to perform the extra work only if Contractor is actually delayed in the performance of any item of the Project on the critical path by:

- 68.1.1 Any act or neglect of OCFA, Project Manager, Design Professional, or any employee, agent, or representative of OCFA; or
- 68.1.2 Combined action of workers, either those employed on the Project or in any industry essential to the conduct of the Work not caused by or resulting from default, negligence, or collusion on the part of Contractor or its Subcontractors of every tier; or
- 68.1.3 Unusually severe weather conditions not reasonably anticipatable for that portion of the Site is located, based upon U.S. Weather Bureau climatological reports for the months included plus a report indicating average precipitation, temperature, etc. for the last ten (10) years from the nearest reporting station; or
- 68.1.4 Excusable Transportation Delays; or
- 68.1.5 Excusable Labor Disputes; or
- 68.1.6 Acts of God; or
- 68.1.7 National Emergency, declared by the President of the United States.

In the event one or more of the specific situations described above occurs, the Scheduled Completion Date may be extended by Change Order for a period not to exceed the length of such delay, provided that Contractor presents a written request to Project Manager, with demonstrated justification, for such time extension within five (5) days of the commencement of such delay. Failure to file such request within the time allowed shall be deemed a waiver of the claim by Contractor. as determined by Project Manager. The decision of the Project Manager shall be final.

- 68.2 The Project Manager may, at any time, by written order, and without notice to the sureties, make changes in the drawings or specifications of the Contract Documents if within the general scope thereof. A change order shall also be any other written order (including direction, instruction, interpretation or determination) from the OCFA which causes any change, provided Contractor gives the OCFA written notice stating the date, circumstances and source of the order and that Contractor regards the order as a change order.
- 68.3 If any change under this Section 1.16 causes an increase or decrease in Contractor's actual direct cost or the time required to perform any part of the work under this Contract, whether or not changed by any order, the Project Manager shall make an equitable adjustment and modify the Contract in writing. Except for claims based on defective specifications, no claim for any change shall be allowed for any costs incurred more than 20 days before the Contractor gives written notice as required below. In the case of defective specifications for which the OCFA is responsible, the equitable adjustment shall include any increased direct cost Contractor reasonably incurred in attempting to comply with those defective specifications.
- 68.4 No extension of time shall be given unless the delay for which a request is made is included in those items for which an extension to the Scheduled Completion Date is appropriate pursuant to the provisions of this Section 1.16 and the Project Manager finds that such reason for the delay actually adversely affected the ability of the Contractor to complete the Project by the Scheduled Completion Date or to complete a Milestone. Project Manager's decision will be conclusive on the parties to this Contract.

- 68.5 No claims by Contractor for additional compensation or damages for delays will be allowed unless Contractor satisfies the Project Manager that such delays were unavoidable and not the result of any action or inaction of Contractor and that Contractor took all available measures to mitigate such damages. The Project Manager's decision will be conclusive on all parties to this Contract.
- 68.6 No extension of the Scheduled Completion Date or the right on the part of Contractor to secure any such extension pursuant to this Section 1.16 shall prejudice any right OCFA may have under the Project Manual, or otherwise, to terminate this Contract.
- 68.7 The Contract Price includes compensation for all work performed by Contractor, unless Contractor obtains a written change order signed by the Project Manager specifying the exact nature of the extra work and the amount of extra compensation to be paid all as more particularly set forth in in this Section 1.16.
- 68.8 Project Manager may extend the Scheduled Completion Date by the number of days reasonably required for Contractor to perform the extra work, but only to the extent such extra work actually adversely affects the Scheduled Completion Date, as determined by Project Manager. The decision of the Project Manager shall be final.
- 68.9 The OCFA or the Fire Chief may order modifications or authorize change orders for any reason. Such modifications shall be reviewed, evaluated, and processed in the manner specified in this Section 1.16.
- 68.10 Project Manager may at any time, without notice to any surety, by written order designated or indicated to be a Class 1 or Class 2 Change Order, make any change in the work within the general scope of the Contract, including, but not limited to, changes in:
- 68.10.1 The Project Manual (including drawings and designs);
 - 68.10.2 The time, method, or manner of performance of the work;
 - 68.10.3 The OCFA-furnished facilities, equipment, materials, services, or site; or
 - 68.10.4 4.Directing acceleration in the performance of the work.
- 68.11 Except as provided in this Section 68, no order, statement or conduct of the OCFA or its representatives, including, but not limited to the Fire Chief, Project Manager, or the Design Professional, shall be treated as a change under this Section 1.16 or entitle Contractor to an equitable adjustment.
- 68.12 If any change under this Section 68 causes an increase or decrease in Contractor's actual, direct cost or the time required to complete the Project or a Milestone under this Contract and Project Manual, whether or not changed by any order, the Project Manager shall make an equitable adjustment and the OCFA shall modify the Contract in writing. Except for Class 1 claims based on defective provisions of the Project Manual, no claim for any change under Section 1.16 shall be allowed for any costs incurred more than 15 days before the Contractor gives written notice as required in this Section 1.16. In the case of defective specifications for which the OCFA is responsible, the equitable adjustment shall include any increased direct cost Contractor reasonably incurred in attempting to comply with those defective specifications.
- 68.13 If Contractor intends to assert a claim for an equitable adjustment under this Section 1.16, it must, within fifteen (15) days after receipt of a written change order under this Section 1.16 or the furnishing of a written notice hereunder, submit a written statement to the Project Manager

setting forth the general nature and monetary extent of such claim. Such claim shall contain the documentation and information as specified herein. The Project Manager may extend the 15-day period so long as the request for the extension is submitted within such 15-day period and only for good and justified cause. Project Manager's decision regarding any request for extension shall be final and binding on all parties.

- 68.14 Claim documentation shall conform to generally accepted accounting principals and all supporting documentation shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to, general conditions, general requirements, technical specifications, drawings, correspondence, conference notes, shop drawings logs, survey books, inspection reports, delivery schedules, test reports, daily reports, subcontracts, fragmentary schedules or time impact analyses, photographs, technical reports, requests for information, field instructions, and all other related records necessary to support Contractor's claim.
- 68.15 Supporting documentation of damages for each claim shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the bid; certified, detailed labor records including labor distribution reports, material and equipment procurement records, construction equipment ownership cost records or rental records, Subcontractor or vendor files and cost records, service cost records, purchase orders, invoices, project as planned and as-built records, general ledger records, variance reports, accounting adjustment records, and any other accounting materials necessary to support Contractor's claim.
- 68.16 Each copy of the claim documentation shall be certified by a responsible office of the Contractor in accordance with the requirements of the Project Manual.
- 68.17 Should Contractor be unable to support any part of the claim and it is determined that such inability is attributable to falsity of such certification or misrepresentation of fact or fraud on the part of Contractor, the Contractor shall be liable to OCFA as provided for under California Government Code Section 12650 et seq.
- 68.18 Disputed work shall be performed as ordered in writing by the Project Manager, so long as the cost of such work is within the OCFA of the Project Manager as described above, so as to minimize the impact on, and delays to, the Work.
- 68.19 Costs which shall not be allowed or paid in Change Orders or claim settlements under this Contract include, but are not limited to, interest cost of any type other than those mandated by statute; claim preparation or filing costs; legal expenses; the costs of preparing or reviewing proposed Change Orders or change order proposals concerning change orders which are not issued by the OCFA; lost revenues; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not yet at the Site or has not yet been employed on the Work; lost earnings or interest on unpaid retainage; claims consulting costs; the costs of corporate officers or staff visiting the Site or participating in meetings with the OCFA; any compensation due to the fluctuation of foreign currency conversions or exchange rates; loss of other business; or any other cost identified as unallowable cost under the provisions of the Federal Acquisition Regulations.
- 68.20 No claim by Contractor for an equitable adjustment shall be allowed if made after final payment under this Agreement. Contractor hereby agrees to make any and all changes, furnish the materials and perform the work that OCFA or its Project Manager may require without nullifying this Contract. Contractor shall adhere strictly to the Contract Documents unless a change therefrom is authorized in writing by the Project Manager, subject to the limitations contained herein. Under no condition shall Contractor make any changes to the Project, either

in additions or deductions, without the written order of the OCFA or its Project Manager and the OCFA shall not pay for any extra charges made by Contractor that have not been agreed upon in advance in writing by the OCFA. Contractor shall submit immediately to the OCFA written copies of its firm's cost or credit proposal for change in the work. Disputed work shall be performed as ordered in writing by the OCFA or the Project Manager and the proper cost or credit breakdowns therefor shall be submitted without delay by Contractor to the Project Manager.

- 68.21 Project Manager is authorized by the Board of Directors to make, by written order, changes or additions to the work within the scope of the Contract Documents. This authority to approve changes is limited to 10% of the original contract amount. All changes over the amounts specified above shall be subject to the approval of the Board of Directors. Any change or addition of any kind pursuant to any provision of the Contract Documents which exceeds the limits described in this subsection and which have not been approved by the Board of Directors is void and can not be enforced against the OCFA.
- 68.22 Any claim of the Contractor for adjustment under this Section 1.16 or any other provision of the Project Manual must be asserted in writing within 15 days from the date of receipt by the Contractor of the notification of change unless the Board of Directors or Project Manager grants a further period of time before the date of final payment under the Contract Documents. Nothing provided in this Section 68 shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this Contract, no charge for any extra work or material will be allowed.
- 68.23 Labor wage rates shall not exceed the Prevailing Wage Rates supported by payroll records. Equipment rental rates should be based on latest edition of equipment rental rates published by the State of California Department of Transportation; Division of Construction.
- 68.24 Nothing in this Section shall excuse the Contractor from proceeding with the Contract Documents as changed.

69 No Verbal Modifications

No verbal statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of the Contract or the Project Manual.

70 Material, Workmanship, And Acceptance

- 70.1 Where materials are specified by reference to standard specifications of the American Society for Testing Materials (A.S.T.M.), Federal Specifications, or others, all applicable provisions of the designated specifications shall be considered as forming a part of the Contract Documents to the same force and effect as if repeated therein.
- 70.2 All work under this Contract Documents shall be performed in a skillful and workmanlike manner. The Project Manager may, in writing, require the Contractor to remove from the work any employee the Project Manager deems incompetent, careless, or otherwise objectionable.
- 70.3 The Contractor shall, without charge, replace any material or correct any workmanship found by the Project Manager not to conform to the contract requirements, unless in the public interest the Project Manager consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

- 70.4 If the Contractor does not promptly replace rejected material or correct rejected workmanship, the OCFA (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with these General Conditions.
- 70.5 Unless otherwise provided in the Contract Documents, acceptance by the OCFA shall be accomplished by recordation of Notice of Completion which shall be made as promptly as practicable after completion and inspection of all work required by the Contract Documents. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regard the OCFA's rights under any warranty or guarantee. Informal procedures such as "punch lists" are not to be deemed final or conditional acceptance.

71 Termination For Default & Damages For Delay

- 71.1 The Contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given: (1) Not less than ten (10) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate; and (2) An opportunity for consultation with the terminating party prior to termination.
- 71.2 If the Contractor refuses or fails to prosecute the work with such diligence as will ensure its completion within the time specified in the Contract Documents or any extension thereof, or fails to complete said work within such time, the Board of Directors may, by written notice to the 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, the OCFA may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completion the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, Contractor and Contractor's sureties shall be liable for any damage to the OCFA resulting from Contractor's refusal or failure to complete the work within the specified time.
- 71.3 Fixed and agreed liquidated damages are provided in the Contract Documents, these General Conditions, paragraph 1.38 J. If the OCFA so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the OCFA in completing the work.
- 71.4 Fixed and agreed liquidated damages are provided in the Contract Documents, these General Condition, paragraph 1.38 J. If the OCFA does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.
- 71.5 The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if the Contractor is actually delayed in the performance of any item of the Project on the critical path by:
- 71.5.1 Any act or neglect of OCFA, Project Manager, Design Professional, or any employee, agent, or representative of OCFA; or
- 71.5.2 Combined action of workers, either those employed on the Project or in any industry essential to the conduct of the Work not caused by or resulting from

default, negligence, or collusion on the part of Contractor or its Subcontractors of every tier; or

71.5.3 Unusually severe weather conditions not reasonably anticipatable for that portion of the County of Orange where the Project site is located, based upon U.S. Weather Bureau climatological reports for the months included plus a report indicating average precipitation, temperature, etc. for the last ten (10) years from the nearest reporting station; or

71.5.4 Excusable Transportation Delays; or

71.5.5 Excusable Labor Disputes; or

71.5.6 Acts of God; or

71.5.7 National Emergency, declared by the President of the United States.

The Scheduled Completion Date may be extended by Change Order for a period not to exceed the length of such delay, provided that Contractor presents a written request to Project Manager, with demonstrated justification, for such time extension within five (5) days of the commencement of such delay. Failure to file such request within the time allowed shall be deemed a waiver of the claim by Contractor. No extension of time shall be given unless the delay for which a request is made is included in those items for which an extension to the Scheduled Completion Date is appropriate as provided above and the Project Manager finds that such reason for the delay actually adversely affected the ability of the Contractor to complete the Project by the scheduled completion date. Project Manager's decision will be conclusive on the parties to this Contract. No claims by Contractor for additional compensation or damages for delays will be allowed unless Contractor satisfies the Project Manager that such delays were unavoidable and not the result of any action or inaction of Contractor and that Contractor took all available measures to mitigate such damages. The Project Manager's decision will be conclusive on all parties to this Contract. Project Manager may extend the time indicated for completion of the Project by the number of days reasonably required for Contractor to perform the extra work, but only to the extent such extra work actually adversely affects the Scheduled Completion Date, as determined by Project Manager. The decision of the Project Manager shall be final.

The rights and remedies of the OCFA provided in this Section 71 are in addition to any other rights and remedies provided by law or under the Contract Documents.

72 OCFA's Rights Regarding Work

72.1 If the Work or any portion thereof is defective and/or does not conform to the Project Manual, or if Contractor fails to supply sufficient skilled workers and suitable material, services, or equipment, or if Contractor fails to make prompt payments to Subcontractors or for labor, materials, or equipment, or if Contractor fails to supervise or coordinate the Work, or if grounds exist pursuant to any other provision of the Project Manual, Project Manager may order Contractor to stop the Work, or any portion thereof, until cause for the order to stop has been eliminated. Project Manager's exercise of this right to stop the Work shall not give rise to any duty on the part of the Project Manager to exercise this right for the benefit of Contractor or any other party. This right to stop the Work pursuant to this Section is in addition to and not in limitation of OCFA's rights to terminate this Contract in accordance with the Project Manual.

72.2 Project Manager may at any time and without cause suspend the Work or any portion thereof by written notice to Contractor and a Change Order shall be issued extending the Scheduled

Completion Date by the number of days of such suspension. For suspensions of the Work which are fourteen (14) days or less, Contractor shall recommence the Work at the direction of Project Manager with the Lump Sum Price remaining unchanged. Provided Contractor is not in default of the terms of the Project Manual, if there is a suspension of Work or suspensions which in the aggregate extend beyond fourteen (14) days, Contractor shall recommence the Work at the direction of Project Manager and Contractor and Project Manager shall, at Contractor's written request and through good faith negotiations, equitably adjust the Scheduled Completion Date and any Milestones, and shall equitably adjust the Lump Sum Price, in an amount to be approved by the Fire Chief or the OCFA, which approval shall not be unreasonably withheld, for each day of such suspension exceeding fourteen (14) days. Adjustments to the Scheduled Completion Date or completion of a Milestone shall only be provided to the extent the suspension of Work actually adversely affects the Scheduled Completion Date or completion of a Milestone, as determined by Project Manager. The decision of the Project Manager shall be final.

- 72.3 In the event the Project Manager determines that the progress of the Work is behind the progress set forth in the Contractor's Construction Schedule, Project Manager may require Contractor to take such actions as the Project Manager deems necessary to expedite the progress of the Work in conformance with the progress set forth in the Contractor's Construction Schedule. Such actions may include without limitation, increasing the number of workers performing the Work, utilizing overtime work, and requiring additional work shifts. Such action by Project Manager to place Contractor back on schedule shall not be the subject of a Change Order increasing the Lump Sum Price, nor shall Contractor receive any additional compensation for these activities.
- 72.4 Contractor shall cooperate with OCFA, Project Manager, Design Professional, and all other persons as OCFA may retain or employ for (by way of illustration only) installation of furniture, decoration, and training, and the like at the Project. Contractor acknowledges that it is critical to OCFA that separate Contractors are allowed to perform and coordinate the installation of furnishings, fixtures, and equipment not covered by this Contract but necessary for the Project. Contractor covenants to use its best efforts to prevent OCFA from suffering delay in completion of the Work as a result of Contractor's failure to cooperate and coordinate its work with Related Work as required by the Project Manual.
- 72.5 To the extent that OCFA timely provides to Contractor information relating to the work of its separate Contractors, the interrelationships between the work of separate Contractors and/or third parties such as OCFA's purchasing agent and any other special consultants shall be indicated on the Contractor's Construction Schedule to allow OCFA to provide for proper phasing.

73 Contract Price; Method of Payment; Retention Of Funds

- 73.1 OCFA agrees to pay and the Contractor agrees to accept as full consideration for the faithful performance of this Contract, subject to any subsequent additions or deductions as provided in approved change orders, the sum as itemized in the Exhibit K: Schedule of Values.
- 73.2 Progress payments shall be made to the Contractor per month for each successive month as the work progresses. The Contractor shall be paid such sum as will bring the total payments received since the commencement of the work up to ninety percent (90%) of the value of the work completed, less all previous payments, provided that the Contractor submits the request for payment prior to the end of the day required to meet the payment schedule. The OCFA will retain ten percent (10%) of the amount of each such progress estimate and material cost until 30 days after the recordation of the Notice of Completion.

- 73.3 The Contractor shall request payment through the preparation and submission to OCFA of an Invoice in accordance with the Project Manual. It shall show in detail all monies properly payable to the Contractor, approved by the Project Manager, in accordance with the previously approved activities as identified on the Contractor's Construction Schedule, including those items of labor, materials, and equipment used or incorporated in the Work (and, if OCFA has agreed in advance in writing, suitably stored at the Site) through and including the Payment Application Date. The Application for Partial Payment shall have, as attachments waivers of mechanics' and materialmen's liens by the Contractor and its Subcontractors and Sub-subcontractors as of the date of submission of the Application for Partial Payment, which waivers shall conform in all material respects with the then current provisions of Section 3262 of the California Civil Code (or any successor thereto), certifications of payrolls (30 days in arrears), and such other evidence of performance of the Work, the costs thereof and payment therefor as OCFA may deem necessary or desirable.
- 73.4 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Partial Payment shall pass to OCFA, free and clear of all liens, claims, security interests or encumbrances, upon the sooner occurrence of: (a) the delivery of any such materials or equipment to the Site; or (b) the tender of payment of the applicable Application for Partial Payment by OCFA to the Contractor; and that no Work, materials, or equipment covered by an Application for Partial Payment shall have been acquired, whether by the Contractor or by any Subcontractor or Sub-subcontractor, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. The passage of title to OCFA as provided herein shall not alter or limit the obligations and duties of the Contractor with respect to the Work and the materials or equipment incorporated therein or used in connection therewith as set forth in the Project Manual. In this regard, it is specifically noted that neither the OCFA, nor its Directors, officers, employees, or agents shall be held responsible in any manner for any loss that may happen to the Work or any part thereof during the course of construction; for any loss or damage to any of the materials, equipment, supplies, or other things used or employed in performing the Work; for injury to or death of any person, either workers or the public; or for damage to property, from any cause that might have been prevented by the Contractor, Contractor's workers, employees, Subcontractors, suppliers, or agents.
- 73.5 If the Contractor has submitted an Application for Partial Payment in the manner prescribed in the Project Manual, The Project Manager shall, with reasonable promptness, review, approve the same (or such portions thereof covering amounts it determines to be properly due), or shall state in writing its reasons for withholding its approval (whether of all or a part).
- 73.6 The Project Manager's approval of an Application for Partial Payment shall not constitute a representation by OCFA that the conditions precedent to the Contractor's entitlement to payment have been fulfilled, nor shall approval of an Application for Partial Payment by OCFA be deemed a representation by OCFA: (a) that it has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (b) that it has reviewed the construction means, methods, techniques, sequences, coordination or procedures, or the cleanliness of the Site, or the safety precautions and programs, in connection with the Work; (c) that it has made any examination to ascertain how or for what purposes the Contractor has used the monies previously paid on account of the Contract Sum.
- 73.7 No approval of an Application for Partial Payment, progress payment or any beneficial, partial or entire use or occupancy of the Project by OCFA shall constitute an acceptance of any Work which is not in accordance with the Project Manual; and regardless of approval of an Application for Partial Payment by OCFA, the Contractor shall remain totally obligated and liable for the performance of the Work in strict compliance with the Project Manual.

- 73.8 Subject to OCFA's rights to offset or withhold as set forth in these General Conditions, after OCFA has approved an Application for Partial Payment, in whole or in part, it shall make payment of the amount approved to the Contractor as provided in the Project Manual.
- 73.9 Pursuant to California Public Works Contract Code Section 22300, the Contractor will be entitled to post approved securities with the OCFA or an approved financial institution in order to have the OCFA release funds retained by the OCFA to ensure performance of the Contract. Contractor shall be required to execute an addendum to this Contract together with escrow instructions and any other documents in order to effect this substitution.

74 Right To Occupy - Beneficial Use

- 74.1 OCFA reserves the right, prior to Substantial Completion of the entire Project, to use a portion or portions of the Work when Project Manager determines that such portion or portions may be safe for such use provided such use will not unreasonably interfere with the Contractor's orderly progress of the Work. Such use ("beneficial use") shall not be construed as an acceptance of any such Work, or a part of the Work, as substantially complete, nor shall it affect the dates and times when payments shall become due from the OCFA to Contractor, nor shall it prejudice OCFA's rights pursuant to the Contract or any bonds guaranteeing the same. Notwithstanding such occupancy or use, Contractor shall continue to provide insurance, security, maintenance, utilities, and protection to the Work, unless otherwise agreed by the parties in writing.
- 74.2 At the sole discretion of the Fire Chief, any time after beneficial use and prior to issuance of a certificate of occupancy by the Local Jurisdictions, the Fire Chief may request one or more of the local Jurisdictions to issue a temporary certificate of occupancy for a portion or portions of the Project. Upon the issuance of such temporary certificate of occupancy, the OCFA may occupy such portion or portions of the Project, and such portions shall be deemed to be substantially complete.
- 74.3 Beneficial Occupancy shall not constitute acceptance by OCFA or Project Manager of the completed Work or any portion thereof, shall not relieve the Contractor of its full responsibility for correcting defective Work and repairing the Work, shall not be deemed to be the equivalent of completion of the Work and shall not entitle the Contractor to any increase in the Contract Sum.
- 74.4 Anything in this Section 74 to the contrary notwithstanding, OCFA may certify any portion of the Work to be occupied or used hereunder to be Substantially Completed and, upon the Contractor's timely completion or correction of the items on the "punch-list" with respect thereto, accept that portion of the Work.

75 Final Completion and Final Payment.

- 75.1 When all permits for the Work have been approved, accepted, or otherwise signed off as complete by the inspectors of the Local Jurisdictions, Contractor shall certify to the Project Manager in writing within ten (10) days that the Work is complete in accordance with the Project Manual and is ready for occupancy. Project Manager, Design Professional, and Fire Chief will make an investigation and inspection of all phases of the Work. If all contractual obligations have not been met, Project Manager shall furnish Contractor a detailed list of all remaining work (the "Punchlist") and Contractor shall commence correction of all items on the Punchlist. A letter of acceptance shall be issued upon completion of all Work specified on the Punchlist to the satisfaction of the Project Manager. In no case will the letter of acceptance relieve Contractor of any obligations of Contractor that may be outstanding. Within five (5) business days after issuance of a letter of acceptance, Project Manager and the Design

Professional shall issue a certificate of final completion. Upon receipt of the certificate of final completion, Contractor shall submit its final application for payment ("Final Application for Payment") which shall set forth all amounts due and remaining unpaid to Contractor and upon approval thereof by the Project Manager and the Design Professional, OCFA shall pay to Contractor the amount due under such Final Application for Payment as provided herein.

- 75.2 Before OCFA makes the Final Payment to Contractor, all requirements of the Project Manual shall have been fulfilled, including the following:
- (1) Receipt by Project Manager of a complete list of Subcontractors and principal vendors, including addresses, telephone numbers, and names of individuals to contact who are familiar with the Project, including Contractor;
 - (2) Receipt by Project Manager of all operation and maintenance manuals, approved by the Design Professional;
 - (3) Receipt by OCFA of all releases and written guarantees from all Subcontractors and material suppliers for the Project in a form and content satisfactory to the Project Manager, which Contractor hereby agrees to obtain for, and deliver to, Project Manager prior to completion of the Project;
 - (4) Receipt by Project Manager of all "As-Built" records, approved by Project Manager and the Design Professional as specified in the Project Manual;
 - (5) Copies of any other warranties or guarantees received from manufacturers, suppliers, or Subcontractors of Contractor or any Subcontractor; and
 - (6) Evidence satisfactory to the Project Manager showing that the Contractor has promptly and satisfactorily settled all claims, if any, for services performed and materials furnished in connection with the Work.
 - (7) Receipt by Project Manager of all documentation necessary to demonstrate compliance with the Leadership and Environmental Design program requirements.
- 75.3 Final Payment shall not become due until Contractor submits to Project Manager: (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which OCFA or OCFA's property might in any way be responsible, have been paid or otherwise satisfied; (2) the consent of the surety to Final Payment; and (3) if reasonably required by the Project Manager, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the Project Manager. Project Manager may require affidavits or certificates of payment and/or releases from any Subcontractor, laborer, or material supplier.
- 75.4 If any Subcontractor or material supplier refuses to furnish a release or waiver required by Project Manager, Contractor may satisfy its obligation with respect to such Subcontractor or material supplier by furnishing a cash bond, assignment of a certificate of deposit, or other liquid security satisfactory to Project Manager to indemnify OCFA against any lien. If any lien remains unsatisfied after all payments are made, Contractor shall refund to OCFA all monies that the OCFA may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
- 75.5 The acceptance of Final Payment shall constitute a waiver of all claims by Contractor except those previously made in writing and identified by Contractor as unsettled at the time of the Final Application for Payment.
- 75.6 The making of Final Payment shall constitute a waiver of all claims by OCFA except those arising from (1) unsettled claims; (2) faulty or defective Work appearing after Final Completion of the Work; (3) failure of the Work to comply with the requirements of the Project Manual; (4) terms of any special warranties required by the Project Manual; (5) "Punchlist" items not yet

completed by the Contractor; (6) discrepancies noted in subsequent audits performed by OCFA or its agents within one (1) year following Final Payment; or (7) any claims identified by Project Manager as unsettled prior to making of Final Payment.

75.7 Final Payment shall not relieve Contractor of its warranty and indemnification obligations pursuant to the Project Manual, which shall survive such payment.

75.8 Contractor shall keep and present within fifteen (15) days after request by OCFA or its agents, in a form reasonably approved by the Project Manager, a final itemized accounting of all expenditures made in connection with the Work together with appropriate suplf any Subcontractor or Sub-subcontractor refuses to furnish any release, satisfaction or waiver of lien required at any time by OCFA under Paragraphs 9.1., or files a claim of lien against OCFA's property, the Contractor shall, if requested by Project Manager and at the Contractor's expense, furnish and record a Mechanic's Lien Release Bond (separate and apart from any other bond provided by the Contractor hereunder) that is in full compliance with the requirements of the then current provisions of Section 3143 of the California Civil Code. If any Subcontractor or Sub- subcontractor serves a Stop Notice (bonded or otherwise) on OCFA, Contractor shall, if requested by OCFA and at Contractor's expense, furnish a Stop Notice Release Bond (separate and apart from any other bond provided by the Contractor hereunder) that is in full compliance with the then current provisions of Section 3171 of the California Civil Code. The Contractor authorizes OCFA, and shall cause its Subcontractors and Sub-subcontractors to authorize OCFA, to check directly with any suppliers of labor and material with respect to any item chargeable to OCFA's property, to confirm balances due and to obtain sworn statements and waivers of lien, all if OCFA so elects. If any lien remains unsatisfied after all payments are made to the Contractor, the Contractor shall reimburse OCFA on account of all monies that the latter may be compelled to pay in discharging such lien, including all costs and attorneys' fees.

76 Surety Bonds.

Contractor shall, upon entering into performance of this Agreement, furnish a bond in the amount of one hundred percent (100%) of the Contract price bid, to guarantee the faithful performance of the work, and an additional bond in the amount of one hundred percent (100%) of the Contract price bid to guarantee payment of all claims for labor and materials furnished. The bonds required pursuant to this Section shall be issued by a surety authorized by the State Insurance Commissioner to transact business in the State of California as a surety and shall have and maintain throughout the life of the Project, at least an "A-" policyholder's rating, or better, and a financial rating of "Class VII," or better, in accordance with the most current A.M. Best's Rating Guide. This Contract shall not become effective until such bonds are supplied to and approved by the OCFA.

77 Risk And Indemnification

77.1 Indemnification: To the fullest extent permitted by law, Contractor shall indemnify, defend (at Contractor's sole cost and expense and with legal counsel approved by OCFA, which approval shall not be unreasonably withheld), protect and hold harmless OCFA and all of OCFA's officers, directors, employees, consultants, agents, successors and assigns (collectively the "Indemnified Parties"), from and against any and all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs and OCFA's general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise from or in any manner related (directly or indirectly) to any work performed or services provided under this Agreement (including, without limitation, the negligent and/or

willful acts, errors and/or omissions of Contractor, its principals, officers, agents, employees, Contractors, suppliers, consultants, subconsultants, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them) regardless of any active or passive negligence or strict liability of an Indemnified Party. Contractor understands and acknowledges that the indemnification obligation hereunder is intended to constitute a "Type I" indemnity under California law and extends to and includes Claims arising from the active or passive negligence of Indemnified Parties. Notwithstanding the foregoing, nothing herein shall be construed to require Contractor to indemnify the Indemnified Parties from any Claim arising from the sole negligence or willful misconduct of the Indemnified Parties.

- 77.2 **Duty to Defend**: The duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of Contractor. Such defense obligation shall arise immediately upon presentation of a Claim by any party and written notice of such Claim being provided to Contractor. Payment to Contractor by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such Indemnified Party's rights to indemnification hereunder. Contractor's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until such time as action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations or statute of repose. Contractor's liability for indemnification hereunder is in addition to any liability Contractor may have to OCFA for a breach by Contractor of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Contractor's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this Agreement.

78 Insurance.

78.1 Compliance with Insurance Requirements.

- 78.1.1 As a condition precedent to the effectiveness of this Agreement, and without limiting the indemnity provisions set forth in this Agreement, Contractor shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to OCFA, all insurance required under this section. Contractor shall not commence any work or services under this Agreement unless and until it has provided evidence satisfactory to OCFA that it has secured all insurance required under this section. If Contractor's existing insurance policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to do so.

- 78.1.2 The amount of insurance coverage available to pay claims under each policy required hereunder shall be the higher of (a) the minimum limits required below, or (b) the actual limits established in each policy. Thus, by way of example only, if the minimum policy limit is \$2 million per occurrence but insurance actually carried by the Contractor or subcontractor is \$4 million per occurrence, the coverage required to be available for claims under that policy would be \$4 million. (Nothing herein requires the Contractor to purchase insurance at limits greater than the minimum limits established below.)

78.2 Types of Insurance Required.

Contractor shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

78.2.1 Commercial General Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Commercial General Liability Insurance (Insurance Services Office form CG 00 01) written on an occurrence basis with limits of at least **two million dollars (\$2,000,000.00)** per occurrence, **four million dollars (\$4,000,000.00)** in the general aggregate, and **four million dollars (\$4,000,000.00)** for completed operations aggregate. Defense costs shall be paid in addition to (and shall not reduce) the limits. The policy shall contain no endorsements or provisions limiting coverage for: (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) any other exclusion contrary to the Agreement.

78.2.2 Automobile Liability Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile Liability Insurance (Insurance Services Office form CA 001) written on a per occurrence basis with limits of at least **one million dollars (\$1,000,000.00)** combined limit for each occurrence covering bodily injury and property damage. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles.

78.2.3 Workers' Compensation Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance in at least the minimum statutory amounts, and in compliance with all other statutory requirements, as required by the State of California. Contractor hereby waives, and agrees to obtain endorsements from its workers' compensation insurer waiving, all subrogation rights against the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, and to require each of its subcontractors, if any, to waive the same and to obtain endorsements waiving the same subrogation rights under their workers' compensation insurance policies. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Employer's Liability Insurance written on a per occurrence basis with limits of at least **one million dollars (\$1,000,000.00)** per incident for bodily injury, disease or other covered claim.

78.2.4 Builders Risk (Course of Construction) Insurance. Contractor shall obtain and maintain, in full force and effect throughout the term of this Agreement, a Builders Risk (Course of Construction) Insurance policy with limits of at least **four million dollars (\$4,000,000.00)**. [Covered causes of loss shall include, or be endorsed to include, earthquake, flooding and other acts of God.] Contractor and each subcontractor agree to waive all rights of subrogation against the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers. The Builders Risk policy shall be endorsed to waive all rights of subrogation against the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers.

78.3 Acceptability of Insurers.

Insurance required by this section 78 shall be issued by a licensed company authorized to transact business in the state by the Department of Insurance for the State of California with a current rating of A:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Line Insurers (LASLI), by the latest edition of A.M. Best's Key Rating Guide, except that the OCFA will accept workers' compensation insurance from the State Compensation Fund. In the event the OCFA determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the OCFA, the Contractor agrees that the minimum limits of the insurance policies may be

changed accordingly upon receipt of written notice from the OCFA. Contractor shall immediately substitute any insurer whose A.M. Best rating drops below the levels specified herein.

78.4 Insurance Endorsements.

Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements issued by the insurance company on forms approved by the OCFA to add the following provisions to the insurance policies:

- 78.4.1 Additional Insured: The OCFA and its officials, officers, employees, agents, representatives, attorneys and volunteers shall be additional insureds with regard to liability and defense of suits and claims arising out of the performance of the Agreement; and
- 78.4.2 Additional Insured Endorsements: Additional insured endorsements shall not: (1) be restricted to "ongoing operations", (2) exclude "contractual liability", (3) restrict coverage to "sole" liability of Contractor, or (4) contain any other exclusions contrary to the Agreement. The coverage shall contain no special limitations on the scope of protection afforded to additional insureds; and
- 78.4.3 Primary and Non-Contributing Insurance: All policies of Commercial General Liability Insurance and Automobile Liability Insurance shall be primary and any other insurance, deductible, or self-insurance maintained by the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, shall not contribute with this primary insurance. Policies shall contain, or be endorsed to contain, such provisions.
- 78.4.4 Waiver of Subrogation: All policies of Commercial General Liability, Automobile Liability Insurance and Worker's Compensation shall contain or be endorsed to waive all rights of subrogation against the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, or shall specifically allow Contractor or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Contractor hereby agrees to waive its own right of recovery against the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, and Contractor hereby agrees to obtain similar written express waivers and insurance clauses from each of its subcontractors prior to commencement of work by the subcontractor.
- 78.4.5 Notice: Each policy of insurance required by this section 78 shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice by First Class U.S. Mail, postage-prepaid, has been provided to the OCFA. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Contractor's failure to pay the insurance premium, the notice provided to OCFA shall be by ten (10) days prior written notice. (Note: an endorsement that fails to state that the insurance company will provide the notice required by this subsection (e.g., "will endeavor to" or similar non-committal phrases) does not comply with the requirements of this subsection. Similarly, Contractor's offer to provide the required notice in lieu of the insurance company doing so will not comply with this subsection. It is the Contractor's obligation to ensure that its insurance company(ies) will provide all policy endorsements required under this Contract.)

78.4.2 For all policies of Commercial General Liability Insurance, Contractor shall provide endorsements for completed operations to effectuate this requirement.

78.5. Deductibles and Self-Insured Retentions.

Any deductible or self-insured retention must be approved in writing by the OCFA in advance and shall protect the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Contractor shall be solely responsible for the payment, and if required by the insurer the advancement, of any and all deductible amounts and self-insured retentions.

78.6. Evidence of Coverage.

Within seven (7) calendar days after the date of the Notice of Apparent Low Bidder, Contractor shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required by this section. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval. The certificates of insurance and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. (ACORD form Certificates of insurance will not be accepted in lieu of approved endorsements.) At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the OCFA. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the OCFA evidence of insurance showing that the required insurance has been reinstated or is being provided through another insurance company or companies. Contractor shall promptly furnish, at OCFA's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents OCFA requires to verify coverage.

78.7 Requirements Not Limiting.

Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Contractor may be held responsible for payments of damages to persons or property.

78.8 Enforcement of Agreement (Non-Estoppel).

Contractor acknowledges and agrees that actual or alleged failure on the part of the OCFA to inform Contractor of any non-compliance with any of the insurance requirements set forth in this section imposes no additional obligation on the OCFA nor does it waive any rights hereunder.

78.9 Insurance for Subcontractors.

Contractor shall either: (1) include all subcontractors engaged in any work or services for Contractor relating to this Agreement as additional named insureds under the Contractor's insurance policies; or (2) Contractor shall be responsible for causing its subcontractors to procure and maintain the same types and amounts of insurance in compliance with the terms of the insurance requirements set forth in this section (except Builders Risk (Course of Construction) Insurance), including but not limited to adding the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, as additional insureds to their respective policies. All policies of Commercial General Liability Insurance and Automobile Liability Insurance provided by Contractor's subcontractors performing any

work or services related to this Agreement shall be endorsed to name the OCFA, its officials, officers, employees, agents, representatives, attorneys and volunteers, as additional insureds. Contractor shall not allow any subcontractor to commence any work or services relating to this Agreement unless and until the Contractor has received confirmation that the subcontractor has secured all required insurance. Upon request of OCFA, Contractor shall deliver to OCFA all certificates of insurance and endorsements required from subcontractors. (Note: Contractor's duty to obtain all required insurance for subcontractors required under this Agreement applies whether or not OCFA requests delivery of evidence of such coverage.)

78.10. Insurance for Large Equipment Suppliers

Suppliers of large equipment that will be installed as part of the Project must have and maintain General Liability Insurance and Automobile Insurance with all endorsements required hereinabove unless the Contractor or Subcontractor that will install the large equipment maintains General Liability Insurance and Automobile Liability Insurance that is endorsed to name the large equipment supplier as an additional named insured and such endorsement is provided to OCFA prior to delivery of the large equipment.

78.11 Other Insurance Requirements.

The following terms and conditions shall apply to the insurance policies required of Contractor pursuant to this Agreement:

- 78.11.1 Contractor shall provide immediate written notice to OCFA if (1) any of the insurance policies required herein are terminated, cancelled or suspended, (2) the limits of any of the insurance coverage types or amounts required herein are reduced by the insurer or depleted by other claims, or (3) the deductible or self-insured retention is increased.
- 78.11.2 All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the OCFA or its operations shall limit the application of such insurance coverage.
- 78.11.3 None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the OCFA and approved in writing.
- 78.11.4 Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay commencement of the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided herein.
- 78.11.5 Contractor agrees to ensure that subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Contractor, have, or are provided by Contractor's insurer, the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the Project will be submitted to the OCFA for review. Claims for which coverage is required but not provided due to Contractor's failure to comply with this section (e.g., allowing subcontractors to proceed with disallowed limitations on their insurance

coverage, or failing to require subcontractors to provide required insurance coverage or endorsements) will result in retention of payments in amounts necessary to cover the anticipated costs associated with defending and paying the claims.

78.11.6 Contractor agrees to provide immediate written notice to OCFA of any claim, demand or loss against Contractor arising out of the work or services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to pay claims, demands or losses arising out of this Agreement.

79. Contractor's Liability; OCFA Not Liable; Claims Resolution

79.1 Contractor's liability. The Contractor shall be responsible for any loss or damage that may occur to:

- The work or any part thereof;
- Any of the materials or other things used or employed in performing the work;
- Any injury to any person or persons, either workers or the public;
- Any damage to property resulting from any cause which might have been prevented by the Contractor, including defects or obstructions at any time before completion of the work and its final acceptance.

79.2. OCFA ordered precautions. If, in the opinion of the Engineer, the precautions taken by Contractor are not safe or adequate at any time during the term of the Contract, the Engineer may order the Contractor to take further precautions, and if the Contractor shall fail to do so, the Engineer may order the work done by others and charge the Contractor for the cost thereof, such cost to be deducted from any moneys due or becoming due the Contractor. Failure of the Engineer to order such additional precautions, however, shall not relieve the Contractor from his full responsibility for public safety.

79.3 OCFA not liable. The OCFA shall not be answerable or accountable in any manner, for any loss or damage that may occur to any of the following from any cause which might have been prevented by the Contractor:

- The work or any part thereof;
- Any of the materials or other things used or employed in performing the work;
- Any injury to any person or persons, either workers or the public;
- Any damage to property.

79.4 Claims Resolution.

79.4.1. From time to time during the period of this contract, the OCFA and/or the Contractor may be served with third-party claims, as a result of alleged conduct by Contractor. The following procedures shall be followed by OCFA and Contractor:

For claims received by Contractor:

(1) Contractor shall provide OCFA on a monthly basis details regarding any claim for damages to persons or property, including, date claim made, date of alleged damages, type of damages, alleged cause of damages and, as claims are resolved, details regarding Contractor's denial or payment of such claim and the reasons for denial or payment.

(2) Contractor shall resolve or deny any claim received within thirty (30) days of receipt. If Contractor is unable to resolve a claim within the thirty (30) days set forth above, it shall, prior to the expiration of the thirty (30) days request and extension in writing from the OCFA.

For claims received by OCFA:

(1) OCFA shall process any claims received pursuant to the California Government Claims Act.

(2) If after investigation of the claim, the OCFA determines the Contractor is liable under this Contract, OCFA shall tender the claim to the Contractor for proper handling and resolution.

79.5. Retention of Claimed Damages by OCFA. The OCFA may retain so much of the money due the Contractor under and by virtue of the Contract as shall be considered necessary by the OCFA until disposition has been made of such suits or claims for damages aforesaid.

80 Termination

80.1 The performance of work under the Contract Documents may be terminated in whole, or from time to time in part, whenever the Board of Directors shall determine that such termination is in the best interest of the OCFA, provided that the Contractor is given (1) Not less than ten (10) calendar days' written notice (delivered by email, followed by overnight delivery with proof of delivery) of intent to terminate; (2) the extent to which performance of work under the Contract Documents is terminated; (3) the date upon which such termination becomes effective; and (4) An opportunity for consultation with the terminating party prior to the effective date of the termination.

80.2 This Contract may be terminated, or the right of the Contractor to complete the Project may be terminated, without liability or damage, when in the OCFA's opinion, the Contractor is not complying with the Contract requirements in good faith, has become insolvent, or has assigned or subcontracted any part of the Work without the OCFA's consent. In the event of such termination, the Contractor will be paid the actual amount due based upon the quantity of work completed at the time of termination, less damages caused to the OCFA by acts of the Contractor causing the termination. The Contractor, in having tendered a bid, shall be deemed to have waived any and all claims for damages because of termination of the Contract or the right of the Contractor to complete the Project for any cause stated in this Section 80.

80.3 If termination is effected by the OCFA, an equitable adjustment in the price provided for in this Contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Contractor at the time of termination may be adjusted to cover any additional costs to the OCFA because of the Contractor's default. The equitable adjustment for any termination shall provide for payment to the Contractor for services rendered and expenses incurred in accordance with Section 8 of the California, Department of Transportation Standard Specifications.

80.4 After receipt of a Notice of Termination, and except as otherwise directed by the Board of Directors, the Contractor shall:

(1) Stop work under the Contract Documents on the date and to the extent specified in the Notice of Termination; and

- (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract Documents as is not terminated; and
 - (3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; and
 - (4) Assign to the OCFA, all of the right, title and interests of the Contractor under the orders and subcontracts so terminated, in which case the OCFA shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts; and
 - (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, subject to the approval of the Board of Directors; and
 - (6) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and
 - (7) Deliver or otherwise make available to the OCFA all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Contractor in performing this Contract whether completed or in process; and
 - (8) Take such action as may be necessary, or as the Project Manager may direct, for the protection and preservation of the property related to the Contract Documents which is in the possession of the Contractor and in which the OCFA has, or may acquire, interest.
- 80.5 After receipt of a Notice of Termination, the Contractor shall submit to the Project Manager a verified termination claim. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Board of Directors upon request of the Contractor made in writing within such one-year period or authorized extension thereof.
- 80.6 If any dispute concerning a question of fact arising under the terms of this Contract is not disposed of within a reasonable period of time by Contractor and Project Manager, such matter shall be brought to the attention of the OCFA via written notice of unresolved dispute(s). If agreement cannot be reached after a good faith effort to resolve the dispute, either party may assert its other rights and remedies within this Contract or within a court of competent jurisdiction. The Parties agree that, in the event of a dispute notwithstanding, they will continue without delay to carry out all their responsibilities under this Contract. The Contractor and the OCFA Board of Directors may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this Section 80, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The Contract Documents shall be amended accordingly, and the Contractor shall be paid the agreed amount.

81 Patent Infringement

- 81.1 The Contractor shall report to the Project Manager, promptly and in reasonable detail, each notice or claim of patent infringement based on the performance of the Contract Documents of which the Contractor has knowledge.
- 81.2 In the event of any suit against the OCFA, or any claim against the OCFA made before suit has been instituted, on account of any alleged patent infringement arising out of the performance of the obligations under the Contract Documents, or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall, at Contractor's own expense, furnish to the OCFA, upon request, all evidence and information

in possession to the Contractor pertaining to such suit or claim. The Contractor further agrees to indemnify and hold harmless the OCFA against any and all claims or lawsuits based upon such patent infringement, to defend such suits, and to pay any judgment rendered against OCFA, its employees, or the Board of Directors.

82 No Waiver By OCFA

The failure of the OCFA in any one or more instances to insist upon strict performance of any of the terms of the Contract Documents or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion.

83 Disputes

- 83.1 In the event of a dispute between the parties as to performance of the work, the interpretation of the Contract Documents, or payment or nonpayment for work performed, the parties shall attempt to resolve the dispute. Pending resolution of the dispute, the Contractor shall continue the work diligently to completion as directed by Project Manager. If the dispute is not resolved, the Contractor agrees Contractor will neither rescind the Contract Documents nor stop the progress of the work.
- 83.2 With respect to any "claim" as that term is defined in Public Contract Code section 9204, Contractor shall submit such claim in accordance with Section 91 hereinbelow.

84 Attorneys' Fees

If any action at law or in equity is necessary to enforce or interpret the terms of this Contract, each party shall be responsible for their respective costs, including attorneys' fees. The prevailing party shall not be entitled to recover its attorneys' fees or related costs. Nevertheless, if any action is brought against the Contractor or any Subcontractor to enforce a Stop Notice or Notice to Withhold, which names the OCFA as a party to said action, the OCFA shall be entitled to reasonable attorneys' fees, costs and necessary disbursements arising out of the defense of such action by the OCFA. The OCFA shall be entitled to deduct its costs for any Stop Notice filed, whether court action is involved or not.

85 Contractor's Employees' Compensation

- 85.1 General Prevailing Rate: OCFA has been advised by the State of California Director of Industrial Relations of the Director's of the general prevailing rate of per diem wages and the general prevailing rate for legal holiday and overtime work in the locality in which the work is to be performed for each craft or type of work needed to execute this Contract, and copies of the same are on file in the Office of the Engineer of OCFA. The Contractor agrees that not less than said prevailing rates shall be paid to workers employed on this public works contract as required by Labor Code Section 1774 of the State of California.
- 85.2 Forfeiture For Violation: Contractor shall, as a penalty to the OCFA, forfeit Fifty Dollars (\$50.00) for each calendar day or portion thereof for each worker paid (either by the Contractor or any subcontractor under it) less than the prevailing rate of per diem wages as set by the Director of Industrial Relations, in accordance with Sections 1770-1780 of the California Labor Code for the work provided for in this Contract, all in accordance with Section 1775 of the Labor Code of the State of California.
- 85.3 Apprentices: Sections 1777.5, 1777.6 and 1777.7 of the Labor Code of the State of California, regarding the employment of apprentices is applicable to this Contract and the contractor shall comply therewith if the prime contract involves Thirty Thousand Dollars [\$30,000.00] or

more or twenty (20) working days, or more; or if contracts of specialty contractors not bidding for work through the general or prime contractor are Two Thousand Dollars [\$2,000.00] or more or Five (5) working days or more. Information relative to apprenticeship standards, contributions, wage schedules and other requirements may be obtained from the State Director of Industrial Relations or from the Division of Apprenticeship Standards.

- 85.4 **Workday:** In the performance of this Contract, not more than eight (8) hours shall constitute a day's work, and Contractor shall not require more than eight (8) hours of labor in a day from any person employed by him hereunder except as provided in Section 11.4.2 above. Contractor shall conform to Article 3, Chapter 1, Part 7 (Sections 1810 et seq.) of the Labor Code of the State of California and shall forfeit to the OCFA as a penalty, the sum of twenty-five Dollars (\$25.00) for each worker employed in the execution of this Contract by Contractor or any Subcontractor for each calendar day during which any worker is required or permitted to labor more than eight (8) hours in any one calendar day and forty (40) hours in any one week in violation of said Article. Contractor shall keep an accurate record showing the name and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Project.
- 85.5 **Record of Wages; Inspection:** The Contractor and each subcontractor performing any portion of the work under the Contract Documents shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor in connection with the work. Said payroll records shall be certified and shall be available for inspection at the principal office of the Contractor on the basis set forth in Labor Code Section 1776. The Contractor shall file a certified copy of said payroll records with the OCFA within ten days after receipt of a written request therefor from Project Manager or otherwise from the OCFA. The Contractor shall inform the OCFA of the location of said payroll records, including the street address, City and State, and shall, within five working days, provide a notice of change of location and address of said payroll records. It shall be the responsibility of the Contractor to ensure the compliance with the provisions of this Section 85 and the provisions of Labor Code Section 1776. In the event of noncompliance with the requirements of this Section or the requirements of Labor Code Section 1776, the Contractor shall have ten days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply. Should noncompliance exist after said ten-day period, the Contractor shall, as a penalty to the OCFA, forfeit Twenty-five Dollars (\$25) for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains until strict compliance is effectuated. The Contractor acknowledges that, without limitation as to other remedies of enforcement available to the OCFA, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due the Contractor.
- 85.6 Pursuant to California Labor Code Section 1771.4, Contractor's services are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices as prescribed by DIR regulations and furnish the records specified in California Labor Code Section 1776 directly to the Labor Commissioner in the manner prescribed by California Labor Code Section 1771.4(a)(3) and (c)(2).

86 SAFETY & HEALTH

- 86.1 The General Contractor (the Contractor) shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. 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 Work and all other

persons, including, without limitation, the employees, agents, guests, visitors, invitees and licensees of OCFA who may be involved. These precautions shall include, but in no event be limited to the:

- (1) Provisions of Local, State and Federal Regulations.
- (2) Posting of danger signs and personal notification to all affected persons of the existence of a hazard, of whatever nature.
- (3) Furnishing and maintaining of necessary traffic control barricades and flagman services.
- (4) Use or storage of required explosives or other hazardous materials only under the supervision of qualified personnel.
- (5) Maintenance of adequate quantities of operable fire protection equipment at the Work Site, as required by Local and /or State regulations.

86.2 The Contractor shall set forth in writing its site specific safety precautions and programs in connection with the Work, including an Anti-Substance Abuse Program which meets or exceeds any and all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to the:

- (1) California Occupational Safety and Health Act of 1973, as amended, and rules and regulations now or hereafter in effect pursuant to said Act.
- (2) California Code of Regulations, Title 8, as amended.
- (3) The Labor Code of the State of California, as amended.
- (4) Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act.
- (5) Code of Federal Regulations, Title 29, as amended.
- (6) The Drug-Free Workplace Act of 1988.
- (7) In the event of conflicting requirements, the more stringent shall govern and if requested by OCFA, submit the same to OCFA for review. OCFA may, but shall not be obligated to, make suggestions and recommendations to the Contractor. OCFA shall review and approve the Contractor's Site Specific Program.

86.3 All work, whether performed by the Contractor or its Subcontractors, of all tiers or anyone directly or indirectly employed by any of them, and all equipment, machinery, materials, tools and like items incorporated or used in the Work, shall be compliance with and conform to:

- (1) All applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act, and California Code of Regulations, Title 8, as amended; and,
- (2) All codes, rules, regulations and requirements of OCFA and its insurance carriers relating thereto. In the event of conflicting requirements, the more stringent shall govern.

86.4 The Contractor shall designate a responsible and qualified member of its organization at the Work Site who has the authority to enforce the Contractor's Safety and Anti-Substance Abuse Programs, to assure compliance with Paragraph 10.1 and to prevent accidents.

86.5 The Contractor shall have a safety representative. The Contractor's safety representative will have:

- (1) The authority to stop work when safety problems are identified.
- (2) The authority to implement corrective actions.

- (3) Extensive training in safety and loss control practices regarding the Contractor's type of work.
- (4) Certification in the OSHA Construction Outreach 10/30 Hour Program.
- (5) Certification in first aid and CPR.

- 86.6 The Contractor shall require its Subcontractors of all tiers to designate a competent and responsible safety representative to assist the Contractor's representative in the performance of his or her duties.
- 86.7 Should the Contractor fail to provide a safe work environment in accordance with the provisions in 10.1.1, OCFA or Project Manager shall have the right, but not the obligation, to suspend Work in the unsafe area, as specified in 10.6. All costs of any nature resulting from the suspension, by whomsoever incurred, shall be paid by the Contractor.
- 86.8 After a Contractor has been awarded the construction contract for the Project, it will be required to attend a pre-construction safety meeting. The purpose of the meeting is to review the Project's Safety Program and requirements. At this time, specific safety concerns related to the Contractor's work will be discussed.
- 86.9 If deemed necessary by the Project Manager or Project Safety Coordinator, or other OCFA representative, a written Job Safety Analysis (JSA) will be required of the Contractor. The JSA will be required for frequency and severity exposures such as steel erection, deep excavations, spray painting, crane handling of large/expensive equipment, etc. This is to ensure that appropriate controls are established prior to work beginning.
- 86.10 Workplace violence (Type III), verbal intimidation or threats to the Project Manager, OCFA or designee will result in immediate removal from the Project. Contractor shall develop and implement a workplace violence policy and procedure.
- 86.11 The Contractor shall provide, or cause to be provided, each worker on the Site the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Site who fails or refuses to use the same. OCFA and/or Project Manager shall have the right, but not the obligation, to order the Contractor to send a worker off the Site for the day or to require the contractor to not allow the worker any further work on OCFA's site for his or her failure to comply with safety practices, with which order the Contractor shall promptly comply.
- 86.12 **Safety Indemnification.** The Contractor shall defend, indemnify, and hold the Project Manager, OCFA, and their respective officers, directors, agents, employees, and assigns harmless from and against any and all liability, public or private, penalties, contractual or otherwise, losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting either in whole or in part from any failure of the Contractor, or its Subcontractors, of all tiers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with provisions of the Project Manual, including but not limited to all applicable laws, ordinances, rules, regulations, and orders of any public, quasi-public, or other authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, all Cal/OSHA laws and regulations and the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to thereto. The Contractor shall not be relieved of its responsibilities under this Subsection should OCFA act or fail to act pursuant to its rights hereunder, nor shall OCFA thereby assume, nor be deemed to have assumed, any responsibilities otherwise imposed on the Contractor by this Contract, by virtue of providing OCFA's Safety Policies & Procedures, or any other manner whatsoever.

86.12.1 The Contractor shall not raise a defense as to its obligation to indemnify under Subsection 86.12 above any contributing negligence of any of those indemnified hereunder, its being understood and agreed that no such contributing negligence shall relieve the Contractor from its liability to so indemnify nor entitle the Contractor to any contribution, either directly or indirectly, by those indemnified hereunder.

86.12.2 In any and all claims against those indemnified hereunder by any employee of the Contractor or its Subcontractors of all tiers, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 86.12 shall not be limited in any way to any limit on the amount or type of damage, compensation or benefits payable by or for the Contractor or its Subcontractors of any tiers under any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

86.13 In connection with the performance of this contract, OCFA shall have the authority to enter the worksite at any time for the purpose of identifying the existence of conditions, either actual or threatened, that may present a danger or hazard to any or all employees. Contractor agrees that OCFA, in its sole authority and discretion, may order the immediate abatement of any and all conditions that may present an actual or threatened danger or hazard to any and all employees at the worksite. Contractor acknowledges that provisions of Section 6400 of the California Labor Code, which requires that employers shall furnish employment and a place of employment that is safe and healthful for all employees working therein. In the event OCFA identifies the existence of any condition that presents an actual or threatened danger or hazard to any or all employees at the worksite, OCFA is hereby authorized to order the immediate abatement of that actual or threatened condition pursuant to this Section. OCFA may also, at its sole authority and discretion, issue an immediate stop work order to Contractor to ensure that no employee working at the worksite is exposed to a dangerous or hazardous condition. Any stop work order issued by OCFA to Contractor in accordance with the provisions of this Section, shall not give rise to any claim or cause of action for delay damages by Contractor or Contractor's agents or subcontractors against OCFA.

87 Non-Discrimination

87.1 Contractor covenants that, by and for itself, successors, and assigns, including its Subcontractors and suppliers, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, gender, marital status, national origin, sexual orientation, or ancestry in the performance of this Contract. Contractor shall take steps to ensure that applicants for any job and that employees are treated without regard to their race, color, creed, religion, gender, marital status, national origin, sexual orientation, or ancestry in full compliance with applicable federal, state, and local laws and regulations.

87.2 Contractor shall not engage in, nor permit its agents, including its Subcontractors and suppliers, to engage in discrimination in employment of persons or provision of services or supplies, on the grounds of race, color, creed, religion, gender, marital status, national origin, sexual orientation, or ancestry.

87.3 Contractor, and Contractor's Subcontractors and suppliers, shall employ fair employment practices with regard to all employees and all applicants for employment and shall act in accordance with all applicable federal, state, and local laws and regulations relating to such fair employment practices. In furtherance of such obligation, Contractor agrees that Contractor, Subcontractors, and suppliers shall not discriminate in employment and/or provision of services under this Contract and all employment practices shall be without regard to a person's race, color, creed, religion, gender, national origin, age, ancestry, physical

handicap, medical condition, marital status, all in accordance with applicable federal, state, and local laws or regulations. Fair employment practices shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other form of compensation and selection for training including apprenticeship.

- 87.4 In the performance of the terms of the Contract Documents, Contractor agrees that Contractor will not engage in nor permit such subcontractors as Contractor may employ to engage in discrimination against any employee or applicant for employment on the basis of race, sex, color, religion, ancestry, national origin, marital status, age or as an otherwise qualified handicapped individual. This prohibition shall pertain to employment, upgrading, demotion, or transfer, recruitment advertising, layoff or termination, rates of pay and other forms of compensation, selection for training, including apprenticeship, and any other action or inaction pertaining to employment matters.

88 Assignment of Antitrust Actions

In accordance with Public Contract Code Section 7103.5, by entering into the Contract Documents or into a subcontract to supply goods, services, or materials pursuant to the Contract Documents, the Contractor, or subcontractor, offers and agrees to assign to the OCFA all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with Section 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract Documents or the subcontract. This assignment shall be made and become effective at the time the OCFA tenders final payment to the Contractor, without further acknowledgment by the parties. The contractor shall cause to be inserted in any such subcontract stipulations to effectuate this Section 88 and the provision of Public Contract Code Section 7103.5.

89 Time of Commencement; Time Is of the Essence

- 89.1 **Commencement:** Contractor agrees to commence the Project within ten (10) calendar days from the date the OCFA's Board approves this Contract, and Contractor shall diligently prosecute the work to Substantial Completion of the Milestones as identified in the Contractor's Construction Schedule and Substantial Completion of the Project no later than the Scheduled Completion Date, excluding modifications for delays caused or authorized by the OCFA as set forth in Section 71.5.
- 89.2 **Construction Schedule:** Within 30 days of the Award of the Contract, Contractor shall furnish to the Project Manager one reproducible, three prints, and an electronic or digital copy in a format approved by the Project Manager of the Contractor's Construction Schedule. The schedule shall be supported by written statements from each supplier of materials or equipment indicating that all orders have been placed and acknowledged, and setting forth the dates that each item will be delivered. The schedule shall establish the order of work which minimizes disruption of existing travel lanes. Upon submission by Contractor, and approval by the Project Manager, the Contractor's Construction Schedule shall be attached to Project Manual as an Exhibit and shall be deemed the baseline schedule. The Contractor's Construction Schedule shall identify and specify scheduling for the Work based on the critical path method (or other scheduling method acceptable to the Project Manager) and updating thereof, and shall provide other schedules that would further the efficient completion of the Project, including the Work and the Related Work in the most expeditious and economical manner. The Contractor's Construction Schedule shall depict in detail the sequence and timing of all activities of the Work and Related Work, including, without limitation, commencement and Completion Dates of Milestones and for all other significant portions of the Work and Related Work. The Contractor's Construction Schedule shall be updated at

least monthly, except that the Scheduled Completion Date shall not be changed or modified unless otherwise approved by the Project Manager pursuant to the terms of this Contract.

89.3 Progress Reports: Concurrently with its submission of Applications for Payment, Contractor shall provide the Project Manager with a report (1) detailing the actual progress of the Work and Related Work as of the date of such report; (2) stating any discrepancies between the actual progress of the Work and Related Work; (3) identifying the progress anticipated by the Contractor's Construction Schedule as of the date of such reports; and (4) stating a recovery schedule to place the Work and Related Work back on schedule, at no cost to the OCFA. The Contractor's Construction Schedule shall include Milestones for each aspect of the Work and the timing for completion of Related Work that could affect completion of the Work by the date listed in the Contractor's Construction Schedule.

89.4 Acceleration.

89.4.1 The OCFA reserves the right to accelerate the work of the Contract at any time during its performance. In the event the OCFA directs acceleration, such directive will be given to the Contractor in writing. The Contractor shall keep cost and other Project records related to the acceleration directive separately from the normal Project cost records and shall provide a written record of acceleration costs to the OCFA on a daily basis.

89.4.2 In the event the Contractor believes that some action or inaction on the part of the OCFA constitutes an acceleration directive, the Contractor shall immediately notify the OCFA in writing that the Contractor considers the actions or inactions an acceleration directive. The Contractor shall not accelerate their work efforts until the OCFA responds to the written notification. If acceleration is then directed or required by the OCFA, all cost records referred to in the previous paragraph shall be maintained by the Contractor and provided to the OCFA on a daily basis.

89.4.3 In order to recover additional costs due to acceleration, the Contractor must document that additional expenses were incurred and paid by the Contractor. Labor costs recoverable will only be overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will only be the cost of added equipment mobilized to the site to accomplish the accelerated work effort.

89.5 TIME IS THE ESSENCE OF THIS CONTRACT: NOTWITHSTANDING OCFA'S APPROVAL OF ANY UPDATED CONTRACTOR'S CONSTRUCTION SCHEDULE, THE SCHEDULED COMPLETION DATE SHALL BE STRICTLY ADHERED TO DURING THE TERM OF THIS CONTRACT. THE SCHEDULED COMPLETION DATE MAY ONLY BE CHANGED AS PROVIDED IN THE CONSTRUCTION CONTRACT.

89.6 Ongoing Responsibility of Contractor: As required by the Project Manual, Contractor shall prepare and obtain approval of all shop drawings, submittals, details, and samples, and do all other things necessary and incidental to the prosecution of Contractor's work in conformance with the Project Manual and Contractor's Construction Schedule. Contractor shall coordinate the Work with the Related Work through the Project Manager, in a manner that will facilitate the efficient completion of the Project in accordance with the Project Manual.

89.7 Control of the Site and Order of Work: Contractor shall have control of the Site and shall have the right to decide the time or order in which the various portions of the work shall be constructed or installed consistent with the Contractor's Construction Schedule and shall

establish the priority of the work of Subcontractors of the Work and the Related Work, and, in general, all matters representing the timely and orderly completion of the Project.

89.8 **Cooperation:** Notwithstanding the Scheduled Completion Date, Contractor will cooperate with the OCFA and the OCFA's separate Contractors, consultants, and employees and Contractor agrees to provide for and coordinate access to the Project prior to the Scheduled Completion Date.

89.9 **Contractor's Risk Of Non-Performance:** IT IS SPECIFICALLY AGREED THAT CONTRACTOR ASSUMES THE RISK OF NONPERFORMANCE, LATE PERFORMANCE, AND NONCOMPLIANCE WITH THE REQUIREMENTS OF THE PROJECT MANUAL BY CONTRACTOR, CONTRACTOR'S SUBCONTRACTORS, SUPPLIERS, AND AGENTS. CONTRACTOR SHALL NOT BE ENTITLED TO AN EXTENSION OF ANY COMPLETION DATE OF THE SCHEDULED COMPLETION DATE FOR THE ABOVE STATED REASONS OR ANY OTHER REASONS, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE PROJECT MANUAL.

89.10 **Notification of Inability to Comply:** If the Contractor, at any time, ascertains that for any reason it is unable to complete the phases of the Work by the Milestones, or complete the Project by the Scheduled Completion Date, Contractor shall promptly and without delay notify the Project Manager in writing of this fact.

89.11 **Liquidated Damages:** The Parties acknowledge and agree that if Contractor fails to achieve Substantial Completion of the Project by the Scheduled Completion Date or fails to achieve Substantial Completion of a Milestone, as such dates may be extended in accordance with the Project Manual, OCFA will suffer, as a result of Contractor's failure, substantial damages which are both extremely difficult and impracticable to ascertain. Therefore the Parties having reasonably endeavored, but failed, to ascertain an amount bearing a reasonable relationship to the actual damage that OCFA will incur if Contractor fails to achieve Substantial Completion of the Project by the Scheduled Completion Date or fails to achieve completion of a Milestone as such dates may be extended in accordance with the Project Manual, agree that in addition to all other damages to which OCFA may be entitled, Contractor agrees to pay to OCFA as liquidated damages, and not as a penalty but as a reasonable estimate of the amount of damages OCFA will suffer, the amount of ____ Dollars (\$____.00) per day for each calendar day occurring after the completion date of a Milestone during which Contractor fails to achieve Substantial Completion for each such Milestone. In addition, the OCFA shall have the right to charge to the Contractor and to deduct from payments for the Work the actual cost to the OCFA of engineering, inspection, superintendence, and other overhead expenses, which are directly chargeable to the Contract and which accrue during the period of such delay. The expenses and damages described above shall be deducted from any money due the Contractor under this contract. The Contractor and its sureties shall be liable for any excess cost.

89.12 **Additional Remedies:** The Parties also acknowledge and agree that OCFA is entitled to any and all legal and equitable remedies OCFA may have that exceed the amount of Liquidated Damages.

90 Audit And Access To Records

90.1 Contractor shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the work under this Contract in accordance with generally accepted accounting principles and practices consistently applied. Contractor shall also maintain all financial information and data used by the Contractor in the preparation or support of any cost submission, including the Contractor's original bid required for this

Contract, or any Change Order, claim, or other request for any adjustment, and a copy of the cost summary or information submitted to the OCFA. The Project Manager or the Fire Chief shall have access upon twenty-four hours advanced written notice, at all times during normal business hours, to all such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. The Contractor shall, at no cost to the OCFA, provide proper facilities for such access, inspection, and copying purposes.

- 90.2 The Parties agree that the provisions of this Section 90 are applicable to Project Manual and all Change Orders, claims, and any other request for adjustment affecting the time or price of this Contract. The Contractor agrees to include the provisions of this Section in all Subcontracts and purchase orders, at any tier, and make this Section 90 applicable to all Change Orders, claims, and other requests for adjustment related to Project performance by Contractor's Subcontractors and suppliers.
- 90.3 Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines.
- 90.4 The Contractor agrees to the disclosure of all information and reports resulting from access to records under the provisions of this Section to the OCFA, the Fire Chief, the Project Manager, and any affected or interested state or local agency.
- 90.5 Records under the provisions of this Section shall be maintained and made available during the performance of the Work under this Contract until three years past final payment and until final settlement of all disputes, claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract to any Change Order, dispute, litigation, settlement of any claim arising out of such performance, or to the cost of items to which an audit exception has been taken, shall be maintained and made available until final payment or final resolution of such dispute, litigation, claim, or exception, whichever occurs later.
- 90.6 These rights to access provisions as provided in this Section apply to all financial records pertaining to this Contract and all Change Orders and claims. In addition, this right to access applies to all records pertaining to all contracts, Change Orders, and any amendments to this Contract: (1) To the extent the records pertain directly to Contract performance; (2) If there is any indication that fraud, gross abuse, or corrupt practices may be involved; or (3) If the Contract is terminated for default or convenience.
- 90.7 Access to records is not limited to the required retention periods. The Fire Chief shall have access to records at any reasonable time for as long as the records are maintained.

91 Resolution Of Construction Claims

- 91.1 California Public Contract Code (PCC) section 9204 as adopted by Assembly Bill 626 prescribes a process to present, confer, and mediate construction claims relating to the OCFA's public works project. Notwithstanding any provisions to the contrary in the Project Manual, this section shall govern all disputes to which section 9204 applies.
- 91.2 For purposes of this Section 91, "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested for (A) a time extension, including, without limitation for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is

not otherwise entitled, or the amount the payment of which is disputed by the local agency.
(PCC 9204(c)(1))

- 91.3 For purposes of this Section 91, "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or another public improvement of any kind.
- 91.4 For any Claim subject to this Section 91, California Public Contract Code section 9204 requires the following:
- 91.4.1 The claim shall be submitted by the Contractor in writing, sent by registered mail or certified mail with return receipt requested and must include the documents necessary to substantiate the claim. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims. However, upon receipt of a claim, the OCFA, and the Contractor may, by mutual agreement, extend the time period provided by statute.
- 91.4.2 For claims of all amounts, the OCFA shall respond within 45 days of receipt of the claim, and provide the claimant a written statement identifying which portion of the claim is disputed and which portion of the claim is undisputed. If the OCFA requires approval from the Board of Directors, and the Board of Directors does not meet within the 45-day period to respond, the OCFA shall have up to three days to issue its response following the Board of Directors meeting.
- 91.4.3 For all portions of a claim determined to be undisputed, the OCFA must process payment to the claimant within 60 days of issuing the OCFA's written determination.
- 91.4.4 If the claimant disputes the OCFA's response, or if the OCFA fails to respond within the time limits provided, the claimant may demand an informal conference to meet and confer for settlement of the issues in dispute. The demand must be sent in writing by registered or certified mail, return receipt requested. Upon receipt of a demand, the OCFA must schedule a meet and confer conference within 30 calendar days for settlement of the disputed claim.
- 91.4.5 Within ten (10) business days following the conclusion of the meet and confer conference, if any portion of the claim remains in dispute, the OCFA shall provide the claimant an addition written statement identifying the portion of the claim that is undisputed and the portion that remains in dispute.
- 91.4.6 For all portions of a claim determined to be undisputed, the OCFA must process payment to the claimant within 60 calendar days of issuing the OCFA's written determination.
- 91.4.7 Any remaining undisputed portion of the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation in which the parties share the cost evenly. The OCFA and the claimant shall mutually agree on a mediator within ten (10) business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree, each party shall select a mediator and those mediators shall jointly select a qualified, neutral third party to mediate the remaining undisputed claim. Each party shall bear the respective costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside of PCC section 9204.

91.4.8 Unless otherwise agreed to by the OCFA and the Contractor in writing, the mediation conducted pursuant to this Section 91 shall excuse any further obligation under PCC Section 20104.4 to mediate after litigation has been commenced.

91.4.9 Public Contract Code Section 9204 does not preclude the OCFA from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program if mediation under this section does not resolve the parties' dispute.

91.4.10 Should the OCFA fail to respond to a claim, or fail to issue written statements as required, the Contractor's claim is deemed denied. A claim denied by reason of the OCFA's failure to respond shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

91.4.11 Amounts not paid in a timely manner as required by PCC 9204 shall bear interest at seven percent per annum.

92 Notice Of Third-Party Claims

When required by PCC Section 9201, the OCFA will provide timely notification to Contractor of the receipt of any third-party claim relating to the Agreement. The Contractor agrees to reimburse the OCFA for its reasonable costs incurred in providing such notice.

93 Cleanup

- 93.1 The Contractor shall at all times keep the Site clean and free from accumulation of waste materials or rubbish (including, without limitation, hazardous waste), caused by his performance of the Work, and shall continuously throughout performance of the Work remove and dispose of all such materials from the Site and the Project.
- 93.2 Project Manager may require the Contractor to comply with such standards, means and methods of cleanup, removal or disposal as Project Manager may make known to the Contractor. In event the Contractor fails to keep the Site clean and free from such waste or rubbish, or to comply with such standards, means and methods, OCFA may take such action and offset any and all costs or expenses of whatever nature paid or incurred by OCFA in undertaking such action against any sums then or thereafter due to the Contractor.
- 93.3 The Contractor shall notify OCFA in advance of the generation, importation, storage, transportation or disposal, of any hazardous waste, toxic materials or contaminants of any type in connection with the Project. Contractor shall provide Project Manager with Material Safety Data Sheets (MSDS's) and the Uniform Hazardous Waste documents. The Contractor will develop and implement a written and effective Spill Control and Containment Plan.

94 Trenches and Excavations

- 94.1 The Contractor shall promptly, and before any of the following conditions are disturbed, notify the Project Manager, in writing, of any:
 - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class 1, Class II, or Class III disposal site in accordance with the provisions of existing law; or
 - (2) Subsurface of latent physical conditions at the Site differing from those indicated; or

- (3) Unknown physical conditions at the Site of unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract and Project Manual.
- 94.2 The Project Manager shall promptly investigate the conditions, and if the Project Manager finds that the conditions materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order, subject to the provisions of the Project Manual.
- 94.3 In the event that a dispute arises between the Project Manager and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any Scheduled Completion Date provided for in the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by the Contract or by law which pertain to the resolution of disputes and protests between parties.

95 Uncovering and Correction of Work; OCFA's Right To Carry Out Work

- 95.1 If any portion of the Work should be covered contrary to the instructions or request of Project Manager or the requirements of the Project Manual, the Contractor shall, if required by Project Manager, uncover such portion of the Work for Project Manager's observation and shall replace such Work all at the Contractor's expense.
- 95.2 If any portion of the Work should be covered prior to a specific request for observation or instruction by Project Manager, Project Manager may request to see such Work, and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Project Manual and without defect, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to OCFA. If such Work is found to be defective or not in accordance with the Project Manual, the Contractor shall bear such costs.
- 95.3 Project Manager shall have the authority to reject any portion of the Work which is defective or does not conform to the Project Manual, and the Contractor shall promptly correct all Work so rejected by Project Manager, whether observed before or after the Date of Substantial Completion and whether or not fabricated, installed or completed. In order that such corrective Work shall not interrupt or delay Contractor's Construction Schedule or the completion date of the Project, the Contractor shall perform such Work according to a schedule therefor established by Project Manager (which may provide that the same be performed on overtime, shiftwork, Saturdays, Sundays and/or holidays), utilizing in the performance thereof such manpower as is necessary to complete the corrective Work in accordance with said schedule. The Contractor shall bear all costs of correcting such rejected Work including, without limitation, compensation for any additional architectural and engineering services made necessary thereby.
- 95.4 If, within one (1) year after the Completion of the Work (as determined by OCFA) or within such longer period of time as may be prescribed by law or by the terms of any applicable warranty or guarantee required by the Project Manual, any of the Work is found to be defective or not in accordance with the Project Manual, the Contractor shall correct it promptly after receipt of written instructions to that effect from OCFA unless OCFA has previously given the Contractor a written acceptance of such condition.
- 95.5 The Contractor shall remove from the Site all Work which is defective or non-conforming and not corrected under the provisions of these General Conditions unless removal is waived in writing by OCFA.

- 95.6 If the Contractor does not remove such uncorrected defective or non-conforming Work within a reasonable time fixed by written instructions to that effect from Project Manager, OCFA may remove it and store the materials and equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, OCFA may, upon ten (10) additional days written notification to the Contractor, sell such materials and equipment at public or private sale and account to the Contractor for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for any additional architectural and engineering services and attorneys' fees made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such difference, the Contractor shall, upon demand, pay the same to OCFA. The obligations of the Contractor under this Subsection shall be in addition to, and not in limitation of, any obligations imposed on it by law, by any other provision of this Contract or by any warranty or guarantee under this Contract.
- 95.7 If the Contractor fails to correct any defective or non-conforming Work, OCFA may correct it with its own forces or by contract with a third party contractor. In the event of a defect found after final acceptance of the Work by OCFA which the Contractor is obligated to correct pursuant to Project Manual, OCFA may, at its option, after giving the Contractor an opportunity to correct such defect, cause such corrective Work to be performed by others and charge the Contractor with the cost thereof. Such charge shall be due and payable by the Contractor upon demand.
- 95.8 If the Contractor defaults or neglects to carry out the Work in accordance with the Project Manual or fails to perform any provision of this Contract, and such default, neglect or non-performance shall continue for a period of 48 hours after written notification thereof from OCFA (or if such default, neglect or non-performance cannot be reasonably remedied within such 48-hour period, and Contractor does not (in the sole determination of OCFA) undertake in good faith the remedy of the same within said period and thereafter proceed diligently to completion), then OCFA may, without prejudice to any other remedy OCFA may have, make good such deficiencies; provided, however, that in the event of an emergency, as determined by OCFA, no notification shall be required. OCFA shall have the right to take possession of such portion of the Site as will enable it to make good such deficiencies and, in connection therewith, to utilize the materials, equipment, tools, construction equipment and machinery of the Contractor located on the Site. If OCFA makes good any such deficiencies, the costs of correcting the same including, without limitation, compensation for additional architectural and engineering services made necessary by such default, neglect or non-performance, shall be offset against any amounts then or thereafter due to the Contractor. If the amounts then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall, upon demand, pay the difference to OCFA.
- 95.9 If OCFA prefers to accept defective or non-conforming Work, it may do so instead of requiring its removal and correction, in which case an appropriate amount shall be offset against any amounts then or thereafter due to the Contractor; or, if the said appropriate amount of offset is determined after final payment (or if there is not then or thereafter due to the Contractor an amount sufficient to cover the offset available to OCFA), the Contractor shall, upon demand, pay the appropriate amount (or the difference after offset, as applicable) to OCFA.

96 Plans, Specifications and Survey

The Contractor shall maintain a control set of Plans, Specifications and survey on the Project site at all times. All final locations determined in the field by survey, and any deviations from the Plans and Specifications, shall be marked in red on this control set to show the as-constructed conditions. Upon

completion of all work, the Contractor shall return the control set to the Engineer. Final payment will not be made until this requirement has been met.

97 Permits

OCFA will reimburse the Contractor for the public agency-charged fee for permits, inspections. No profit amount shall be added to such reimbursement.

98 Compliance with Laws; Non-Discrimination

Contractor shall ensure that its officers, employees, agents, contractors, and subcontractors: (1) conduct themselves in compliance with all applicable laws and licensure requirements including, without limitation, compliance with laws applicable to nondiscrimination, harassment, and ethical behavior, throughout the duration of the Contract; and (2) comply with all OCFA, State, and Federal, Local Agency and Regulatory Agency orders regarding affirmative action to ensure equal employment opportunities and fair employment practices. Failure to file any report due under said orders will result in suspension of periodic progress payments. The Contractor shall ensure unlimited access to the job site for all equal employment opportunity compliance officers.

99 Right-Of-Way And Easements

In the event any required easements have not yet been acquired by the OCFA, the Contractor shall conduct its operation so as to confine its work to the limits of the existing right-of-way.

100 Disputed Work

Contractor shall keep all records of disputed work in accordance with the General Conditions. In any case where the Contractor believes extra compensation is due the Contractor for work or materials not clearly covered in the Contract, or not ordered by the OCFA as "extra work", the Contractor shall notify the OCFA in writing of the Contractor's intention to make claim for such extra compensation before the Contractor begins the work on which Contractor bases the claim. All "claims" as that term is defined in Public Contract Code section 9204 shall be submitted and processed in accordance with Section 91 hereinabove. Such notice by the Contractor, and the fact that the OCFA has kept account of the cost as aforesaid, shall not in any way be construed as proving the validity of the claim. The validity of the claim must be determined by the OCFA. If the OCFA determines that all or a portion of the claim is well founded, the valid portion shall be allowed and paid for as "extra work"; if the OCFA determines that all or a portion of the claim is not well founded, the portion that is not well founded shall be disallowed and not paid, subject to Section 91. Nothing herein limits the authority of the OCFA to consider, approve or disapprove of Change Orders in accordance with the Project Manual.

101 Time of Completion.

Work will be deemed completed on the same date when the Notice of Completion is recorded with the County of Orange.

102 Delivered Materials.

Materials and equipment delivered but not incorporated into the work shall not be included in the estimate for progress payment.

103 Mobilization.

103.1 Mobilization shall consist of preparatory work and operations, including but not limited to those necessary for the movement of personnel, equipment, supplies, and incidentals to the Project

site; for the establishment of all offices, buildings and other facilities necessary for the work on this Project; and for all other work and operations which must be performed or cost incurred prior to beginning work on the various contract items on the Project site. Mobilization is deemed to include all aspects of mobilization and de-mobilization work occurring during the life of the Project for any reason.

- 103.2 Full compensation for mobilization shall be included in the Contract lump sum price bid for Mobilization and shall include full compensation for all costs incurred by the Contractor for doing all the work involved in mobilization as specified herein, and no additional compensation will be allowed. Mobilization shall not exceed 5% of the entire bid, excluding mobilization and as shown in the Proposal Bid Sheet.

104 Facilities For Contract Personnel.

104.1 Extended Field Office Overhead Cost.

- 104.1.1 Within fourteen (14) calendar days after receipt of the Notice to Proceed, the Contractor shall submit a written statement to the OCFA detailing its field office overhead costs which are time related. The OCFA will review this first cost submittal and reach a written agreement with the Contractor on a daily field office overhead cost rate which shall be memorialized in a no cost change order. The daily rate agreed to in this change order will be applicable throughout the duration of the Contract. No field office costs will be paid until such an agreement is reached between the OCFA and the Contractor and the change order concerning this daily rate is executed by both parties. Progress payments will be withheld pending receipt of the above-referenced cost submittal and executed change order.
- 104.1.2 The individual cost components of the daily field office overhead rate shall represent costs which increase as a direct result of any time extension caused solely and exclusively by an act or omission of the OCFA. This listing may include such cost items as on-site project management, supervision, Engineering and clerical salaries; on-site utilities and rent; on-site company vehicles and their operating expenses; and site maintenance and security expenses. Field office overhead costs which are unaffected by increased time shall not be allowable cost in calculating the daily field office overhead rate. These non-time related costs include, but are not limited to, acquisition and installation of stationary equipment; temporary construction facilities; utilities and office furnishings (unless such items are rented or leased); the preparation of the site including clearing, grubbing, grading, fencing, mobilizations and demobilization costs; and the costs of permits, bonds and insurance coverage for the Project.
- 104.1.3 The individual wage cost components used to calculate the daily field office rate shall be supported by actual employee payroll records, not salary ranges or estimates. Hourly rates for management, supervisory, engineering, and clerical employees shall be based upon 2080 work hours per year and shall not include allowances for holidays, vacations, or sick time.
- 104.1.4 When applicable, the daily field office overhead rate shall be multiplied by the number of days the Contract is delayed or extended by change order and shall be added to the agreed upon change order cost. The days of delay shall be those caused solely by the acts or omissions of the OCFA and documented by a time impact analysis prepared and submitted by the Contractor. In the event a deductive change order is issued which reduces time under the Contract, the daily field office overhead rate shall be used to calculate the deductive amount. No allowance for overhead costs and no profit allowance shall be added to the extended field office overhead cost.

105 OCFA Officers And Employees; Non-Discrimination

- 105.1 No member, officer, member of the OCFA Board of Directors, or employee of the OCFA shall be personally liable to Contractor, or any successor in interest, in the event of any default or breach by OCFA or for any amount which may become due to Contractor or to its successor, or for breach of any obligation of the terms of this Contract.
- 105.2 Pursuant to the provisions of the OCFA's conflict of interest code, the Political Reform Act as set forth in Government Code Section 81000 et seq., and/or the prohibition against self-dealing in contracts as set forth in Government Code Section 1090 et. seq., the Parties acknowledge that no officer or employee of the OCFA, or any member of the OCFA Board, shall have any personal interest, direct or indirect, in this Contract or any Subcontract under the Contract, nor shall any such officer, employee, or member of the OCFA Board participate in any decision relating to the Contract which effects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. In the furtherance of such acknowledgement, Contractor:
- i. Contractor agrees that no officer, employee, member of the OCFA Board of Directors, agent, or assignee of the OCFA having direct or indirect control of any monies allocated by OCFA to finance this Project, shall serve as an officer, director, employee, or agent of Contractor, or as a officer, director, employee, or agent of any Subcontractor of supplier of Contractor under this Contract; and
 - ii. Any conflict or potential conflict of interest of any officer, director, employee, or agent of Contractor or any Subcontractor or supplier of Contractor has been fully disclosed to the OCFA prior to execution of this Contract and such disclosure shall be deemed a part of this Contract.
- 105.3 Contractor shall not expend any funds for the purpose of influencing or attempting to influence an officer, member, employee, or member of the OCFA Board in the connection with the awarding and the administration of this Contract or any subcontract in furtherance of the Project.

106 Entire Agreement

It is agreed that this Contract (which incorporates the Project Manual) represents the entire agreement. It is further agreed that the Project Manual is incorporated in this Contract by this reference, with the same force and effect as if the same were set forth at length within the Contract, and that Contractor and Contractor's officers, employees, agents, trades, material suppliers, and Subcontractors will be and are bound by any and all of said Project Manual insofar as they relate in any part or in any way, directly or indirectly, to the work covered by this Contract.

107 Written Notices

Any written notice required to be given in any part of the Contract Documents shall be performed by dispatching the same via email directed to the email address of the Contractor as set forth in the Contract Documents, and to the OCFA addressed as follows:

A. [INSERT OCFA CONTACT INFO FOR NOTICES]

B. [INSERT CONTRACTOR CONTACT INFO FOR NOTICES]

108 Miscellaneous Provisions

- 108.1 Assignment: Contractor shall neither delegate its duties or obligations, nor assign its rights with respect to this Contract, either in whole or in part. Any such attempted delegation and/or assignment shall be void and deemed void at such occurrence, if it were to occur.
- 108.2 Computation of Time: When any period of time is referred to in the Project Manual by days, it shall be computed to exclude the first and include the last day of the period, provided, however, that if the last day of the period falls on a Saturday, Sunday, or legal holiday, that day shall be omitted from the computation. "Days" refers to calendar days unless otherwise expressly provided.
- 108.3 Remedies Cumulative: No remedy herein reserved to OCFA is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other given in the Project Manual as now or hereafter existing or at law, equity, or by statute.
- 108.4 Nonwaiver: The failure of the OCFA to notify the Contractor of any default under the Project Manual shall not be deemed to be a waiver by OCFA of any continuing default by Contractor of any term, covenant, or condition set forth in this Contract, nor of the OCFA's right to declare a default for any such continuing breach, and the failure of OCFA to insist upon strict performance of any of the terms, covenants, or conditions of the Project Manual, or to exercise any option in the Project Manual in any one or more instances, shall not be construed as a waiver or relinquishment of any such terms, covenants, conditions or options, but the same shall be and remain in full force and effect.
- 108.5 Severability: In case any one or more provisions set forth in the Project Manual shall for any reason be held invalid, illegal, or unenforceable in any respect, any such invalidity, illegality, or unenforceability shall not affect any other provision of the Project Manual, and the Project Manual and this Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been incorporated therein so long as the deletion of such provision does not, in the OCFA's judgment, materially alter this Contract.
- 108.6 No Third Party Beneficiaries: The Project Manual and this Contract are not intended and shall not be deemed or construed, to confer any rights, powers, or privileges on any person, firm, partnership, corporation, or other entity not a party to this Contract except as may be expressly provided in the Contract to the contrary.
- 108.7 No Verbal Agreements: No verbal order, objection, claim, or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Contract or the Project Manual, and none of the provisions of the Project Manual shall be held to be waived or modified by reason of any act whatsoever, other than by a definitely agreed waiver or Modification in writing and executed in the manner required in this Contract by authorized officers or representatives of the Parties. No evidence shall be introduced in any proceeding of any other waiver or modification.
- 108.8 Counterparts: This Contract may be executed in any number of counterparts, and each of such counterparts for all purposes shall be deemed to be an original, and all of such counterparts should constitute one and the same agreement.
- 108.9 Governing Law/Venue: The Contract, including the Project Manual, shall be governed by the laws of the State of California. Venue for all disputes related to the Project, the Contract Agreement and/or the Project Manual shall be in Orange County, California.

- 108.10 Services Prior to Execution: Notwithstanding the fact that this Contract is executed as of the date first set forth above, the Parties recognize that a portion of the Work required under the Project Manual may have been performed prior to such date, all of which Work shall be governed by the terms and conditions of this Contract and shall be deemed to be a part of the Work. Without limiting the foregoing, all of Contractor's liabilities and obligations to OCFA under the Project Manual shall apply to all Work and services provided by the Contractor for the Work prior hereto, notwithstanding the fact that the Work may have been performed prior to the date hereof pursuant to prior negotiations, representations, agreements, understandings, or otherwise.
- 108.11 Survival of Rights: Any indemnity, warranty, guarantee given by the Contractor to the OCFA under this Contract shall survive the expiration or termination of this Contract and shall be binding upon Contractor until any action under this Contract is barred by the applicable statute of limitations.
- 108.12 Notice: All notices (whether or not designated as such herein) which are required under this Contract to be given between the parties pursuant to this Paragraph shall be in writing and deemed given and, unless otherwise provided herein, effective when delivered personally to an officer of the party to be served (including the Contractor's Project Manager, in the case of the Contractor), when deposited in the United States mail, or in a sealed envelope, with postage thereon prepaid, sent by registered or certified mail, return receipt requested, and addressed to the appropriate party at the address set forth in the Contract or such other address as may be designated by either party hereto by notice to the other, or when transmitted by wire or facsimile to the appropriate party at the aforesaid address (a complimentary confirming letter shall also be mailed to the appropriate party on the same date).
- 108.13 Maintenance of Harmonious Relations: The Contractor is hereby advised that any portion of the Project, or other projects in proximity to the Project may be subject to, and governed by, certain union or trade agreements. It is the policy of OCFA to promote and maintain harmonious relationships in connection with the Project. The Contractor and its Subcontractors and Sub-subcontractors shall follow this policy; and shall utilize only qualified persons or organizations in the performance of the Work. A qualified person or organization is one: which is not likely to promote labor unrest on the Project; which shall abide by all local, state and federal labor and employment relation rules, regulations and laws; whose financial stability is reasonably assured throughout the duration of the Contract; and whose commitments to other projects are not likely to interfere with its ability to perform its portion of the Work efficiently and cost effectively. OCFA reserves the right to disapprove, or to require the removal of, any person or organization who is being considered for, or has received, an award to perform all or a portion of the Work but has failed to demonstrate the willingness or ability to follow this policy.
- 108.14 Union Agreements: Regardless of the expiration of any collective bargaining agreement during the term of this Contract which may affect the Contractor in any of its activities including, without limitation, with respect to the Work or the Project, the Contractor is obligated to man the job and properly and timely perform the Work in a diligent manner. Upon notification of expected or actual labor disputes or job disruption arising out of any such collective bargaining negotiations, the expiration of any union or trade agreement or any other cause, the Contractor and its Subcontractors and Sub-subcontractors shall cooperate with OCFA concerning any legal, practical or contractual actions to be taken by OCFA in response thereto and shall perform any actions requested by OCFA to eliminate, neutralize or mitigate the affects of such actions on the progress of the Work and the impact of such actions on the public access to OCFA's facilities. It is the Contractor's obligation, at

the Contractor's own cost and expense, to take all steps available to prevent any persons performing the work from engaging in any disruptive activities such as strikes, picketing, slowdowns, job actions or work stoppages of any nature or ceasing to work due to picketing or other such activities, which steps shall include, without limitation, execution of an appropriate project agreement with appropriate unions prohibiting all such activities on or about the Project. Notwithstanding any such occurrences, the Contractor shall not be relieved of its obligation to man the job and properly and timely perform the Work in a diligent manner.

108.15 Immigration Reform Control Act: All Contractors, Subcontractors, and Sub-subcontractors must adhere to the Immigration Reform Control Act of 1986 and shall maintain I-9 forms regarding all employees. It is not OCFA's obligation to insure compliance with this law, however, OCFA reserves the right to inspect and copy the Contractor's records in this regard upon request.

108.16 General: The captions of divisions, sections, articles, Paragraphs, Subparagraphs, clauses and the like in the Project Manual are for convenience only and shall in no way define the content or limit the meaning or construction of the wording of the divisions, sections, articles, Paragraphs, Subparagraphs, clauses and the like. The parties agree that the Project Manual shall not be construed more strictly against any party regardless of the identity of their drafter. Unless otherwise specified, Section and Subsection references appearing in these General Conditions are to Section and Subsections of the Contract Agreement.

108.17 Evidence of Corporate Existence and Good Standing. A corporation to which an award is made may be required, before the Contract Agreement is executed by the OCFA, to furnish evidence of its corporate existence and good standing, of its right to enter into contracts in the State of California, and that the officers signing the Contract and bonds for the corporation have the authority to do so. (Ref: California Corporations Code section 7214.)

END OF DOCUMENT

SECTION 6: TECHNICAL SPECIFICATIONS

6A: [NAME OF REPORT/DRAWINGS]

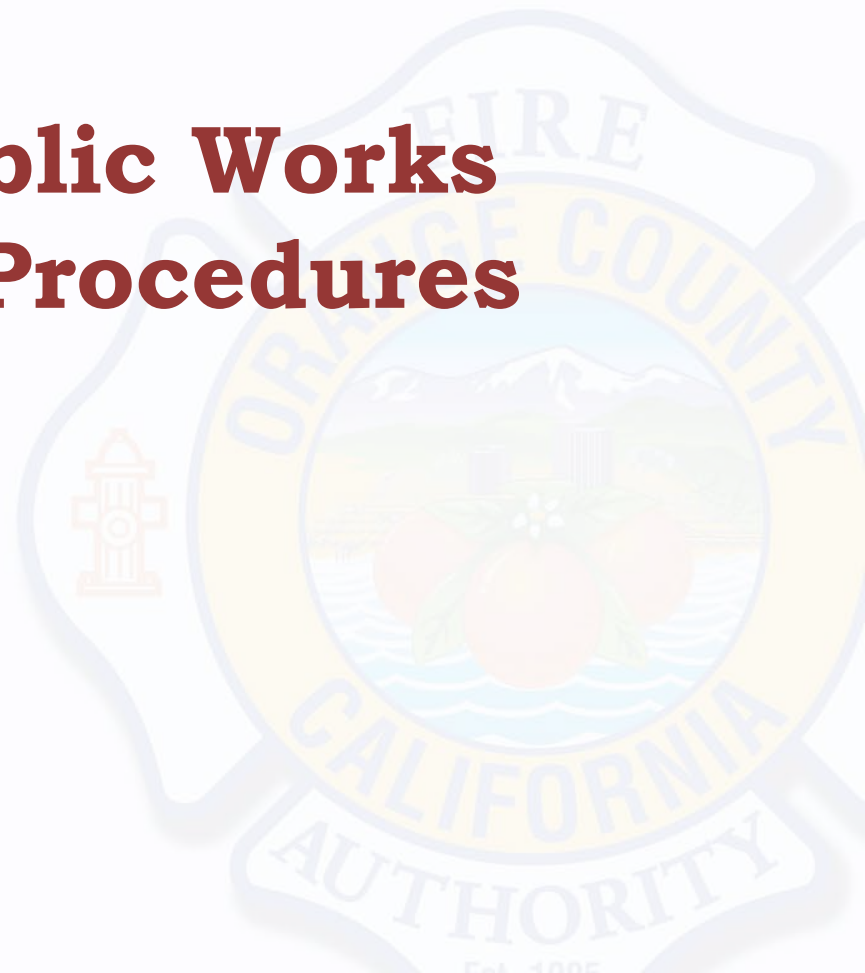
6B: [NAME OF REPORT/DRAWINGS]

6C: [NAME OF REPORT/DRAWINGS]

6D: [NAME OF REPORT/DRAWINGS]

6E: [NAME OF REPORT/DRAWINGS]

Update on Public Works Procurement Procedures



Pre-Qualification vs. Concurrent Qualification Process

Concurrent Qualification:

Bidder submits statements of experience and qualifications *at the same time* as they submit their pricing.

Pre-Qualification:

Contractors submit statements of their experience and qualifications *before the bid is released*. Only those Contractors who score high enough on the Pre-Qual receive the Invitation to Bid and are permitted to submit pricing.

Survey Results

- Number of Agencies Surveyed: **24**
- Number of Agencies that Responded: **20**
- Number of Agencies that Pre-Qualify: **6**
- Number of Agencies that Conduct Concurrent Qualification Review: **19**
- Value of Most Recent Pre-Qualification Project: **\$3.2M to \$40M**

Updates to Process

Concurrent Qualification (Less than \$5,000,000)

Solicitation	Purpose
IFB	<p>Solicitation issued to hire the contractor who will build the project. One-step process: Qualifications are evaluated concurrently with bid pricing. Per CA PCC 22034 (projects up to \$200,000) and CA PCC 22032 (projects over \$200,000)</p> <p>Plans, specifications, and contract award are brought to the Board of Directors for adoption and approval if value exceeds \$200,000.</p>

Pre-Qualification (Greater than \$5,000,000)

Solicitation	Purpose
<u>Step One</u> <u>RFSQ</u>	Solicitation to pre-qualify construction contractors to be eligible to submit a bid to build the project. Per CA PCC 20101
<u>Step Two</u> <u>IFB</u>	<p>Solicitation to hire the contractor who will build the project. IFB is sent only to pre-qualified contractors. Per CA PCC 22032 (projects over \$200,000)</p> <p>Plans, specifications, and contract award are brought to the Board of Directors for adoption and approval.</p>

Comments/Questions?





Orange County Fire Authority
AGENDA STAFF REPORT

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 3C
Discussion Calendar

**Review of Purchasing Ordinance and
Purchasing Provisions of Roles/Responsibilities/Authorities Matrix**

Contact(s) for Further Information

Lori Zeller, Deputy Chief Business Services Department	lorizeller@ocfa.org	714.573.6020
Robert C. Cortez, Assistant Chief Business Services Department	robertcortez@ocfa.org	714.573.6012
Sara Kennedy, Purchasing Manager Business Services Department	sarakennedy@ocfa.org	714.573.6643

Summary

This item is submitted per request from Director Bartlett to review OCFA's purchasing provisions related to sole source and special procurements and per request from Director Kuo to review the dollar thresholds delegated to OCFA management for authorizing purchasing transactions.

Prior Board/Committee Action

Following the first reading of the Proposed Purchasing Ordinance on April 28, 2016, the Board of Directors unanimously approved the Purchasing Ordinance on May 26, 2016, which remains in effect today.

RECOMMENDED ACTION(S)

Direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors receive and file the report.

Impact to Cities/County

Not Applicable

Fiscal Impact

Not Applicable

Background

Purchasing Ordinance

The attached agenda staff report was submitted to the Board of Directors on April 28, 2016 detailing the comprehensive changes that were proposed to OCFA's purchasing requirements (Attachment 1). The Board provided specific feedback to staff to add documented justification and approvals by the Assistant Chief of Business Services and Chief Procurement Officer within the justification forms for sole source purchases and special procurements and in the Roles/Responsibilities/Authorities Matrix. At the May 26, 2016 meeting, the Board of Directors received the second reading of the ordinance and provided unanimous approval (Attachment 2).

Roles/Responsibilities/Authorities Matrix

The roles, responsibilities, and authorities that have been delegated by the Board of Directors to subcommittees or to management are documented in the Roles/Responsibilities/Authorities Matrix (Matrix), including dollar thresholds that are delegated to management for various types of purchasing transactions. The procurement section of the Matrix was most recently updated and approved by the Board at its April 25, 2019 Board of Directors meeting. We have attached an excerpt of the Matrix which specifically includes all of the line items relevant to purchasing (Attachment 3).

Difference Between Sole Source & Special Procurement

As specifically requested by Director Bartlett during the March 25, 2021 Board of Directors meeting, and also further described in the attached documents, the below provides the definition of a sole source procurement and a special procurement as captured in the Procurement Ordinance:

Section 1-21. Sole Source Procurement. *Notwithstanding any other provisions of this code, a contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using department requesting a sole source procurement shall provide written evidence to support a sole source determination. The Chief Procurement Officer may require that negotiations are conducted as to price, delivery, and terms. The Chief Procurement Officer may require the submission of cost or pricing data in connection with an award under this section. Sole source procurements exceeding the amount defined in the roles and responsibilities matrix shall be executed by the Chief Procurement Officer upon approval by the Executive Committee or Board of Directors. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a public record.*

Section 1-23. Special Procurement. *Notwithstanding any other provisions of this code, the Executive Committee or the Board of Directors may authorize procurements above the small purchase amount specified in Section 1-20 for supplies, equipment or services (including maintenance) when, due to unusual or special circumstances, it would be in the best interest of the Fire Authority to accomplish the procurement without compliance with Sections 1-17 (competitive sealed bidding), 1-18 (competitive sealed proposals), or 1-51 (procurement of professional design services). This is not applicable to the procurement of construction services (Section 1-50). The using department requesting a special procurement shall provide written evidence to support a special procurement determination. Any special procurement under this section shall be limited to those materials, equipment or services, necessary to satisfy the Fire Authority's need and shall be made with sound fiscal discretion. A written determination by the Chief Procurement Officer with review and approval from the Assistant Chief, Business Services of the basis for the special procurement and for the selection of the particular contractor shall be maintained as public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, and a wise exercise of discretion and is in the public interest.*

The Special Procurement provision generally allows the Board or Executive Committee (not staff) to authorize procurement of goods or services when the Board or the Executive Committee concludes “it would be in the best interest” of the OCFA to procure them without complying with competitive bidding or RFP.

Routine Purchasing Activity Reports

As these prior Board actions were researched for preparation of this agenda staff report, staff found that a process for generating routine purchasing activity reports was not completed, and therefore, staff is researching types of routine reports that are being provided to the governing bodies for some of our member agencies and regional agencies in Orange County. Staff will return to the Budget and Finance Committee at its June 9, 2021 meeting with the routine purchasing activity report that could then be provided to the Budget & Finance Committee and Executive Committee on a quarterly basis.

Attachment(s)

1. April 28, 2016 Staff Report – Proposed Purchasing Ordinance, First Reading
2. May 28, 2016 Staff Report – Proposed Purchasing Ordinance, Second Reading
3. OCFA Roles/Responsibilities/Authorities Matrix



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
April 28, 2016

Agenda Item No. 5A
Discussion Calendar

Proposed New Purchasing Ordinance – Introduction

Contact(s) for Further Information

Lori Zeller, Assistant Chief
Business Services Department

lorizeller@ocfa.org

714.573.6020

Debbie Casper, Purchasing & Materials Manager

debbiecasper@ocfa.org

714.573.6641

Summary

This item is submitted for consideration to adopt a more comprehensive procurement ordinance to govern the Orange County Fire Authority procurement functions, and to discuss modifications to the Roles/ Responsibilities/Authorities Matrix for various procurements.

Prior Board/Committee Action – Committee Recommendation: *APPROVE*

Ordinance No. 006 and No. 007 were adopted on April 23, 2009, and the purchasing items listed in the Roles/Responsibilities/Authorities Matrix were last updated February 26, 2015. At the November 3, 2015, Human Resources Committee meeting, Director Hatch inquired into the feasibility of delegating more responsibility from the Board of Directors to administration to enable management to award higher dollar purchasing contracts without requiring Board approval. Director Hatch requested staff to develop recommendations for further discussion with the Budget and Finance Committee.

At its regular April 13, 2016, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

RECOMMENDED ACTION(S)

1. Waive the full reading of the proposed Ordinance.
2. Introduce and read by title only proposed Ordinance No. 008 entitled AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 006 AND ORDINANCE NO. 007 AND ESTABLISHING THE PURCHASING RULES AND PROCEDURES OF THE ORANGE COUNTY FIRE AUTHORITY establishing a comprehensive procurement ordinance based on the American Bar Association Model Procurement Code.
3. Approve the proposed Resolution entitled A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY BOARD OF DIRECTORS AMENDING THE ROLES/RESPONSIBILITIES/AUTHORITIES MATRIX TO COINCIDE WITH THE NEW PURCHASING CODE.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

See attached extended background.

Attachment(s)

1. Ordinance No. 006 (current) Establishing Informal Bidding Procedures
2. Ordinance No. 007 (current) Establishing Purchasing Rules and Regulations
3. Proposed Ordinance No. 008 Establishing a Comprehensive Procurement Ordinance based on the Model Procurement Code
4. Purchasing Authorities Comparison Chart
5. Proposed Resolution Adopting the Roles/Responsibilities/Authorities Matrix for the OCFA

Background

The Orange County Fire Authority's purchasing ordinances and guidelines were originally established in 1995 and 1996 when OCFA had just formed and the organization was in the early stages of developing fiscal controls. The existing ordinances provide for centralized procurement functions and were subsequently updated in 2003, and again in 2009, to provide for updates allowing for electronic processes, increase informal bid limits, and to refine outdated or redundant language.

No substantial changes were made to either of the ordinances since their inception. As a result, the requirements that govern our procurement practices today are substantially the same as they were when they were adopted. The purpose of the new ordinance is to simplify, clarify, centralize, and modernize the requirements governing the procurement functions of the OCFA.

American Bar Association Model Procurement Code

Based on a review of best practices in public procurement, staff is recommending a new comprehensive procurement ordinance or code based on the American Bar Association (ABA) Model Procurement Code (MPC). The MPC was initially developed and adopted in 1979 and updated in 2000. The MPC is identified as the most recognized regulatory model for state and local government in the country. Due to its longevity and exposure to countless procurement challenges, the MPC provides the best standard. The MPC has been adopted in part and in whole by thousands of local jurisdictions across the United States.

The MPC structure is intended to provide a flexible framework that promotes transparency, fairness, competition, and reliable processes for government agencies adopting a model procurement-based code. The proposed new Ordinance No. 008 is structured into twelve articles providing policies, legal remedies and ethical considerations as summarized below. Articles I through X cover basic policies for the procurement of supplies, services and construction; disposal of supplies; and legal remedies. Article XI is reserved for any new/additional policies that OCFA may elect to become subject to in the future and Article XII establishes ethical standards for procurement staff.

The MPC provides a guide for addressing common procurement related concerns. Current OCFA Ordinance Nos. 006 and 007 are missing some key components typically found in government procurement regulations such as, authorization for best value procurements (request for proposals), protest provisions and authorization for use of cooperative purchasing contracts. The need for further direction on these elements was referenced in an Internal Control Review of Purchasing Practices (2013), which referenced some of these concerns and suggested the adoption of a purchasing ordinance based on the MPC. Due to the comprehensive changes and combination of the two ordinances into one, it was not feasible to red-line the prior ordinances in the incorporation.

OCFA legal counsel has provided an in-depth review of the new proposed purchasing Ordinance No. 008 and supports the recommended changes.

Research on Procurement Limits

The current Roles/Responsibilities/Authorities matrix was updated on February 26, 2015. Staff has reviewed and compared the purchasing limits of larger regional agencies in the county including the County of Orange, Orange County Transportation Authority (OCTA), and Irvine Ranch Water District (IRWD). The City of Irvine was also included in the comparison and a chart of the findings is included (Attachment 4). Based on this comparison, staff is proposing changes in OCFA's purchasing authority limits that will put the OCFA thresholds in line with other regional agencies of like-size.

Proposed Changes to Procurement Limits

The recommended changes in the Roles and Responsibilities matrix will provide further clarification to OCFA staff and will allow for additional management authority in an effort to streamline the purchasing process for the day to day purchasing needs. The updated code will provide the legal backbone for the source selection and contract formation methods used in awarding Fire Authority contracts. ***The Executive Committee would retain the authority to approve non-competitive contracts and those with significant value and the Board would retain the authority for all formal public projects.***

Proposed revisions to the Roles and Responsibilities matrix include:

- References to applicable sections in the procurement code
- Separates commodity purchases and fixed assets allowing for different approval limits
- Increases management authority for the approval and amendment of commodity contracts (materials, equipment and supplies) so long as the annual contract amount remains less than \$250,000
- Provides for management authority to approve fixed asset purchases less than \$100,000 per unit
- Modifies management authority to approve service contracts less than \$100,000 annually, and for multi-year contracts when the total contract amount does not exceed \$500,000
- Further defines change orders and contract amendments with revised approval amounts
- Increases management authority for sole source purchases from \$25,000 to \$50,000 aggregate in order to align with the small purchase limits defined in Sec. 1-20 of the procurement code
- Addition of special procurements defined in Sec. 1-23 with management authority at the same limits as sole source (up to \$50,000). *Special procurements are for those purchases that are in the best interest to the Fire Authority that do not meet the definition of a sole source and reasons for not going through a solicitation process are validated*
- Included details of current thresholds from the Public Contract Code Section 22032
- Reduced management authority on informal public project change orders from \$50,000 to \$17,500 which equals 10% of the current informal amount defined in the Public Contract Code
- Added Board approval for change orders on formal public projects greater than 10% of the original contract amount or \$50,000 whichever is less
- Added the authority for the Fire Chief or his designee to declare an emergency and authorize procurement of equipment, services, construction services and supplies without competitive bidding requirements with reporting to follow at the next scheduled Board meeting

Summary of Benefits in Adopting the Proposed MPC & Roles/Responsibilities Matrix

The establishment of one comprehensive ordinance that governs procurement will create a clear and consistent guide for staff, vendors doing business with OCFA, and the public. The structure of the ordinance will allow for future amendments as required without rescinding and replacing the entire ordinance. Staff recommends adoption of a new OCFA Procurement Code, proposed Ordinance No. 008, which is based in large part upon the ABA Model Procurement Code.

Revision to the Roles, Responsibilities, and Authorities Matrix will provide the OCFA staff with the tools needed to address the daily needs of the Fire Authority while permitting the Executive Committee and the Board of Directors to retain oversight in the process.

ORDINANCE NO. 006

**AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE
COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 002 AND
ESTABLISHING INFORMAL BIDDING PROCEDURES UNDER THE
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT
(SECTION 22000, ET SEQ, OF THE PUBLIC CONTRACT CODE)**

RECITALS

A. WHEREAS, on February 22, 1996, the Orange County Fire Authority adopted OCFA Ordinance No. 002 establishing informal bidding procedures under the Uniform Public Construction Cost Accounting Act; and

B. WHEREAS, at the time of adoption of Ordinance 002, the UPCCAA authorized informal bidding procedures to be applied for construction contracts no greater than \$75,000, and accordingly, Ordinance 002 limited the application of informal bidding procedures to contracts no greater than \$75,000; and

C. WHEREAS, since the adoption of Ordinance 002, the UPCCAA has been amended to authorize public agencies to apply informal bidding procedures to larger construction contracts, with the limit presently set at \$125,000; and

D. WHEREAS, the Board of Directors wishes to replace the existing \$75,000 limitation established in Ordinance 002 with the maximum limit set forth in the UPCCAA, as that limitation may be amended from time to time, and to make related administrative changes in the procedures.

THEREFORE, the Board of Directors of the Orange County Fire Authority does hereby ordain as follows:

Section 1. Repeal of Ordinance No. 002; Replacement.

As of the effective date of this Ordinance, Ordinance No. 002 is hereby repealed and replaced, in its entirety, with the provisions of this Ordinance.

Section 2.0 Informal Bid Procedures

Public works projects, as defined by the Uniform Public Construction Cost Accounting Act, and in accordance with the limits listed in Section 22302 of the Public Contract Code, as those limits may be amended from time to time, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code.

Section 2.1 Contractors List

A list of qualified contractors, identified according to categories of work, shall be developed and maintained by the Authority in accordance with the provisions of Section 22034 of the Public Contract Code and criteria established from time to time by the California Uniform Construction Cost Accounting Commission.

Section 2.2 Notice Inviting Informal Bids

Where a public works project is to be performed which is subject to the provisions of this Ordinance, a notice inviting informal bids shall be mailed to all contractors for the category of work to be bid, as shown on the list developed in accordance with Section 2.1, or to all construction trade journals as specified by the California Uniform Construction Cost Accounting Commission in accordance with Section 22036 of the Public Contract Code, unless the product or service is proprietary. Additional contractors and/or construction trade journals may be notified at the discretion of the Authority. If there is no list of qualified contractors maintained by the Authority for the particular category of work to be performed, the notice inviting bids shall be sent only to the construction trade journals specified by the Commission.

Section 2.3 Mailing of Notices and Description of Project

All mailing of notices to contractors or construction trade journals pursuant to Section 2.2 shall be completed not less than 10 calendar days before bids are due. The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

Section 2.4 Bids in Excess of the Formal Limit

If all bids received are in excess of the formal limit then set forth in Section 22032, the Board may, by passage of a resolution by a 4/5ths vote, award the contract to the lowest responsible bidder, if the Board determines the cost estimate was reasonable and if the contract amount does not exceed the maximum amount then permissible set forth in Section 22034.

Section 2.5 Award of Contracts

Except as specified under Section 2.4, the Orange County Fire Authority Purchasing Manager is authorized to award informally bid contracts pursuant to provisions of this ordinance.

Section 3. Severability

If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of the entire Ordinance or any of the remaining portions.

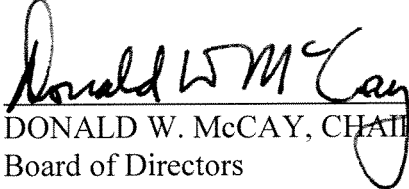
Section 4. Precedence

This Ordinance shall supercede the provisions of any previously adopted ordinance, resolution or policy inconsistent herewith.

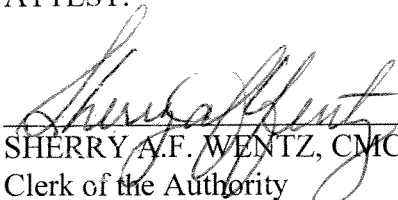
Section 5. Effective Date; Publication

This Ordinance shall take effect and be in force thirty (30) days after the date of its passage. Before the expiration of fifteen (15) days after its passage, it or a summary of it shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Orange County Register, a newspaper of general circulation published in the County of Orange.

PASSED, APPROVED, AND ADOPTED this 23rd day of April 2009.


DONALD W. McCAY, CHAIR
Board of Directors

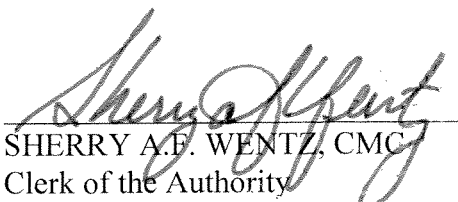
ATTEST:


SHERRY A.F. WENTZ, CMC
Clerk of the Authority

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF ORANGE }

I, SHERRY A.F. WENTZ, Clerk of the Orange County Fire Authority, do hereby certify that the foregoing Ordinance No. 006 was duly introduced and placed upon its first reading at a regular meeting of the Orange County Fire Authority Board of Directors on the 26th day of March 2009, and that thereafter, said Ordinance was duly adopted and passed at an adjourned regular meeting of the Board of Directors of the Orange County Fire Authority held on the 23rd day of April 2009, by the following vote, to wit:

AYES:	Joe Aguirre, Alternate, Placentia	Neil Blais, Rancho Santa Margarita
	Bill Campbell, County of Orange	Henry Charoen, La Palma
	Dr. Steven S. Choi, Irvine	Troy Edgar, Los Alamitos
	Trish Kelley, Mission Viejo	Don McCay, Buena Park
	Janet Nguyen, County of Orange	Jim Palmer, Alternate, Tustin
	Brad Reese, Villa Park	Nancy Rikel, Yorba Linda
	Martin Rhodes, Alternate, Laguna Woods	R. Craig Scott, Laguna Hills
	Todd Seymore, Cypress	David Shawver, Stanton
	David Sloan, Seal Beach	Tri Ta, Westminster
	Mark Tettemer, Lake Forest	Dr. Londres Uso, San Juan Capistrano
	Steven Weinberg, Dana Point	
NOES:	None	
ABSTAIN:	None	
ABSENT:	Carmen Cave, Aliso Viejo	Gary Capata, Laguna Niguel
	Greg Sowards, Placentia	James Dahl, San Clemente
	Doug Davert, Tustin	


SHERRY A.F. WENTZ, CMC
Clerk of the Authority

ORDINANCE NO. 007

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 005 AND ESTABLISHING THE PURCHASING RULES AND REGULATIONS OF THE FIRE AUTHORITY

RECITALS

A. WHEREAS, on January 16, 2003, the Orange County Fire Authority adopted OCFA Ordinance No. 005 establishing the Authority's purchasing rules and regulations of the Fire Authority. Ordinance No. 005 established the general guidelines for all purchasing activities (except Public Works projects) of the Fire Authority; and

B. WHEREAS, Ordinance No. 005 limited more expedited informal bidding processes to contracts of not greater than \$5,000, the same limits established when the Fire Authority was established in 1995; and

C. WHEREAS, revising the informal bid limit to \$10,000 will help keep pace with the escalating cost of goods and services, and will result in efficiency savings; and

D. WHEREAS, additional improvements in contracting efficiency for the Fire Authority and those contracting with it can be achieved by: changing the award criteria for emergency purchases from "quickest" to "most value-added"; providing an alternate Published Notice requirement to include posting on the OCFA website; allowing for a secure, web-based system to receive formal bids; allowing posting of bid tabulations on the OCFA website; and allowing for posting bid solicitations on the OCFA website.

THEREFORE, the Board of Directors of the Orange County Fire Authority does hereby ORDAIN:

Section 1. Repeal of Ordinance No. 005; Replacement:

As of the effective date of this Ordinance, Ordinance No. 005 is hereby repealed and replaced, in its entirety, with the provisions of this Ordinance.

Section 2. ADOPTION OF PURCHASING SYSTEM

In order to establish efficient procedures for the purchase of services, supplies and equipment; to secure for the Fire Authority supplies, equipment, services at the lowest possible cost commensurate with quality needed; to exercise positive financial control over purchases; to clearly define authority for the purchasing functions; to assure the quality of purchases; and to buy without favor or prejudice, a purchasing system is hereby adopted and shall control the procedure for all purchases except Public Works projects and as otherwise provided by law.

Section 3. DEFINITION OF TERMS

The following terms, whenever used in this Ordinance, shall be construed as follows:

- A. Fire Authority: The Orange County Fire Authority.
- B. Purchases: Purchases of services, supplies and equipment shall include Master Lease Agreements and other debt service agreements.
- C. Purchasing Manager: The official appointed by the Fire Chief for enforcement of this division. The duties of the Purchasing Manager may be combined with those of another position.
- D. Services, Supplies and Equipment: Any and all services, articles, things, or personal property furnished to or used by the Fire Authority.

Section 4. A CENTRALIZED PURCHASING PROGRAM

There is hereby created a centralized purchasing program within the Orange County Fire Authority in which is vested authority for the purchase of services, supplies and equipment. The Board of Directors shall adopt by resolution policies setting forth the authority and limitations of the centralized purchasing program.

Section 5. PURCHASING MANAGER GENERAL POWERS

The Purchasing Manager shall direct and supervise the purchasing program. He/she shall appoint such deputies, assistants or other employees as shall from time to time be authorized. The Purchasing Manager utilizing sound professional purchasing practices, shall endeavor to obtain as full and open competition as reasonable on all purchases and shall award all purchases to qualified bidders. He/she shall furnish the Board of Directors with such reports and information as the Board may from time to time require, and shall establish methods and procedures necessary for the proper functioning of the purchasing program in an efficient and economical manner.

Section 6. PURCHASING MANAGER AUTHORITY

The Purchasing Manager shall have the authority to:

- A. Purchase Material: Purchase all services, supplies, equipment and other personal property required by the Fire Authority in accordance with the policies and procedures adopted by the Board of Directors, administrative procedures approved by the Fire Chief, or as otherwise provided by law. Except in cases of emergency, pursuant to Section 12 or where the Board of Directors or the Executive Committee has retained authority, no purchase of services, supplies and

equipment by any person other than the Purchasing Manager or his or her appointed designee shall be binding upon the Fire Authority or constitute a lawful charge against Fire Authority funds.

- B. Contract Generally: Enter into any contract permitted by law, including but not limited to purchase orders, price agreements, equipment service contracts, lease purchase agreements, professional service contracts and rental agreements, subject to any restrictions set forth in this division or specifically provided for by law.
- C. Dispose of Surplus Property: Dispose of all Fire Authority surplus supplies and equipment and any other surplus personal property in accordance with the provisions of Section 13 of this Ordinance.

Section 7. PURCHASING REQUIREMENTS

Purchases of services, supplies, and equipment shall be made and accomplished in conformity with Section 8, except:

- A. When the amount is less than ten thousand dollars (\$10,000); or
- B. When the Purchasing Manager determines that an emergency exists which requires that an order be placed with the most value-added source of supply; or
- C. When an emergency exists pursuant to Section 12; or
- D. When the Purchasing Manager, with the approval of the Fire Chief, determines that the services, supplies, and equipment needed can feasibly be obtained from one source only; or
- E. When the Board of Directors has contracted for or transferred the authority to make the purchase of services, supplies and equipment to another governmental agency or officer thereof pursuant to lawful authority; or
- F. When the Board of Directors finds that the public interest and convenience require the purchase of services, supplies, and equipment utilizing purchasing agreements maintained by the county, state or other public agencies; or
- G. When the Board of Directors determines to dispense with such bidding and other procedures in any individual instance upon finding that it would be impractical, useless or uneconomical in such instance to follow the bidding or other procedures, and that the welfare of the public would be promoted by dispensing with the same.

Section 8. BIDDING - PROCEDURES

The bidding procedure for the Orange County Fire Authority shall be one of the following:

A. Formal Written Bid Process:

A formal written bid shall be processed as indicated below for all purchases where required by state and/or federal laws or when required by action of the Board of Directors or Executive Committee, but shall not apply to public works contracts. The process shall include the following components:

1. NOTICE INVITING BIDS. Notices inviting bids shall include a general description of the articles to be purchased and shall state where the bid documents and specifications may be secured and the time and place for opening bids.
 - a. Published Notice: The first notice inviting bids shall be published at least ten days before the opening of the bids. Notice shall be published at least twice, not less than five days apart, in a newspaper of general circulation, printed and published in the County of Orange; or the notice may be posted on the Fire Authority's website at least ten days prior to the opening of bids.
2. BIDDERS' SECURITY. When deemed necessary, or when required by state and/or federal law, bidders' security will be prescribed in the public notices inviting bids. The security shall be returned upon rejection of a bid, provided that a successful bidder shall forfeit his bid security upon refusal or failure to execute the contract within ten days after the award of contract has been mailed, unless the Fire Authority is responsible for or agrees to the delay. The Board of Directors may, on refusal or failure of the successful bidder to execute the contract, award it to the next lowest responsive and responsible bidder. If the Fire Authority awards the contract to the next lowest responsive and responsible bidder, the amount of the lowest bidders' security shall be applied by the Fire Authority to the difference between the low bid and the second lowest bid, and the surplus, if any shall be returned to the lowest bidder or to the surety if a bidder's bond is used.
3. BID OPENING PROCEDURE. Sealed bids shall be submitted to the Fire Authority and shall be identified as bids on the envelope. Bids shall be opened in public at the time and place stated in the public notices.

A secure, web-based system or other appropriate media may be used in lieu of sealed bids opened in public, provided that the Purchasing Manager has approved the system for accuracy, confidentiality, and reliability.

A tabulation of all bids received shall be posted on the Fire Authority's website; or, open for public inspection during regular business hours for a period of not less than thirty calendar days after the bid opening.

4. REJECTION OF BIDS. At its discretion, the Board of Directors may reject all bids presented and re-advertise for bids.
5. AWARD OF CONTRACTS. Contracts shall be awarded to the lowest responsive and responsible bidder, except as otherwise provided herein.
6. TIE BIDS. If two or more bids received are for the same total amount or unit price with equal quality and service, and if the public interest will not permit the delay of re-advertising for bids, the Fire Authority shall accept the bidder whose business is located within the OCFA service areas, or accept the one it chooses, or accept the lowest responsive and responsible bid made by negotiation with the tie bidders.
7. PERFORMANCE BONDS. The Board of Directors shall have the authority to require a performance bond before entering into a contract in such amount as it shall find reasonably necessary to protect the best interests of the Fire Authority. If the Fire Authority requires a performance bond, the form and amount of the bond shall be described in the notice inviting bids or in the contract specifications.

B. Open Market Process:

Purchase of services, supplies, and equipment shall be made by the Purchasing Manager following the open market process described herein where neither state and federal laws nor action of the Board of Directors or Executive Committee require the use of the formal written bid process, or where these procedures are not otherwise exempted. This process shall include the following:

1. MINIMUM NUMBER OF BIDS. Open market purchases shall, whenever possible, be based on at least three bids.
2. SOLICITING BIDS. The Purchasing Manager shall solicit bids from prospective vendors by written request, FAX, telephone, or by public notice posted on the Fire Authority's website.

3. AWARD OF PURCHASE. Open market purchases shall be awarded to the most qualified bidder as determined by the Orange County Fire Authority.

Section 9. RECORD RETENTION

The Purchasing Manager shall maintain records of all sealed written bids and open market orders resulting therefrom for a period of one year after the submission of the bids or the placing of orders. This record, while so kept, shall be open to public inspection during regular business hours.

Section 10. ENCUMBRANCES OF FUNDS

Except in cases of emergency, or in cases where specific authority has been first obtained from the Fire Chief, the Purchasing Manager shall not issue any purchase orders for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which said purchase is to be charged. All purchases, regardless of encumbrances, shall be made in conformance with the policies established by this Ordinance.

Section 11. INSPECTION AND TESTING

The Purchasing Manager may inspect supplies and equipment delivered to determine their conformance with the specifications set forth in the order or contract. The Purchasing Manager shall have authority to require chemical and physical tests of samples submitted with bids and samples of deliveries which are necessary to determine compliance with specifications.

Section 12. EMERGENCY PURCHASES

In the event services, equipment or supplies are immediately necessary for the preservation to life or property, emergency purchases may be made without compliance with Section 8 by:

The Fire Chief and/or his designee who shall provide a full report of the circumstances of all emergency purchases in excess of the Fire Chief's delegated authority. Such purchases require prior approval of the Chair or Vice-Chair and shall be reported at the next meeting of the Executive Committee.

Section 13. SURPLUS SUPPLIES AND EQUIPMENT

The process for the disposition of surplus supplies and equipment shall be as follows:

- A. Disposition of Surplus Property: The approved disposition process for surplus property will be determined by the Purchasing Manager and shall be in accordance with guidelines as established in the OCFA Purchasing Handbook.

- B. Donated Property: If the surplus property has an estimated value of less than \$5,000 and it is proposed that the property may be donated, the Purchasing Manager has the authority to determine whether the proposed donation of the surplus property to another local agency or non-profit organization is in keeping with the intent of the California Constitution. Under the California Constitution, when a public agency gives a surplus item to another organization, the item must be used for a public purpose of interest and benefit generally to the people of the agency's jurisdiction and in keeping with the agency's purpose. Said donations shall require the prior approval of the Fire Chief and a release of liability to OCFA from the agency accepting the surplus property. Donations of surplus property with an estimated value of \$5,000 or more must require prior approval of the Executive Committee or Board of Directors.
- C. Historical Surplus Property: Surplus Property deemed to have historical significance, by the Fire Chief and/or his designee, will be transferred and placed in the custody of a designated section manager for safe keeping.
- D. Surplus Property: The Purchasing Manager shall provide an annual report of surplus property disposition to the Assistant Chief of Business Services.

Section 14. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid, such invalidity shall not affect the validity of the entire Ordinance or any of the remaining portions.

Section 15. PRECEDENCE

This Ordinance shall supercede the provisions of any previously adopted ordinance, resolution or policy inconsistent herewith.

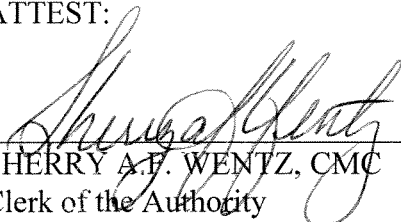
Section 16. EFFECTIVE DATE; PUBLICATION.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, it or a summary of it shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Register, a newspaper of general circulation published in the County of Orange.

PASSED, APPROVED, AND ADOPTED this 23rd day of April 2009.


DONALD W. McCAY, CHAIR
Board of Directors


ATTEST:


SHERRY A.F. WENTZ, CMC
Clerk of the Authority

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF ORANGE }

I, SHERRY A.F. WENTZ, Clerk of the Orange County Fire Authority, do hereby certify that the foregoing Ordinance No. 007 was duly introduced and placed upon its first reading at a regular meeting of the Orange County Fire Authority Board of Directors on the 26th day of March 2009, and that thereafter, said Ordinance was duly adopted and passed at an adjourned regular meeting of the Board of Directors of the Orange County Fire Authority held on the 23rd day of April 2009, by the following vote, to wit:

AYES:	Joe Aguirre, Alternate, Placentia	Neil Blais, Rancho Santa Margarita
	Bill Campbell, County of Orange	Henry Charoen, La Palma
	Dr. Steven S. Choi, Irvine	Troy Edgar, Los Alamitos
	Trish Kelley, Mission Viejo	Don McCay, Buena Park
	Janet Nguyen, County of Orange	Jim Palmer, Alternate, Tustin
	Brad Reese, Villa Park	Nancy Rikel, Yorba Linda
	Martin Rhodes, Alternate, Laguna Woods	R. Craig Scott, Laguna Hills
	Todd Seymore, Cypress	David Shawver, Stanton
	David Sloan, Seal Beach	Tri Ta, Westminster
	Mark Tettemer, Lake Forest	Dr. Londres Uso, San Juan Capistrano
	Steven Weinberg, Dana Point	
NOES:	None	
ABSTAIN:	None	
ABSENT:	Carmen Cave, Aliso Viejo	Gary Capata, Laguna Niguel
	Greg Sowards, Placentia	James Dahl, San Clemente
	Doug Davert, Tustin	


SHERRY A.F. WENTZ, CMC
Clerk of the Authority

ORDINANCE NO. 008

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 006 AND ORDINANCE NO. 007 AND ESTABLISHING THE PURCHASING RULES AND PROCEDURES OF THE ORANGE COUNTY FIRE AUTHORITY

RECITALS

A. *WHEREAS*, on April 23, 2009, the Orange County Fire Authority adopted OCFA Ordinance No. 006 establishing informal bidding procedures under the Uniform Public Construction Cost Accounting Act; and

B. *WHEREAS*, on April 23, 2009, the Orange County Fire Authority adopted OCFA Ordinance No. 007 establishing the purchasing rules and procedures; and

C. *WHEREAS*, the Board wishes to replace these two ordinances with a single ordinance based on the American Bar Association Model Procurement Code.

THEREFORE, the Board of Directors of the Orange County Fire Authority does hereby ordain as follows:

Section 1. Repeal of Ordinance Nos. 006 and 007; Replacement.

As of the effective date of this Ordinance, Ordinance No. 006 and No. 007 are hereby repealed and replaced, in their entirety, with the Orange County Fire Authority Procurement Code attached hereto as Exhibit A.

Section 2. Effective Date; Publication.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, it or a summary of it shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Register, a newspaper of general circulation published in the County of Orange.

PASSED, APPROVED and ADOPTED this ____ day of _____ 2016.

GENE HERNANDEZ, CHAIR
OCFA Board of Directors

ATTEST:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss
CITY OF ORANGE }

I, SHERRY A.F. WENTZ, Clerk of the Orange County Fire Authority, do hereby certify that the foregoing Ordinance No. 008 was duly introduced and placed upon its first reading at a regular meeting of the Orange County Fire Authority Board of Directors on the _____ day of _____ 2016, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the Board of Directors of the Orange County Fire Authority held on the _____ day of _____ 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

EXHIBIT A

ORANGE COUNTY FIRE AUTHORITY
PROCUREMENT CODE

- Art. I. In General, §§ 1-1--1-10**
- Art. II. Chief Procurement Officer Authority, §§ 1-11--1-14**
- Art. III. Source Selection and Contract Formation, §§ 1-15--1-40**
- Art. IV. Specifications, §§ 1-41--1-46**
- Art. V. Procurement of Public Works Projects and Professional Design Services, §§ 1-47--1-57**
- Art. VI. Contract Terms and Conditions, §§ 1-58--1-61**
- Art. VII. Cost Principles, §§ 1-62--1-65**
- Art. VIII. Materials Management, §§ 1-66--1-74**
- Art. IX. Legal and Contractual Remedies, §§ 1-75--1-125**
- Art. X. Cooperative Purchasing, §§ 1-126--1-131**
- Art. XI. Reserved, §§ 1-132--1-136**
- Art. XII. Ethics in Public Contracting, §§ 1-137--1-140**

Article I. General Provisions

- Sec. 1-1. General Law.
- Sec. 1-2. Applicability.
- Sec. 1-3. Definitions.
- Sec. 1-4. Supplementary general principles of law applicable.
- Sec. 1-5. Requirement of good faith.
- Sec. 1-6. Confidential information.
- Secs. 1-7--1-10. Reserved.

Article II. Chief Procurement Officer Authority

Sec. 1-11. Authority of the Chief Procurement Officer.

Sec. 1-12. Written determinations.

Secs. 1-13, 1-14. Reserved.

Article III. Source Selection and Contract Formation

Sec. 1-15. Definitions.

Sec. 1-16. Methods of source selection.

Sec. 1-17. Competitive sealed bidding.

Sec. 1-18. Competitive sealed proposals.

Sec. 1-19. Contracting for legal counsel.

Sec. 1-20. Small purchases.

Sec. 1-21. Sole source procurement.

Sec. 1-22. Emergency procurements.

Sec. 1-23. Special procurements.

Sec. 1-24. Cancellation of solicitations.

Sec. 1-25. Rejection of individual bids, proposals, quotations or statements of qualifications

Sec. 1-26. Responsibility of bidders, offerors and respondents.

Sec. 1-27. Bid and contract security, material or service contracts.

Sec. 1-28. Types of contracts.

Sec. 1-29. Approval of accounting system.

Sec. 1-30. Multi-year contracts.

Sec. 1-31. Right to inspect.

Sec. 1-32. Right to audit records.

Sec. 1-33. Reporting of anticompetitive practices.

Sec. 1-34. Prospective vendors lists.

Sec. 1-35. Contract form and execution.

Sec. 1-36. Assignment of rights and duties.

Sec. 1-37--1-40. Reserved.

Article IV. Specifications

- Sec. 1-41. Definitions.
- Sec. 1-42. Maximum practicable competition.
- Sec. 1-43. Specifications prepared by other than Fire Authority personnel.
- Sec. 1-44. Brand name or equal specification.
- Sec. 1-45. Brand name specification.
- Sec. 1-46. Reserved.

Article V. Procurement of Public Projects and Professional Design Services

- Sec. 1-47. Definitions.
- Sec. 1-48. Procurement of public projects.
- Sec. 1-49. Public project informal bidding procedures.
- Sec. 1-50. Public project formal bidding procedures.
- Sec. 1-51. Procurement of professional design services.
- Sec. 1-52. Procurement of construction services.
- Sec. 1-53. Public project emergencies procedures.
- Sec. 1-54--1-57. Reserved.

Article VI. Contract Terms and Conditions

- Sec. 1-58. Contract terms and conditions.
- Secs. 1-59--1-61. Reserved.

Article VII. Cost Principles

- Sec. 1-62. Cost principles.
- Sec. 1-63. Cost or pricing data.
- Secs. 1-64, 1-65. Reserved.

Article VIII. Materials Management

- Sec. 1-66. Definitions.
- Sec. 1-67. Materials management guidelines.
- Sec. 1-68. Inventory management.
- Sec. 1-69. Disposition of surplus property.
- Secs. 1-70--1-74. Reserved.

Article IX. Legal and Contractual Remedies

- Sec. 1-75. Definitions.
- Sec. 1-76. Authority of the Chief Procurement Officer.
- Sec. 1-77. Right to protest.
- Sec. 1-78. Filing of a protest.
- Sec. 1-79. Time for filing protests.
- Sec. 1-80. Stay of procurements during the protest.
- Sec. 1-81. Confidential information.
- Sec. 1-82. Decision by the Chief Procurement Officer.
- Sec. 1-83. Remedies.
- Sec. 1-84. Appeals to the Fire Chief.
- Sec. 1-85. Notice of appeal.
- Sec. 1-86. Stay of procurement during appeal.
- Sec. 1-87. Contract procurement officer report.
- Sec. 1-88. Dismissal by the Fire Chief.
- Sec. 1-89. Remedies.
- Sec. 1-90. Filing of a contract claim.
- Sec. 1-91. Chief Procurement Officer's decision.
- Sec. 1-92. Issuance of timely decision.
- Sec. 1-93. Appeals to the Fire Chief.
- Sec. 1-94. Fire Authority claims against a contractor.
- Sec. 1-95. Mediation.
- Sec. 1-96. Arbitration.
- Sec. 1-97. Final decision by the Fire Chief.
- Sec. 1-98. Judicial review of protests or claims.
- Sec. 1-99. Exclusive remedy.
- Secs. 1-100--1-115. Reserved.

Article X. Cooperative Purchasing

- Sec. 1-116. Definitions.

Sec. 1-117. Applicability.

Sec. 1-118. Cooperative purchasing agreements required.

Sec. 1-119. Cooperative purchasing authorized.

Secs. 1-120, 1-121. Reserved.

Article XI. Reserved

Secs. 1-122--1-126. Reserved.

Article XII. Ethics in Public Contracting

Sec. 1-127. Procurement Ethics Standards

Secs. 1-128--1-130. Reserved.

ARTICLE I. GENERAL PROVISIONS

Purpose

The purpose of the Orange County Fire Authority Procurement Code is to:

- (a) Simplify, clarify, centralize, and modernize the Fire Authority's rules and regulations governing procurement.
- (b) Permit the continued development of best value procurement policies and practices.
- (c) Provide for increased public confidence in the procurement procedures followed by the Fire Authority.
- (d) Ensure the fair and equitable treatment of all persons who deal with the procurement system of the Fire Authority.
- (e) Provide increased economy in Fire Authority procurement activities and maximize, to the fullest extent practicable, the purchasing value of public monies of the Fire Authority, and foster effective broad-based competition within the free enterprise system.
- (f) Provide safeguards for the maintenance of a procurement system of quality and integrity.
- (g) Obtain in a cost-effective and timely manner the materials, services, and construction required by the Fire Authority to better serve its citizens.

Sec. 1-1. General Law.

Pursuant to and to the extent required by Government Code Section 6509, the Orange County Fire Authority shall be restricted in the exercises of its powers in the same manner as is a general law city in accordance with the joint power agreement formed as of February 3, 1995, and as subsequently amended.

Sec. 1-2. Applicability.

Sec. 1-2(1). The provisions of this code shall apply to the following:

- (a) Every expenditure of public monies by the Fire Authority irrespective of their source, including State and Federal assistance monies, for the procurement of materials, services, and public projects;
- (b) Disposal of property; and
- (c) Contracts where there is no expenditure of public monies or where the Fire Authority is offering something of value to the business community when the Fire Authority determines source selection and award of a contract.

Sec. 1-2(2). The following are exempt from the provisions of this code:

- (a) Grants awarded by the Fire Authority and approved by the Board of Directors;
- (b) The purchase, sale or lease of Fire Authority real property;
- (c) Contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which the Fire Authority

is or may become a party to, and contracts for special investigative services for law enforcement purposes;

(d) Agreements negotiated by the Fire Authority in settlement of litigation or threatened litigation; or

(e) Contracts with other governmental agencies.

Sec. 1-3. Definitions.

In this code, unless the context otherwise requires:

Sec. 1-3(1). "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 1-3(2). "Change order" means a written document authorized by the Chief Procurement Officer which directs the contractor to make changes with or without the consent of the contractor.

Sec. 1-3(3). "Chief Procurement Officer" means the official appointed by the Fire Chief as the purchasing and materials manager and the central procurement and contracting authority for the Fire Authority.

Sec. 1-3(4). "Contract" means all types of Fire Authority agreements, regardless of what they may be called, for the procurement of materials, maintenance, services, public works, construction or the disposal of materials.

Sec. 1-3(5). "Construction" means the process of building, reconstructing, erecting, altering, renovating, improving, demolishing, or repairing any Fire Authority owned, leased, or operated facility. Construction does not include maintenance work, which is defined to include routine, recurring, and usual work for the preservation or protection of any Fire Authority owned or operated facility for its intended purposes.

Sec. 1-3(7). "Contract officer" means any person duly authorized by the Chief Procurement Officer to facilitate the source selection process, including but not limited to; preparing solicitations and written determinations, conducting negotiations, making award recommendations, and administering contracts.

Sec. 1-3(8). "Contractor" or "Consultant" means any person who has a procurement contract with the Fire Authority.

Sec. 1-3(9). "Days", unless otherwise specified, means calendar days and shall be computed by excluding the first day and including the last working day, unless the last day is a holiday, and then it is also excluded.

Sec. 1-3(10). "Department" means the Purchasing Section of the Business Services Department.

Sec. 1-3(11). "Designee" means a duly authorized representative of the Chief Procurement Officer, designated by the Chief Procurement Officer.

Sec. 1-3(12). "Disposal of material" means sale of surplus property by public auction, including online electronic auction, competitive sealed bidding, small purchase procedures, recycling, or other appropriate method designated by this code.

Sec. 1-3(13). "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other

similar technology.

Sec. 1-3(14). "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Sec. 1-3(15). "Executive Committee" means the Executive Committee of the Orange County Fire Authority Board of Directors.

Sec. 1-3(16). "Fire Authority" means the Orange County Fire Authority.

Sec. 1-3(17). "Grant" means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 1-3(18). "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 1-3(19). "Person" means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 1-3(20). "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any materials, services, or construction. Procurement also includes all functions that pertain to the acquisition of any material, service, or construction including but not limited to, description of requirements, selection and solicitation of sources, preparation, negotiation and, award of contract, and all phases of contract administration.

Sec. 1-3(21). "Professional service" means a unique, technical function performed by an independent contractor or firm qualified by education, experience, and/or technical ability to provide services and may include consulting, marketing analysis, banking services, auditing, software development/design, and editing services.

Sec. 1-3(22). "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 1-3(23). "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or sub-consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to: consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.

Sec. 1-3(24). "Sole Source" means a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions.

Sec. 1-3(25). "Subcontractor or subconsultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the Fire Authority.

Sec. 1-3(26). "Written or in writing" means the product of any method for forming characters on paper or other material or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 1-3(27). "Using department" means any organizational unit of the Fire Authority, which utilizes any materials, services or construction procured under this code.

Sec. 1-4. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this code.

Sec. 1-5. Requirement of good faith.

This code requires all parties involved in the negotiation, performance, or administration of Fire Authority contracts to act in good faith.

Sec. 1-6. Confidential information.

All bids, proposals, offers, specifications, or protests submitted to the Fire Authority are subject to public inspection and disclosure under the California Public Records Act (Government Code Section 6250 et seq.). If a person believes that any portion of its bid, proposal, offer, specifications or protest is exempt from public disclosure, such portion may be marked "confidential." Except as required by law or court order, the Fire Authority will use reasonable means to ensure that such confidential information is safeguarded.

Secs. 1-7--1-10. Reserved.

ARTICLE II. CHIEF PROCUREMENT OFFICER AUTHORITY

Sec. 1-11. Authority of the Chief Procurement Officer.

Sec. 1-11(1). Except as otherwise provided in this code, the Chief Procurement Officer may adopt operational procedures consistent with this code governing the procurement and management of all materials, services, and construction to be procured by the Fire Authority and the disposal of materials.

Sec. 1-11(2). The Chief Procurement Officer shall serve as the central procurement and contracting authority of the Fire Authority.

Sec. 1-11(3). Except as otherwise provided in this code, the Chief Procurement Officer shall:

- (a) Procure or supervise the procurement of all materials, services and construction needed by the Fire Authority and establish the methods and procedures necessary for the proper, efficient, and economical functioning of the procurement program.
- (b) Establish guidelines for the management of all inventories of materials belonging to the Fire Authority.
- (c) Sell, trade or otherwise dispose of surplus materials belonging to the Fire Authority in accordance with the provisions of Section 1-69.

- (d) Prepare, issue, revise, maintain, and monitor the use of specifications for materials, services and construction required by the Fire Authority.
- (e) Manage the Fire Authority's procurement card (pCard) program.
- (f) Furnish the Board of Directors with such reports and information as the Board may require.

Sec. 1-11(4). The Chief Procurement Officer may delegate procurement authority to designees or to any using department or official of the Fire Authority.

Sec. 1-11(5). The Chief Procurement Officer may determine in writing that noncompliance with any provision of this code is not substantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

Sec. 1-11(6). The Chief Procurement Officer, in accordance with this code, shall have the authority to award contracts not exceeding the amount defined under management authority in the Roles and Responsibilities Matrix. Contracts exceeding management authority shall be executed by the Chief Procurement Officer upon approval by the Executive Committee or the Board of Directors.

Sec. 1-11(7). Except in cases of emergency, pursuant to Section 1-22, or where the Board of Directors or the Executive Committee has retained authority, no purchase of services, supplies and equipment by any person other than the Chief Procurement Officer or designee shall be binding upon the Fire Authority or constitute lawful charge against Fire Authority funds.

Sec. 1-12. Written determinations.

Written determinations required by this code shall be retained in the department.

Secs. 1-13, 1-14. Reserved.

ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 1-15. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-15(1). "Best value" means a method in the competitive sealed proposal process which permits the evaluation of criteria to determine the best overall value to the Fire Authority.

Sec. 1-15(2). "Discussions" means communication with an offeror, bidder or respondent for the purpose of:

- (a) Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
- (b) Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
- (c) Resolving minor variations in contract terms and conditions; or
- (d) Establishing the competency or financial stability of any offeror, bidder or respondent.

Sec. 1-15(3). "Invitation for bid" means all documents, written or electronic, whether attached or

incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in Section 1-17.

Sec. 1-15(4). "Minor informalities or irregularities" means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms whereby the waiver or correction of such mistakes does not prejudice other bidders, offerors or respondents.

Sec. 1-15(5). "Negotiations" means an exchange of information or any form of cooperation during which the offeror and the Fire Authority may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract.

Sec. 1-15(6). "Registered supplier" means a supplier, vendor, or contractor that that has registered as an interested party to do business with the Fire Authority.

Sec. 1-15(7). "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Section 1-18.

Sec. 1-15(8). "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with Article V.

Sec. 1-15(9). "Responsible bidder, offeror, or respondent" means a person who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the procurement contract.

Sec. 1-15(10). "Responsive bidder" means a person who submits a bid which conforms in all material respects to a solicitation.

Sec. 1-15(11). "Solicitation" means an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, or any other invitation or request by which the Fire Authority invites a person to participate in a procurement.

Sec. 1-16. Methods of source selection.

All contracts of the Fire Authority shall be awarded by one of the methods of source selection specified in this code.

Sec. 1-17. Competitive sealed bidding.

Sec. 1-17(1). Invitation for bids.

- (a) Competitive sealed bids shall be solicited through an invitation for bids. The invitation for bids shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of an invitation for bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the contract officer shall only consider bids that are submitted from prequalified bidders.

Sec. 1-17(2). Public notice. Notice of the invitation for bids shall be electronically posted and the invitation for bids shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer. The public notice

shall state the place, date, and time of bid opening.

Sec. 1-17(3). Pre-bid conference. The Chief Procurement Officer may conduct a pre-bid conference. If a pre-bid conference is conducted, it shall be not less than seven days before the bid due date and time, unless the Chief Procurement Officer makes a written determination that the specific needs of the procurement justify a shorter time.

Sec. 1-17(4). Solicitation amendment. The Chief Procurement Officer shall issue a solicitation amendment to do any or all of the following:

- (a) Make a correction in the solicitation;
- (b) Correct defects or ambiguities;
- (c) Provide additional information or instructions; or
- (d) Extend the offer due date and time if the Chief Procurement Officer determines that an extension is in the best interest of the Fire Authority.

If a solicitation is changed by a solicitation amendment, the Chief Procurement Officer shall post the amendment electronically and notify registered suppliers. It is the responsibility of the offeror to obtain any solicitation amendments and acknowledge receipt of amendment as specified in the solicitation amendment.

Sec. 1-17(5). Late bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. A late bid shall be rejected. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 1-17(6). Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A secure web-based system or other appropriate media may be used in lieu of public bid opening, provided that the accuracy, confidentiality, and reliability is maintained. The name of each bidder and the amount of each bid, as well as other relevant information as the Chief Procurement Officer deems appropriate shall be recorded. Unless otherwise determined by the Chief Procurement Officer, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the department and a "bid" or "no bid" may be recorded on the tabulation. The bids shall not be available for public inspection until after a contract is awarded. After a notice of intent to award is issued or, in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.

Sec. 1-17(7). Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this code. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 1-17(8). Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the department prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the Fire Authority or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

- (a) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer.

Sec. 1-17(9). Contract award.

- (a) *General.* The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (b) *Public record.* After the Fire Authority issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.
- (c) *Encumbrance of funds.* Except in cases of emergency, or in cases where specific authority has been first obtained from the Fire Chief, the Chief Procurement Officer shall not issue any purchase orders for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which said purchase is to be charged. All purchases, regardless of encumbrances, shall be made in conformance with the policies established by this code.
- (d) *Procurement of recycled material.* Recycled products shall be used whenever practicable when they are of comparable quality, of equivalent price and appropriate for the intended use. Recycled products shall be procured in accordance with Public Contract Code, Section 22150, et seq.

Sec. 1-17(10). Low tie bids. If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Chief Procurement Officer.

Sec. 1-18. Competitive sealed proposals.

Sec. 1-18(1). Request for proposals.

- (a) Competitive sealed proposals shall be solicited through a request for proposals. The request for proposals shall include a scope of work and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

- (b) A prequalification process may be conducted prior to the issuance of a request for proposals in order to establish a list of qualified offerors. In the event a prequalification process is used, the contract officer shall only consider proposals that are submitted from prequalified offerors.

Sec. 1-18(2). Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 1-17(2).

Sec. 1-18(3). Pre-proposal conference. The Chief Procurement Officer may conduct a pre-proposal conference. If a pre-proposal conference is conducted, it shall be not less than seven days before the offer due date and time, unless the Chief Procurement Officer makes a written determination that the specific needs of the procurement justify a shorter time.

Sec. 1-18(4). Solicitation amendment. Solicitation amendments shall be handled in the same manner as provided in Section 1-17(4).

Sec. 1-18(5). Late proposals. A proposal is late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Section 1-17(5).

Sec. 1-18(6). Receipt of proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.

Sec. 1-18(7). Evaluation of proposals.

- (a) *Evaluation criteria.* The request for proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required.
- (b) *Selection committee.* The Chief Procurement Officer shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 1-18(8). Discussion with offerors. Discussions may be conducted with offerors.

Sec. 1-18(9). Negotiations with offerors and revisions to proposals. Negotiations may be conducted with offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (a) *Concurrent negotiations.* Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- (b) *Exclusive negotiations.* Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the Fire Authority. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the Fire

Authority may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 1-18(10). Contract award. Contract award shall be made by the Chief Procurement Officer to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Fire Authority taking into consideration the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Sec. 1-19. Contracting for legal counsel.

Sec. 1-19(1). Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, contracts for the services of legal counsel shall be awarded with the authorization of the Board of Directors or the Executive Committee except as otherwise provided by law.

Sec. 1-19(2). Conditions for use. Unless determined by the Board of Directors or the Executive Committee that direct selection is in the best interest of the Fire Authority, the services of legal counsel shall be procured in accordance with this code.

Sec. 1-20. Small purchases.

Sec. 1-20(1). General. Any contract for the purchase of supplies, equipment and services (including maintenance) not exceeding fifty thousand dollars (\$50,000.00) may be made by the Chief Procurement Officer in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

Sec. 1-20(2). Small purchases over ten thousand dollars (\$10,000.00). Insofar as it is practical for small purchases in excess of ten thousand dollars (\$10,000.00) but less than fifty thousand dollars (\$50,000.00), no less than three (3) businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the Fire Authority and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be maintained as a public record. Nothing herein contained, however, shall preclude the Fire Authority from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded or when the Chief Procurement Officer determines it is in the best interest of the Fire Authority to do so.

Sec. 1-20(3). Small purchases less than ten thousand dollars (\$10,000.00). The Chief Procurement Officer shall adopt operational procedures for making small purchases of ten thousand dollars (\$10,000.00) or less.

Sec. 1-21. Sole source procurement.

Notwithstanding any other provisions of this code, a contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using department requesting a sole source procurement shall provide written evidence to support a sole source determination. The Chief Procurement Officer may require that negotiations are conducted as to price, delivery, and terms. The Chief Procurement Officer may require the submission of cost or pricing data in connection with an award under this section. Sole source procurements exceeding the amount defined in the roles and responsibilities matrix shall be executed by the Chief Procurement Officer upon approval by the Executive Committee or Board of Directors. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a

public record.

Sec. 1-22. Emergency procurements.

Notwithstanding any other provisions of this code, the Fire Chief may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with Sections 1-17, 1-18, 1-49, or 1-50 contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The using department requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. Emergency procurements exceeding the amount defined in the roles and responsibilities matrix shall be executed by the Chief Procurement Officer upon approval by the Chair or Vice Chair of the Board of Directors. A written determination of the basis for the emergency and for the selection of the particular contractor shall be maintained as a public record.

Sec. 1-23. Special procurements.

Notwithstanding any other provisions of this code, the Executive Committee or the Board of Directors may authorize procurements above the small purchase amount specified in Section 1-20 for supplies, equipment or services (including maintenance) when, due to unusual or special circumstances, it would be in the best interest of the Fire Authority to accomplish the procurement without compliance with Sections 1-17 (competitive sealed bidding), 1-18 (competitive sealed proposals), or 1-51 (procurement of professional design services). This is not applicable to the procurement of construction services (Section 1-50). The using department requesting a special procurement shall provide written evidence to support a special procurement determination. Any special procurement under this section shall be limited to those materials, equipment or services, necessary to satisfy the Fire Authority's need and shall be made with sound fiscal discretion. A written determination by the Chief Procurement Officer of the basis for the special procurement and for the selection of the particular contractor shall be maintained as public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, and a wise exercise of discretion and is in the public interest.

Sec. 1-24. Cancellation of solicitations.

Sec. 1-24(1). Cancellation of solicitations. An invitation for bids, a request for proposals, a request for qualifications, or other solicitation may be cancelled, or any or all bids, proposals or statements of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the Fire Authority.

Sec. 1-24(2). Prior to opening.

- (a) As used in this section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Chief Procurement Officer determines in writing that such action is in the Fire Authority's best interest for reasons including but not limited to:
 - i. The Fire Authority no longer requires the materials, services, or construction;
 - ii. The Fire Authority no longer can reasonably expect to fund the procurement; or
 - iii. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the Fire Authority.

- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.
- (d) The notice of cancellation shall:
 - i. Identify the solicitation;
 - ii. Briefly explain the reason for cancellation; and
 - iii. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials, services, or construction.

Sec. 1-24(3). After opening.

- (a) After opening but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the Chief Procurement Officer determines in writing that such action is in the Fire Authority's best interest for reasons including but not limited to:
 - i. The Fire Authority no longer requires the materials, services or construction;
 - ii. Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;
 - iii. The solicitation did not provide for consideration of all factors of significance to the Fire Authority;
 - iv. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - v. All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;
 - vi. There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - vii. Competition was insufficient.
- (b) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to subsection 1-24(2) (d) of this section.
- (c) If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 1-24(4). Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 1-25. Rejection of individual bids, proposals, quotations or statements of qualifications.

- (a) A bid may be rejected if:
 - i. The bidder is determined to be non-responsible pursuant to Section 1-26;
 - ii. The bid is nonresponsive in accordance with Section 1-17; or
 - iii. It is otherwise not advantageous to the Fire Authority.
- (b) A proposal, statement of qualifications, or quotation may be rejected if:

- i. The person responding to the solicitation is determined to be non-responsible pursuant to Section 1-26; or
- ii. The proposal is incomplete, nonresponsive to solicitation requirements; or
- iii. The proposed price exceeds available funds or is unreasonable; or
- iv. It is otherwise not advantageous to the Fire Authority.

(c) The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 1-26. Responsibility of bidders, offerors and respondents.

Sec. 1-26(1). Findings of non-responsibility. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found non-responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the contract officer. The unreasonable failure of a bidder, offeror or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

Sec. 1-26(2). Right of nondisclosure. Except as required by law or court order, confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the Fire Authority outside of the agency, or using department, without prior written consent by the bidder, offeror or respondent.

Sec. 1-26(3). Factors. Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the Fire Authority; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 1-26(4). Responsibility criteria. The contract officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Sec. 1-27. Bid and contract security, material or service contracts.

The Chief Procurement Officer may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Chief Procurement Officer shall consider the nature of the performance and the need for future protection to the Fire Authority. The requirement for security must be included in the invitation for bids, invitation for reverse auction bids or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

Sec. 1-28. Types of contracts.

Subject to the limitations of this code, any type of contract which will promote the best interests of the Fire Authority may be used.

Sec. 1-29. Approval of accounting system.

The Chief Procurement Officer may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

Sec. 1-30. Multi-year contracts.

Unless otherwise provided by law, a contract for materials, services or construction may be entered into for any period of time deemed to be in the best interest of the Fire Authority, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

Sec. 1-31. Right to inspect.

The Fire Authority may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or sub-consultant that is related to the performance of any contract awarded or to be awarded by the Fire Authority.

Sec. 1-32. Right to audit records.

Sec. 1-32(1). The Fire Authority may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in Article VII of this code to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

Sec. 1-32(2). The Fire Authority is entitled to audit the books and records of a contractor, consultant or any subcontractor or sub-consultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or sub-consultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract.

Sec. 1-33. Reporting of anticompetitive practices.

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents a notice of the relevant facts shall be transmitted to the Chief Procurement Officer. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Chief Procurement Officer.

Sec. 1-34. Prospective vendors lists.

Sec. 1-35(1). The Chief Procurement Officer shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a Fire Authority contract.

Sec. 1-35(2). Persons desiring to be included on the prospective vendors list may register with the department electronically. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the Fire Authority.

Sec. 1-35(3). It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

Sec. 1-35. Contract form and execution.

All contracts entered into under this code not exceeding the amount established by Section 1-11(6) shall be executed in the name of the Fire Authority by the Chief Procurement Officer. Contracts entered into under this code exceeding the amount established by Section 1-11(6) approved by the Executive Committee shall be executed by the Fire Chief, approved as to form by the General Counsel to the Fire Authority and countersigned by the Clerk of the Authority.

Sec. 1-36. Assignment of rights and duties.

The Chief Procurement Officer shall have the rights and duties of the Fire Authority to contract for the purchase of all services, supplies, equipment and other personal property required by the Fire Authority in accordance with the code and all policies and procedures adopted by the Board of Directors, and administrative procedures approved by the Fire Chief, or as otherwise provided by law. Except in cases where the Board of Directors or the Executive Committee has retained authority, the purchase of services, supplies and equipment are not transferable or otherwise assignable without the written consent of the Chief Procurement Officer.

Sec. 1-37--1-40. Reserved.

ARTICLE IV. SPECIFICATIONS

Sec. 1-41. Definition.

As used in this article, "specification" is used interchangeably with "scope", "scope of services", or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Sec. 1-42. Maximum practicable competition.

Sec. 1-42(1). All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Fire Authority's needs and shall not be unduly restrictive.

Sec. 1-42(2). To the extent practicable and unless otherwise permitted by this code, all specifications shall describe the Fire Authority's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 1-42(3). Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using department requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of restrictive specifications.

Sec. 1-42(4). To the extent practicable, the Fire Authority shall use accepted commercial specifications and shall procure standard commercial materials.

Sec. 1-43. Specifications prepared by other than Fire Authority personnel.

The requirements of this code regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by Fire Authority personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Sec. 1-44. Brand name or equal specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

Sec. 1-45. Brand name specification.

A brand name specification may be used to identify the sole acceptable item that meets the Fire Authority's needs. The using department requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the Chief Procurement Officer of the basis for the brand name shall be maintained as public record. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.

Sec. 1-46. Reserved.

**ARTICLE V.
PROCUREMENT OF PUBLIC WORKS PROJECTS AND
PROFESSIONAL DESIGN SERVICES**

Sec. 1-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-47(1). "Capital improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 1-47(2). "Contractor" shall mean any corporation, partnership, individual, sole proprietorship, joint venture or other legal entity which enters into a contract to sell commodities, services, or construction services to the Fire Authority.

Sec. 1-47(4). "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor.

Sec. 1-47(5). "Construction services" means either of the following for construction- manager-at-risk, and design-build project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk project delivery methods.
- (b) A combination of construction and, as elected by the Fire Authority, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction- manager-at-risk, and design-build in this section.

Sec. 1-47(6). "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 1-47(7). "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 1-47(8). "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two (2) separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 1-47(9). "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 1-47(10). "Design professional" means an architect or engineer, or both, duly licensed for professional practice, who may be employed by an owner for the purpose of designing a project.

Sec. 1-47(11). "Emergency for Public Projects" shall have the meaning provided in Public Contract Code Sections 22035 and 22050.

Sec. 1-47(12). "Facility" means any plant, building, structure, ground facility, real property, street, highway or other public work improvement.

Sec. 1-47(13). "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

Sec. 1-47(14). "Finance services" means financing for a construction services project.

Sec. 1-47(15). "Force account" means work performed on public projects by the Fire Authority's regularly employed personnel.

Sec. 1-47(16). "Maintenance work" shall have the meaning provided in Public Contract Code Section 22002(d), as that section may be amended from time to time, and shall include the following:

- (a) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

- (b) Minor repainting.
- (c) Resurfacing of streets and highways at less than one inch.
- (d) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

Sec. 1-47(17). "Preconstruction services" means advice during the design phase.

Sec. 1-47(18). "Professional design services" means architect services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of California.

Sec. 1-47(19). "Professional engineer" refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

Sec. 1-47(20). "Public project" shall have the meaning provided in Public Contract Code Section 22002(c), as that section may be amended from time to time, and shall include the following:

- (a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- (b) Painting or repainting of any publicly owned, leased, or operated facility.
- (c) "*Public project*" does not include maintenance work.

Sec. 1-47(21). "Public works contract" means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Sec. 1-47(22). "Solicitation" shall mean an invitation for bids, request for quotations, request for qualifications, or request for proposals issued by the Fire Authority for the purpose of requesting bids, quotes or proposals to perform a contract.

Sec. 1-47(23) "Uniform Public Construction Cost Accounting Act" is an alternative method for public project work performed or contracted by public entities in California as defined by Public Contract Code Section 22000 et seq. The Fire Authority adopted the alternative informal bidding procedures on February 22, 1996 establishing informal bidding procedures for public works.

Sec. 1-48 Procurement of public projects.

Sec. 1-48(1). Procurement of public projects, in accordance with the limits listed in Section 22302 of the Public Contract Code, as those limits may be amended from time to time, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code. Nothing herein contained, however, shall preclude the Fire Authority from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded or when the Chief Procurement Officer determines it is in the best interest

of the Fire Authority.

Sec. 1-48(2). Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in Sections 1-52 (procurement of construction services), 1-20 (small purchases), 1-21 (sole source procurement), and 1-22 (emergency procurements). The Chief Procurement Officer shall award contracts for public projects in accordance with the requirements of Public Contract Code Section 22000 et seq. and this code.

Sec. 1-48(3). Force Account and informal bidding procedures. Public works projects of the amount set forth in Public Contract Code Section 22032(a), as amended from time to time, may be performed by the employees of the Fire Authority, by negotiated contract, or by purchase order.

Sec. 1-48(4). Informal bidding procedures. Public works projects of the amount set forth in Public Contract Code Section 22032(b), as amended from time to time, may be let to contract by informal bidding procedures as set forth in Section 1-49(1).

Sec. 1-48(5). Formal bidding procedures. Public projects exceeding the amount set forth in Public Contract Code Section 22032(c), as may be amended from time to time, shall be let to contract by formal bidding procedures as set forth in Section 1-50.

Sec. 1-48(6) Payment bond. In accordance with the Civil Code Section 9550 et seq. all public works bids involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall require a payment bond in an amount not less than 100 percent of the total amount payable pursuant to the public works contract.

Sec. 1-49. Public project informal bidding procedures.

Sec. 1-49(1). Public projects which are subject to the informal bidding procedures as set forth in Section 1-48, shall be awarded to the lowest responsible bidder in accordance with the Public Contract Code Section 22000 et seq.

Sec. 1-49(2). Contractors list. The Fire Authority shall maintain a list of qualified contractors, identified according to categories of work. The development and maintenance of the list shall be in accordance with the provisions in the Public Contract Code Section 22034 and criteria established from time to time by the California Uniform Construction Cost Accounting Commission.

Sec. 1-49(3). Notice inviting informal bids. All contractors on the list of qualified contractors for the category of work to be bid or all construction trade journals as specified in the Public Contract Code Section 22036, or both, shall be sent a notice inviting informal bids unless the product or service delivery is proprietary. Additional contractors and/or construction trade journals may be notified at the discretion of the Chief Procurement Officer. If there is no list of qualified contractors maintained by the Fire Authority for the particular category of work to be performed, the notice shall be sent to the construction trade journals specified by the Commission.

Sec. 1-49(4). Sending notices and descriptions of project. All sending of notices to contractors and construction trade journals pursuant to Section 1-49(3) shall be completed not fewer than ten calendar days before bids are due. The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

Sec. 1-49(5). Award of informal bids. The Chief Procurement Officer is authorized to award informal bids for public projects.

Sec. 1-49(6). Bids in excess of the formal bid limit. If all bids received are in excess of the amount set forth in Public Contract Code Section 22032(b), as may be amended from time to time, the Board of Directors may by passage of a resolution by a four-fifths vote, award the contract, to the lowest responsible bidder, if it determines the cost estimate was reasonable and the contract amount will not exceed the amount set forth in Public Contract Code Section 22034(d), as may be amended from time to time.

Sec. 1-50. Public project formal bidding procedures.

Sec. 1-50(1). Public projects which are subject to formal bidding procedures, shall be awarded to the lowest responsive and responsible bidder in accordance with the procedures set forth in this section.

Sec. 1-50(2). Notice inviting formal bids. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids, in a newspaper of general circulation within the jurisdiction of the Fire Authority. The notice inviting formal bids shall also be sent electronically to all construction trade journals specified for the County of Orange in the Public Contract Code Section 22036 at least fifteen (15) calendar days before the date of bid opening. In addition to notice required by this section, the Fire Authority may give other notice as it deems proper.

Sec. 1-50(3). Adopt plans. The Board of Directors of the Fire Authority shall adopt plans, specifications, and working details for all public projects as required by Public Contract Code 22039, exceeding the amount specified in the Public Contract Code Section 22032(c).

Sec. 1-50(4). Bidder security. All formal public projects shall require bidder's security as required by state law. Bid security shall be in an amount equal to at least ten percent of the amount bid, or such other amount as may be set forth in Public Contract Code Section 20171, as may be amended from time to time. Any bid bond submitted shall be executed by an admitted surety insurer which meets the rating requirements established by the risk manager or designee, made payable to the Fire Authority.

Sec. 1-50(5). Prequalification. The Fire Authority may require bidders to meet certain criteria in order to be placed upon a bidder's list to bid on formal public projects.

Sec. 1-50(6). Award of formal bids. The Board of Directors of the Fire Authority shall award all formal public works projects.

Sec. 1-51. Procurement of professional design services.

Contracts for professional design services shall be solicited and selected in accordance with Government Code Section 4525 et seq. through a request for qualifications.

Sec. 1-52. Procurement of construction services.

Contracts for construction services shall be solicited through a design-bid build or a design-build process in accordance with Public Contract Code Section 22160 et seq. except as otherwise provided for in Section 1-53. The Board of Directors or delegated authority shall award all contracts for construction services in accordance with the state requirements and this code.

Sec. 1-53. Public project emergencies procedure.

In cases of emergency, when repair or replacements are necessary to permit the continued conduct of the operation or services of the Fire Authority or to avoid danger to life or property, the Chair or Vice Chair

of the Board of Directors, after making a finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and, that the action is necessary to respond to the emergency, may by a four-fifths vote, proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts. The Fire Chief shall have the power to declare a public emergency when it is impractical to convene a meeting of the Board of Directors, subject to confirmation by the Board, by a four-fifths vote, at its next meeting and reviewed at least at every regularly scheduled meeting thereafter until the action is terminated. This procedure shall be subject to any other requirements of Public Contract Code Sections 22035 and 22050, as may be amended from time to time.

Sec. 1-54--1-57. Reserved.

ARTICLE VI. CONTRACT TERMS AND CONDITIONS

Sec. 1-58. Contract terms and conditions.

All Fire Authority contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Chief Procurement Officer shall have the authority to establish and modify any such terms and conditions.

Secs. 1-59--1-61. Reserved.

ARTICLE VII. COST PRINCIPLES

Sec. 1-62. Cost principles.

The Chief Procurement Officer shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

Sec. 1-63. Cost or pricing data.

The submission of current cost or pricing data may be required in connection with any award, change order or contract modification.

Secs. 1-64, 1-65. Reserved.

ARTICLE VIII. MATERIALS MANAGEMENT

Sec. 1-66. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-66(1). "Property" means controlled fixed assets including supplies, materials or equipment with a useful life of more than one (1) year and value greater than \$5,000.

Sec. 1-66(2). "Property transfer" means the transfer of controlled fixed assets between using agencies or transfer of property to or from the surplus property program.

Sec. 1-66(3). "Surplus property" means property no longer needed by using department for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

Sec. 1-67. Materials management guidelines.

The Chief Procurement Officer shall establish guidelines as may be required governing:

Sec. 1-67(1). The transfer of surplus property and operation of the surplus property program.

Sec. 1-67(2). The sale or disposal of surplus property, by auction, competitive sale or other authorized method.

Sec. 1-67(3). The trade-in of surplus property for purchase of new equipment.

Sec. 1-68. Inventory management.

The Chief Procurement Officer shall manage the Fire Authority service center which provides warehousing services including inventory management, shipping, receiving, storing, issuing and servicing of supplies and inventory for the Fire Authority. The Chief Procurement Officer will establish policies and procedures required for efficient and effective operation of the inventory system including the purchase of inventory, sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies.

Sec. 1-69. Disposition of surplus property.

Sec. 1-69(1). The Chief Procurement Officer will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by using agencies.

Sec. 1-69(2). Using agencies shall request department authorization to transfer controlled fixed assets to another using department, or to request transfer of property into or from the surplus property program.

Sec. 1-69(3). Unless otherwise provided for, surplus property no longer needed by any using department shall be offered through competitive sale to the highest responsible bidder.

Sec. 1-69(4). Unless otherwise provided, all proceeds from the sale of surplus property will be deposited into the Fire Authority's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

Sec. 1-69(5). If surplus property has an estimated value of less than five thousand dollars (\$5,000) and it is proposed that the property may be donated, the Chief Procurement Officer has the authority to determine whether the proposed donation of the surplus property to another local agency or non-profit organization meets the intent of the California Constitution whereby when a public agency gives a surplus item to another organization, the item must be used for a public purpose of interest and benefit generally to the people of the agency's jurisdiction and in keeping with the agency's purpose. Said donations shall require the prior approval of the Fire Chief and a release of liability to the Fire Authority from the agency accepting the donated surplus property. Any request for donation with a fair market value exceeding five thousand dollars (\$5,000) shall require prior approval by the Board of Directors or the Executive Committee.

Sec. 1-69(6). If surplus property is deemed to have historical significance by the Fire Chief and or/his designee, the historical property will be transferred and placed in the custody of a designated

section manager for safe keeping.

Secs. 1-70--1-74. Reserved.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Sec. 1-75. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-75(1). "Adequate evidence" means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

Sec. 1-75(2). "Contract claim" means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, payment in a sum certain, adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Sec. 1-75(3). "Filed" means delivery to the contract officer or to the Chief Procurement Officer, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

Sec. 1-75(4). "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Sec. 1-75(5). "Interested party" means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

Sec. 1-75(6). "Receipt" means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons last known address.

Sec. 1-75(7). "Substantial evidence" means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Sec. 1-76. Authority of the Chief Procurement Officer.

The Chief Procurement Officer shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the Chief Procurement Officer may be made to the Fire Chief pursuant to the provisions of this article.

Sec. 1-77. Right to protest.

Any actual interested party who is aggrieved in connection with the solicitation or award of a contract may

protest to the Chief Procurement Officer.

Sec. 1-78. Filing of a protest.

Sec. 1-78 (1). "Content of protest". The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
- (b) The signature of the protestant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 1-79. Time for filing protests.

Sec. 1-79(1). Protests concerning improprieties in a solicitation. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Sec. 1-79(2). In cases other than those covered in subsection (1) of this section, protests shall be filed within seven (7) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than seven (7) days after issuance of intent to award.

Sec. 1-79(3). The Chief Procurement Officer, without waiving the Fire Authority's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 1-79(4). The Chief Procurement Officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

Sec. 1-80. Stay of procurements during the protest.

In the event of a timely protest under Section 1-79, the Fire Authority may proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the Fire Authority.

Sec. 1-81. Confidential information.

Sec. 1-81(1). Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to Section 1-6.

Sec. 1-81(2). If the protestant believes the protest contains material that should be withheld, a statement advising the Chief Procurement Officer of this fact shall accompany the protest submission in accordance with Section 1-6.

Sec. 1-82. Decision by the Chief Procurement Officer.

Sec. 1-82(1). The Chief Procurement Officer shall issue a written decision within fourteen (14) days after a protest has been filed pursuant to Section 1-78. The decision shall contain an explanation of the basis of the decision.

Sec. 1-82(2). The Chief Procurement Officer shall furnish a copy of the decision to the protestant, by e-mail and/or certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Sec. 1-82(3). The time limit for decisions set forth in subsection (1) of this section may be extended by the Fire Chief for a reasonable time not to exceed thirty (30) days. The Chief Procurement Officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Sec. 1-82(4). If the Chief Procurement Officer fails to issue a decision within the time limits set forth in subsection (1) or (3) of this section, the protestant may proceed as if the Chief Procurement Officer had issued an adverse decision.

Sec. 1-82(5). The Chief Procurement Officer's decision shall contain a statement regarding the appeals process that is available pursuant to this article.

Sec. 1-83. Remedies.

Sec. 1-83(1). If the Chief Procurement Officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with the procurement code, the Chief Procurement Officer shall implement an appropriate remedy.

Sec. 1-83(2). In determining an appropriate remedy, the Chief Procurement Officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) The seriousness of the procurement deficiency;
- (b) The degree of prejudice to other interested parties or to the integrity of the procurement process;
- (c) The good faith of the parties;
- (d) The extent of performance;
- (e) Costs to the Fire Authority;
- (f) The urgency of the procurement; and
- (g) The impact of the relief on the using department's mission.

Sec. 1-83(3). An appropriate remedy may include one or more of the following:

- (a) Reject all bids, responses or proposals;
- (b) Terminate the contract;

- (c) Reissue the solicitation;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the procurement code;
- (f) Such other relief as is determined necessary to ensure compliance with the General Law and this code.

Sec. 1-84. Appeals to the Fire Chief.

Sec. 1-84(1). Appeal. An appeal from a decision entered or deemed to be entered by the Chief Procurement Officer shall be filed with the Fire Chief within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Chief Procurement Officer.

Sec. 1-84(2). Content of appeal. The appeal shall contain:

- (a) The information set forth in Section 1-78, including the identification of confidential information in the manner set forth in Section 1-81;
- (b) A copy of the decision of the Chief Procurement Officer; and
- (c) The precise factual or legal error in the decision of the Chief Procurement Officer from which an appeal is taken.

Sec. 1-85. Notice of appeal.

Sec. 1-85(1). The Fire Chief shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

Sec. 1-85(2). The Fire Chief shall, upon request, furnish copies of the appeal to those named in subsection (1) of this section subject to the provisions of Section 1-81.

Sec. 1-86. Stay of procurement during appeal.

If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Chief Procurement Officer pursuant to Section 1-80, the filing of an appeal shall automatically continue the stay unless the Fire Chief makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the Fire Authority.

Sec. 1-87. Chief Procurement Officer's report.

Sec. 1-87(1). Report. The Chief Procurement Officer shall file a report on the appeal with the Fire Chief within seven (7) days from the date the appeal is filed. At the same time, Chief Procurement Officer shall furnish a copy of the report to the appellant by e-mail and/or certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to Section 1-85(2). The report shall contain copies of:

- (a) The appeal;
- (b) Any other documents that are relevant to the protest; and

- (c) A statement by the Chief Procurement Officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

Sec. 1-87(2). Extension for filing of report.

- (a) The Chief Procurement Officer may request in writing an extension of the time period setting forth the reason for extension.
- (b) The Fire Chief's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The Chief Procurement Officer shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Sec. 1-87(3). Comments on report.

- (a) The appellant shall file comments on the Chief Procurement Officer's report with the Fire Chief within seven (7) days after receipt of the report. Copies of the comments shall be provided by the appellant to the Chief Procurement Officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.
- (b) The Fire Chief may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in subsection (3)(a) of this section stating the reason an extension is necessary. The Fire Chief's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The Fire Chief shall notify the Chief Procurement Officer of any extension.

Sec. 1-88. Dismissal by the Fire Chief.

The Fire Chief shall dismiss, upon a written determination, an appeal if:

Sec. 1-88(1). The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

Sec. 1-88(2). The appeal is untimely pursuant to Section 1-84(1).

Sec. 1-89. Remedies.

If the Fire Chief sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with the general law and/or this code, remedies may be implemented pursuant to Section 1-83.

Sec. 1-90. Filing of a contract claim.

Sec. 1-90(1). "Content of claim". The claim shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the claimant;
- (b) The signature of the claimant or its representative;
- (c) Identification of the solicitation or contract number;

- (d) A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 1-91. Chief Procurement Officer's decision.

Sec. 1-91(1). Written decision. If a contract claim cannot be resolved by mutual agreement, the Chief Procurement Officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty (60) days after the request is filed. Before issuing a final decision, the Chief Procurement Officer shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

Sec. 1-91(2). Final decision. The Chief Procurement Officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract provision;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the Chief Procurement Officer's decision, with supporting rationale;
- (e) A statement regarding the appeals process that is available pursuant to this article.

Sec. 1-92. Issuance of a timely decision.

Sec. 1-92(1). The time limit for decisions set forth in Section 1-91(1) may be extended for good cause. The Chief Procurement Officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

Sec. 1-92(2). If the Chief Procurement Officer fails to issue a decision within sixty (60) days after the request on a claim is filed or within the time prescribed under subsection (1) of this section, the contractor may proceed as if the Chief Procurement Officer had issued an adverse decision.

Sec. 1-93. Appeals to the Fire Chief.

Sec. 1-93(1). Appeal of final decision. An appeal of a final decision of a Chief Procurement Officer on a claim shall be filed with the Fire Chief within five (5) days from the date the decision is received. The appellant shall also file a copy of the appeal with the Chief Procurement Officer.

Sec. 1-93(2). Content of appeal. The appeal shall contain a copy of the decision of the Chief Procurement Officer and the basis for the precise factual or legal error in the decision of the Chief Procurement Officer from which an appeal is taken.

Sec. 1-93(3). Final decision, mediation service or arbitration. The Fire Chief may make the final decision in accordance with Section 1-97 or to refer to mediation services in accordance with Section 1-95 or refer to arbitration in accordance with Section 1-96.

Sec. 1-94. Fire Authority claims against a contractor.

All contract claims asserted by the Fire Authority against a contractor that are not resolved by mutual agreement shall promptly be referred by the Chief Procurement Officer to the Fire Chief for a final decision in accordance with Section 1-97, or mediation, in accordance with Section 1-95, or arbitration in accordance with Section 1-96.

Sec. 1-95. Mediation.

Contract claims may be resolved utilizing mediation services if the Fire Chief determines the use of such services is in the best interest of the Fire Authority.

Sec. 1-96. Arbitration.

Contract claims may be resolved utilizing arbitration if the Fire Chief determines the use of arbitration is in the best interest of the Fire Authority. The claim shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the Fire Authority, in accordance with the provisions of the California Arbitration Act (CAA) (Cal. Civ. Proc. Code §§ 1280-1294.2) or the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1-16, 201-208, 301-307).

Sec. 1-97. Final decision by the Fire Chief.

Sec. 1-97(1). The Fire Chief may affirm, modify, or reject the Chief Procurement Officer's decision in whole or in part, or make any other appropriate disposition.

Sec. 1-97(2). A decision by the Fire Chief shall be final. The decision shall be sent to all parties by e-mail, certified mail, return receipt requested or by any other method that provides evidence of receipt. If a stay was issued, the final decision by the Fire Chief shall lift any such stay, unless the Fire Chief determines that the continued stay is necessary to protect the substantial interest of the Fire Authority.

Sec. 1-98. Judicial review of protests or claims.

Any decision of the Fire Chief regarding a protest (§ 1-77 et seq.) or claim (§ 1-90 et seq.) under this code shall be final. Exhaustion of the procedures set forth in this code shall be a condition precedent to any person seeking judicial review of a final decision by the Fire Chief.

Sec. 1-99. Exclusive remedy.

Notwithstanding any law to the contrary, this article shall provide the exclusive procedure for asserting a claim or cause of action against the Fire Authority arising in relation to any procurement conducted under this code.

Secs. 1-100--1-115. Reserved.

ARTICLE X. COOPERATIVE PURCHASING

Sec. 1-116. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-116(1). "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 1-116(2). "Eligible public procurement unit" means any state, county, city, town, and any other political subdivision, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies,

services and construction, and any not-for-profit entity.

Sec. 1-117. Applicability.

Agreements entered into pursuant to this article shall be limited to the areas of procurement, warehousing or materials management.

Sec. 1-118. Cooperative purchasing authorized.

The Fire Authority may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to joint or multi-party contracts between public procurement unit and open-ended public procurement unit contracts that are made available to other public procurement units. Parties under a cooperative purchasing agreement may:

Sec. 1-118(1). Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 1-118(2). Cooperatively use materials or services.

Sec. 1-118(3). Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 1-118(4). Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 1-118(5). On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

Sec. 1-119. Cooperative purchasing source selection methods.

All cooperative purchasing conducted under this Article shall be through contracts awarded by a public agency through full and open competition, including use of source selection methods substantially equivalent to those specified in Article III (Source Selection and Contract Formation) of this code.

Secs. 1-120, 1-121. Reserved.

**ARTICLE XI.
RESERVED**

Secs. 1-122--1-126. Reserved.

**ARTICLE XII.
ETHICS IN PUBLIC CONTRACTING**

Sec. 1-127. Procurement Ethics Standards

Sec. 1-127(1). The Chief Procurement Officer, as well as those involved in Fire Authority procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust.

Sec 1-127(2). The Chief Procurement Officer, as well as those involved in Fire Authority procurement, shall be subject to the Conflict of Interest Code and subsequent amendments adopted by the Fire Authority.

Sec. 1-127(3). The Chief Procurement Officer shall adopt a Procurement Ethics Policy and Procedures applicable to all Fire Authority procurement functions.

Secs. 1-128--1-130. Reserved.

Purchasing Authorities Comparison Chart

Attachment 4

	County of Orange	Orange County Transp. Authority (OCTA)	Irvine Ranch Water District	City of Irvine	<i>Proposed for OCFA</i>
Commodities (Defined as materials, equipment & supplies) Ord. 8, Sec. 1- 3(18)	Commodity contracts include all supplies and equipment and software licenses costing less than \$5,000 per unit <i>Only sole source commodity contracts exceeding \$250K annually require Board approval</i>	Inventory materials, equipment and supplies, if competed, may be awarded by management in any amount Inventory amendments for POs ≤ 30% increase none > 30% increase requires CEO signature	Inventory materials, equipment and supplies contracts can be awarded by management in any amount. The list of open supply contracts (exceeding \$100K) is provided to the finance committee annually in May. No Board approval is required	Approval for purchase occurs with budgetary pre- approval process at the line item detail, no further approval required	Executive Committee approval for commodity contracts with an annual contract amount greater than \$250,000. Authority management can approve any increase to commodity term contracts provided the annual contract amount remains less than \$250,000
Fixed Assets	<u>Budgeted Asset</u> - No Board approval if within budgeted amount in the adopted budget approved by the Board - Board approval if asset cost exceeds budgeted amount by more than 10% or \$100,000 (whichever is less) <u>Unbudgeted Asset</u> - Board approval if cost is > 25K each	<u>Budgeted</u> ≤ 250K none >250K Board approval <u>Non-budgeted</u> ≤ 25K none > 25K Board approval of bid & award	Operating budget line items that are part of the approved budget do not need Board approval unless the unit price is over \$100,000	Approval for purchase occurs with budgetary pre- approval process at the line item detail no further approval needed unless cost of the asset is greater by \$100,000 or more of the approved budgeted amount	Authority management can approve the purchase of fixed assets with unit cost less than \$100,000 Executive Committee approval is required for the purchase of fixed assets with unit cost greater than \$100,000

Purchasing Authorities Comparison Chart

	County of Orange	Orange County Transp. Authority (OCTA)	Irvine Ranch Water District	City of Irvine	<i>Proposed for OCFA</i>
Professional Services	<p>Board of Supervisors approval is required for contracts exceeding \$100,000 in any year of the contract</p> <p>Multi-year contracts exceeding \$500K require Board approval when the total contract exceeds or is anticipated to exceed \$500,000 when future years are taken into consideration</p>	<p><u>Budgeted</u> ≤ \$250K none >\$250K Board approval</p> <p><u>Non-budgeted</u> ≤ \$25K none > \$25K Board approval of bid & award</p> <p>If contract is not a competitive bid, Board approval is required for amounts over \$25,000</p>	<p>Board approval is required for contracts in which the annual contract amount is greater than \$100K.</p>	<p>Approval during the annual budget process (detailed line item includes description and not to exceed amount). No further Council approval required for the contract award unless the contract exceeds the budgeted amount.</p> <p><i>Unplanned contracts or if cost exceeds approved amount. Dept Director <\$30K City Mgr. <\$100K Council>\$100K</i></p>	<p><i>Service contracts include professional services facilities & equipment services, and consulting.</i></p> <p>Board approval is required for service contracts in which the annual contract amount is greater than \$100,000 or the multi-year contract exceeds \$500,000 when future years are taken into consideration.</p>
Maintenance Services	<p><i>Service contracts include: professional services, facilities & equip. services, consulting, capital leases, & revenue generating agreements</i></p> <p><u>Same rules listed for professional services (above) apply.</u></p>	<p><i>Service contract for maintenance are the same as professional services.</i></p> <p>Board approval is required for maintenance service contracts over \$250,000</p>	<p>Operating budget line items that are part of the approved budget do not need Board approval</p>	<p>Approval for purchase occurs with budgetary pre-approval process at the line item detail for service contracts, no further approval needed</p> <p><u>Same rules listed for professional services (above) apply.</u></p>	<p><i>Service contracts include professional services facilities & equipment services, and consulting.</i></p> <p>Board approval is required for service contracts in which the annual contract amount is greater than \$100,000 or the multi-year contract exceeds \$500,000 when future years are taken into consideration.</p>

Purchasing Authorities Comparison Chart

	County of Orange	Orange County Transp. Authority (OCTA)	Irvine Ranch Water District	City of Irvine	<i>Proposed for OCFA</i>
Sole Source	<u>Sole Source Commodity</u> > \$250K (annually) require Board Approval <u>Sole Source Capital Asset</u> > 50K Board approval <u>Sole Source Service Contracts</u> ≥ 50K (annual) require Board approval & may not be renewed without approval <i>Board approval is required for sole source contracts issued for two consecutive years regardless of dollar amount.</i>	<u>Sole Source</u> ≤ 25K none > 25K Board approval	<u>Sole Source</u> >\$100,000 Board approval	<u>Sole Source</u> < \$30K purchasing agent >\$100K require Council approval <i>*Different management level approvals are required up to \$100K</i>	Executive Committee approval is required for sole source contracts when aggregate amount exceeds \$50,000. <i>Sole source justification form is a required attachment to the staff report.</i> Add Special Procurements Executive Committee approval is required for special procurements when aggregate amount exceeds \$50,000. Special procurements are used when it is in the best interest of OCFA to award a contract without bidding requirements and the contract does not meet the definition of a sole source with justification. <i>Special Procurement justification form is a required attachment to the staff report.</i>
Emergency Purchases	<u>Unbudgeted Asset</u> - Board approval if cost is > 25K	Report emergencies purchases made greater than 25K at the next scheduled Board meeting	No specified limit Report emergency purchases made that were greater than \$100K at the next scheduled Board meeting	The City Manager has the authority to declare a public emergency, no specific dollar limit listed	Purchases in excess of \$100,000 require prior approval of Chair or Vice Chair and must be reported at the next Executive Committee meeting. Authorize the Fire Chief or designee to declare an emergency.

Purchasing Authorities Comparison Chart

	County of Orange	Orange County Transp. Authority (OCTA)	Irvine Ranch Water District	City of Irvine	<i>Proposed for OCFA</i>
Contract Amendments	<p>Commodity contracts can be amended by management.</p> <p>Service contracts of less than five years duration may be extended for up to one year without Board approval provided there are no monetary increases that exceed the average annual value of the prior year's contracts.</p> <p>Service contracts that exceed \$100K per year required Board approval</p>	<p><u>Management authority</u></p> <p><u>Inventory amendments for POs</u></p> <p>≤ 30% increase none > 30% increase requires CEO signature</p> <p><u>Informal Contract <\$50K</u></p> <p>50% of original contract or \$8,333, whichever is less, provided contract amount does not exceed \$50K</p> <p><u>Formal Contract >\$50K</u></p> <p>15% of original contract or \$250K, whichever is less</p> <p><u>Equipment Amendment</u></p> <p>5% of original contract or \$250K, whichever is less</p>	<p><u>Change Order</u></p> <p>If individual or cumulative total of change orders in a month together with any change orders previously approved exceeds 30% of the original contract and the individual or cumulative total of such change orders exceeds \$100K, Board approval is required.</p>	<p><u>Change Order</u></p> <p>When the scope of work or cost increases are inconsistent with the adopted budget, approval for the additional services must be obtained according the guidelines:</p> <p>- Between \$5K-\$30K Director</p> <p>Over \$30K-\$100K City Manager</p> <p>Over \$100K – Finance Comm. Review and Council approval</p>	<p>Authorize management to increase commodity contracts so long as the annual contract amount remains less than \$250,000.</p> <p>Authority management for service contract amendments remains the same</p> <p><u>Public Projects</u></p> <p>Reduce management authority on public projects change orders (formal and informal) to \$17,500 which equals 10% of the current PCC informal public project amount of \$175,000.</p> <p>Require Board approval for change orders on formal public projects over 10% or exceeding a total value of \$50,000</p>
Contract Duration	Board approval required for contracts longer than five years	Board approval required for contracts longer than five years	Contracts are three to five years	Contracts duration up to five years	Allow approval of contracts up to five years

RESOLUTION NO. 2016-XX

**A RESOLUTION OF THE ORANGE COUNTY FIRE AUTHORITY
BOARD OF DIRECTORS AMENDING THE
ROLES/RESPONSIBILITIES/AUTHORITIES MATRIX TO COINCIDE
WITH THE NEW PURCHASING CODE**

RECITALS

A. WHEREAS, the Orange County Fire Authority Board of Directors last amended the Roles/Responsibilities/Authorities Matrix on February 26, 2016, and

B. WHEREAS, because the OCFA is adopting by Ordinance a new procurement code, it is appropriate to update the Roles/Responsibilities/Authorities Matrix to coordinate with the new procurement code; and

C. WHEREAS, the Board has considered the attached amendments to the matrix.

THEREFORE, the Board of Directors of the Orange County Fire Authority does hereby resolve as follows:

The Roles/Responsibilities/Authorities Matrix is amended as indicated by the redline version attached hereto as Exhibit A. This Resolution shall take effect on the effective date of Ordinance No. 008.

PASSED, APPROVED and ADOPTED this 28th day of April 2016.

GENE HERNANDEZ, CHAIR
OCFA Board of Directors

ATTEST:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

ORANGE COUNTY FIRE AUTHORITY Roles/Responsibilities/Authorities

All authority rests with the Board of Directors unless it is delegated by statute or board action. When delegated, these authorities are further defined by contracts, resolutions, policies, or other board actions. The following chart defines OCFA's levels of authority. The Board of Directors has the authority to change these delegations within the parameters of legal and contractual restrictions.

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Levels of Service	Develop and implement programs to provide the identified "Levels of Service."		Approve temporary changes in "Levels of Service."	Approve "Levels of Service" for the Authority.
Resource Deployment	Establish policy/deployment that maintains the approved "Levels of Service."			
Standard Operating Procedures (SOPs) and General Orders (GOs)	Develop and implement SOPs and GOs consistent with Board policies.			
Budget Adoption	Develop the budget.		Budget & Finance Committee - Review the budget; make recommendations.	Approve the budget prior to June 30 each year (JPA Agreement, Article IV.1)
Budget Execution	Authorize expenditures within approved budget appropriations (JPA Agreement, Article IV.2)			
Budget: Intra- and inter-fund transfer; increases and decreases to appropriation.	Approve intra-fund transfers within adopted budgets			Approve inter-fund transfers between budgets; Approve increases and decreases to appropriations.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Fire Station 41, Air Operations Maintenance Facility - Leases	Negotiate, approve and execute leases and/or lease amendments for Hangers Nos. 1, 2, 3, and 4			
Fund Balance - Assigned	Assign amounts for workers' compensation and the capital improvement program within requirements of the <i>Assigned Fund Balance Policy</i>		Budget & Finance Committee – Review calculations used to determine assignments for workers' compensation and the capital improvement program for consistency with <i>Assigned Fund Balance Policy</i>	Assign and un-assign fund balance for any specific purposes other than workers' compensation and the capital improvement program, within the guidelines of GASB Statement No. 54
Fund Balance – Committed				Commit and un-commit fund balance via minutes action, within the guidelines of GASB Statement No. 54
Contingency Planning and funding	Develop plan; administer budget in a manner consistent with plan and policies.		Budget & Finance Committee - Review contingencies and spending for compliance with plan and policies.	Establish plan and policies. Transfer of Appropriation for Contingencies requires prior approval of the Chair or the Vice Chair, in the absence of the Chair, and must be reported to the Board immediately in writing.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Debt obligation	Develop and recommend financing plans.		Budget & Finance Committee – Review of recommended financing plans.	Approve all debt obligations. (Note: long-term bonded indebtedness requires approval by 2/3 rd vote of the members.)
Purchase of Commodities purchases and fixed assets (materials, equipment & supplies) <u>Ord. 8, Sec. 1-3(18)</u>	Approve purchase of commodities (<u>Ord. 8, per Art. III selection process or Art. X cooperative purchasing</u>) and fixed assets for total annual contract amount less than \$100,000 <u>250,000</u> . <u>Approve any increase to commodity term contracts provided the annual contract amount remains less than \$250,000.</u>		Approve purchase of commodities and fixed assets for with an annual total contract amount greater than over \$100,000 <u>250,000</u> . <u>Approved increase to commodity contracts if the increase results in the annual contract being greater than \$250,000.</u>	
<u>Fixed asset purchases</u>	<u>Approve purchase of fixed assets with unit cost less than \$100,000.</u>		<u>Approve purchase of fixed assets with a unit cost greater than \$100,000.</u>	

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Purchase—Professional Service Contracts – (including consulting contracts) includes professional services, facilities & equipment services, and consulting.	<p>Approve all service contracts <u>(selection process per Ord. 8, Art. III, or Art. X) for annual contract amount less than \$100,000, for the life of the contract duration.</u></p> <p><u>Approve multi-year contracts so long as the annual amount is less than \$100,000, and the total contract amount does not exceed \$500,000.</u></p>		<p>Approve all service contracts <u>in which the annual contract amount exceeds over \$100,000 for life of contract duration or multi-year contract exceeds \$500,000 when future years are taken into consideration.</u></p> <p>Contract extensions beyond the initial contract term <u>and allowable contract extensions</u> will require Executive Committee approval prior to contract extension.</p>	
<p>Change Orders/ Modifications</p> <p><u>Service Contract Amendments (Non Public Projects)</u></p> <p>(excludes Public Works contracts in excess of the formal limit set forth in Section 22032 of Public Contract Code)</p>	<p>For <u>service</u> contracts within the limits delegated herein to Authority Management, approve change orders in any amount so long as the revised amount remains within the delegated limits.</p> <p>For contracts originally approved by the Executive Committee or Board of Directors, approve change orders within the original scope of work, less than 15% but not to exceed a total value of \$50,000.</p>		<p>Approve change order/modifications to any contracts with original or revised values that exceed those amounts delegated herein to Authority Management.</p>	

ORANGE COUNTY FIRE AUTHORITY

Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Emergency Purchases/Contracts	Approve emergency purchases, <u>as defined in Ord. 8, Sec. 1-3(14) & Sec. 1-22,</u> up to \$100,000.		Purchases in excess of \$100,000 require prior approval of Chair or Vice Chair and must be reported at the next Executive Committee meeting.	
Sole Source Contracts	Approve any sole source contracts up to less than \$2550,000, <u>so long as acceptable justification is provided by the using agency per the requirements in Ord. 8, Sec. 1-21.</u>		Approve any sole source contracts <u>when aggregate amount exceeds over \$2550,000. <i>Sole source justification form is a required attachment to the staff report.</i></u>	
<u>Special Procurement Contracts – utilized when it is in the best interest of OCFA to award a contract without bidding requirements and the procurement does not meet the definition of a sole source.</u>	<u>Approve any special procurement contract less than \$50,000, so long as acceptable justification is provided by the using agency per the requirements in Ord. 8, Sec. 1-23.</u>		<u>Approve any special procurement contract when the aggregate amount exceeds \$50,000. <i>Special procurement justification form is a required attachment to the staff report.</i></u>	
Public Works Projects	Approve all informal public works contracts <u>projects</u> in amounts up to the statutory limits authorized by <u>Public Contract Code Section 22032</u> of the Public Contract Code. <u>(Currently projects under \$175,000).</u>			Approve all <u>formal</u> public works contracts in amounts at or above the statutory limits authorized by <u>Public Contract Code Section 22032</u> Section 22032 of the Public Contract Code. <u>(Currently projects over \$175,000).</u>

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Public Projects - Change Orders/ Modifications for formal and informal Public Works contracts Projects in excess of the formal limit as set forth in Public Contract Code Section 22032 of the Public Contract Code	Approve C change Order/modifications <u>for formal and informal Public Projects up to 10% of original contract amount</u> , but not to exceed less than a total value of \$50,000 <u>17,500</u> .		Approve C change Order/modifications <u>for informal Public Projects</u> over 10% <u>of original contract amount</u> , or exceeding a total value of \$50,000 <u>17,500</u> .	<u>Approve Change Order/modification on formal Public Projects over 10% of original contract amount, or exceeding a total value of \$50,000 which ever is less.</u>
<u>Public Projects – Emergency as defined in Public Contract Code Sections 22035 and 22050 (Ord. 8, Sec. 1-53)</u>	<u>Fire Chief or designee has authority to declare an emergency and authorize procurement of equipment, services, construction services and supplies without the competitive bidding requirements when it is impracticable to convene a meeting of the Board of Directors prior to addressing the emergency needs.</u>			<u>Authorize exemption from procurement requirements by four-fifths vote (at next scheduled meeting) as required per Public Contract Code Sections 22035 and 22050.</u>
Investment Practices	Provide financial data to Budget & Finance Committee, Executive Committee and Board of Directors. Develop draft policy.		Budget & Finance Committee - Review Treasury/Investment actions to insure compliance with policy. Executive Committee – review monthly reports.	Adopt investment and Treasury policies.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Setting of salaries/benefits and other terms and conditions of employment	Identify issues, recommend negotiations approach; negotiate with labor organizations as approved by the Board of Directors.		Review management recommendations; make recommendations to the Board of Directors.	Provide direction to chief negotiator on negotiations; adopt resulting MOUs and changes in the PSR.
Grievances	Administer procedures pursuant to MOU and PSR provisions.			
Disciplinary Actions	Implement disciplinary actions within legal and MOU requirements.			
Hire/Terminate	Hire/terminate Authority staff.		Make recommendations to the Board of Directors on General Counsel legal services contract and Fire Chief employment contract, and compensation of General Counsel and the Fire Chief.	Hire/terminate Fire Chief and General Counsel. Approve service contract for General Counsel. Approve employment contract for Fire Chief.
Appointments				Appointment of clerk, auditor, and treasurer (JPA Agreement Articles II.9 and II.13)
Classification and Salary Ranges	Administer classification system within existing classes and budget.		Adopt and approve new or modified classes and corresponding salary ranges.	
Settlement of Employee Complaints and Grievances	Approve settlements up to \$10,000 within existing PSR parameters.		Approve settlements up to \$50,000.	Approve settlements over \$50,000.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
File Legal action				Authorize filing of legal action.
Respond to legal action				Authorize response to legal action.
Settlement of Claims and Litigation	Approve settlements of claims and litigation up to \$50,000. in accordance with Board of Directors Rules of Procedure.	Approve settlements of claims and litigation over \$50,000 not to exceed \$250,000. in accordance with Board of Directors Rules of Procedure.		Approve settlements of claims and litigation over \$250,000.
Level of risk/coverage/exposure	Recommend risk management policies; administer risk management program within established Board of Directors and legal requirements.			Establish policies.
Write-Off for Uncollectible Accounts	Approve write-off of uncollectible accounts up to \$15,000.		Approve write-off of uncollectible accounts over \$15,000. Budget and Finance Committee review annual report of uncollectibles and make a recommendation to Executive Committee for final decision.	
Accept Real Property Interests	Accept interest in real property if the Board of Directors or Executive Committee has previously approved.			Approve Secured Fire Protection Agreements and Purchase Agreements for the acquisition of real property.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

	Authority Management	Claims Settlement Committee	Executive Committee	Board of Directors
Utility licenses and easements	Execute licenses and easements for utilities necessary to implement construction projects approved by the Board or Executive Committee		Approve licenses and easements for utilities where no prior approval of construction projects has occurred	
Accept Grants	Accept all grants except: (1) when the grantor requires approval by the governing body, or; (2) when an adjustment is immediately needed to appropriations to expend the grant, or; (3) when a contract award is needed, requiring approval by the Executive Committee or Board.		Accept all grants in which the grantor requires approval by the governing body.	



Orange County Fire Authority
AGENDA STAFF REPORT

Board of Directors Meeting
May 26, 2016

Agenda Item No. 3A
Consent Calendar

Proposed Purchasing Ordinance – Second Reading

Contact(s) for Further Information

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Summary

This item is submitted for the second reading to adopt the proposed Purchasing Ordinance. Upon adoption, the Ordinance will take effect in 30 days.

Prior Board/Committee Action(s) – Committee Recommendation: *APPROVE*
Board of Directors First Reading: *APPROVE*

At its regular April 13, 2016, meeting, the Budget and Finance Committee reviewed and unanimously recommended approval of this item.

Subsequently, at its regular April 28, 2016, meeting, the Board of Directors introduced and waived the full reading of Ordinance No. 008, with one modification. The modification was made to Sec. 1-23 of the Ordinance (page 16), to require that the Chief Procurement Officer's written determination regarding the special procurement be further reviewed and approved by the Assistant Chief/Business Services. The Board also directed staff to modify the Roles/Responsibilities/Authorities matrix to require justifications for sole source purchases (within management authority) to be provided to the Chief Procurement Officer. This modification was also added for special procurements (within management authority) with the added requirement for review/approval by the Assistant Chief/Business Services. Lastly, the Board directed staff, upon implementation of the new Ordinance, to begin providing routine purchasing activity reports, similar to those provided by other agencies such as the County of Orange or the Orange County Transportation Authority.

RECOMMENDED ACTION(S)

1. Waive the full reading of the proposed Ordinance.
2. Adopt and read by title only proposed Ordinance No. 008 entitled AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 006 AND ORDINANCE NO. 007 AND ESTABLISHING THE PURCHASING RULES AND PROCEDURES OF THE ORANGE COUNTY FIRE AUTHORITY establishing a comprehensive procurement ordinance.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Not Applicable.

Background

Adoption of an Ordinance is a two-step process consisting of the introduction of the Ordinance, followed the adoption of the Ordinance. The establishment of one comprehensive ordinance that governs procurement will create a clear and consistent guide for staff, vendors doing business with OCFA, and the public. The structure of the ordinance will allow for future amendments as required without rescinding and replacing the entire ordinance.

Staff recommends adoption of a new OCFA Procurement Code, proposed Ordinance No. 008, which is based in large part upon the ABA Model Procurement Code. Upon adoption, the Ordinance will take effect in 30 days.

Attachment(s)

Proposed Ordinance No. 008 (redline version)

ORDINANCE NO. 008

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE ORANGE COUNTY FIRE AUTHORITY REPEALING ORDINANCE NO. 006 AND ORDINANCE NO. 007 AND ESTABLISHING THE PURCHASING RULES AND PROCEDURES OF THE ORANGE COUNTY FIRE AUTHORITY

RECITALS

A. *WHEREAS*, on April 23, 2009, the Orange County Fire Authority adopted OCFA Ordinance No. 006 establishing informal bidding procedures under the Uniform Public Construction Cost Accounting Act; and

B. *WHEREAS*, on April 23, 2009, the Orange County Fire Authority adopted OCFA Ordinance No. 007 establishing the purchasing rules and procedures; and

C. *WHEREAS*, the Board wishes to replace these two ordinances with a single ordinance based on the American Bar Association Model Procurement Code.

THEREFORE, the Board of Directors of the Orange County Fire Authority does hereby ordain as follows:

Section 1. Repeal of Ordinance Nos. 006 and 007; Replacement.

As of the effective date of this Ordinance, Ordinance No. 006 and No. 007 are hereby repealed and replaced, in their entirety, with the Orange County Fire Authority Procurement Code attached hereto as Exhibit A.

Section 2. Effective Date; Publication.

This Ordinance shall take effect and be in force thirty (30) days from the date of its passage. Before the expiration of fifteen (15) days after its passage, it or a summary of it shall be published once, with the names of the members of the Board of Directors voting for and against the same in the Register, a newspaper of general circulation published in the County of Orange.

PASSED, APPROVED and ADOPTED this ____ day of _____ 2016.

GENE HERNANDEZ, CHAIR
OCFA Board of Directors

ATTEST:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss
CITY OF ORANGE }

I, SHERRY A.F. WENTZ, Clerk of the Orange County Fire Authority, do hereby certify that the foregoing Ordinance No. 008 was duly introduced and placed upon its first reading at a regular meeting of the Orange County Fire Authority Board of Directors on the 28th day of April 2016, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the Board of Directors of the Orange County Fire Authority held on the _____ day of _____ 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

SHERRY A.F. WENTZ, CMC
Clerk of the Authority

EXHIBIT A

ORANGE COUNTY FIRE AUTHORITY
PROCUREMENT CODE

- Art. I. In General, §§ 1-1--1-10**
- Art. II. Chief Procurement Officer Authority, §§ 1-11--1-14**
- Art. III. Source Selection and Contract Formation, §§ 1-15--1-40**
- Art. IV. Specifications, §§ 1-41--1-46**
- Art. V. Procurement of Public Works Projects and Professional Design Services, §§ 1-47--1-57**
- Art. VI. Contract Terms and Conditions, §§ 1-58--1-61**
- Art. VII. Cost Principles, §§ 1-62--1-65**
- Art. VIII. Materials Management, §§ 1-66--1-74**
- Art. IX. Legal and Contractual Remedies, §§ 1-75--1-125**
- Art. X. Cooperative Purchasing, §§ 1-126--1-131**
- Art. XI. Reserved, §§ 1-132--1-136**
- Art. XII. Ethics in Public Contracting, §§ 1-137--1-140**

Article I. General Provisions

- Sec. 1-1. General Law.
- Sec. 1-2. Applicability.
- Sec. 1-3. Definitions.
- Sec. 1-4. Supplementary general principles of law applicable.
- Sec. 1-5. Requirement of good faith.
- Sec. 1-6. Confidential information.
- Secs. 1-7--1-10. Reserved.

Article II. Chief Procurement Officer Authority

Sec. 1-11. Authority of the Chief Procurement Officer.

Sec. 1-12. Written determinations.

Secs. 1-13, 1-14. Reserved.

Article III. Source Selection and Contract Formation

Sec. 1-15. Definitions.

Sec. 1-16. Methods of source selection.

Sec. 1-17. Competitive sealed bidding.

Sec. 1-18. Competitive sealed proposals.

Sec. 1-19. Contracting for legal counsel.

Sec. 1-20. Small purchases.

Sec. 1-21. Sole source procurement.

Sec. 1-22. Emergency procurements.

Sec. 1-23. Special procurements.

Sec. 1-24. Cancellation of solicitations.

Sec. 1-25. Rejection of individual bids, proposals, quotations or statements of qualifications

Sec. 1-26. Responsibility of bidders, offerors and respondents.

Sec. 1-27. Bid and contract security, material or service contracts.

Sec. 1-28. Types of contracts.

Sec. 1-29. Approval of accounting system.

Sec. 1-30. Multi-year contracts.

Sec. 1-31. Right to inspect.

Sec. 1-32. Right to audit records.

Sec. 1-33. Reporting of anticompetitive practices.

Sec. 1-34. Prospective vendors lists.

Sec. 1-35. Contract form and execution.

Sec. 1-36. Assignment of rights and duties.

Sec. 1-37--1-40. Reserved.

Article IV. Specifications

- Sec. 1-41. Definitions.
- Sec. 1-42. Maximum practicable competition.
- Sec. 1-43. Specifications prepared by other than Fire Authority personnel.
- Sec. 1-44. Brand name or equal specification.
- Sec. 1-45. Brand name specification.
- Sec. 1-46. Reserved.

Article V. Procurement of Public Projects and Professional Design Services

- Sec. 1-47. Definitions.
- Sec. 1-48. Procurement of public projects.
- Sec. 1-49. Public project informal bidding procedures.
- Sec. 1-50. Public project formal bidding procedures.
- Sec. 1-51. Procurement of professional design services.
- Sec. 1-52. Procurement of construction services.
- Sec. 1-53. Public project emergencies procedures.
- Sec. 1-54--1-57. Reserved.

Article VI. Contract Terms and Conditions

- Sec. 1-58. Contract terms and conditions.
- Secs. 1-59--1-61. Reserved.

Article VII. Cost Principles

- Sec. 1-62. Cost principles.
- Sec. 1-63. Cost or pricing data.
- Secs. 1-64, 1-65. Reserved.

Article VIII. Materials Management

- Sec. 1-66. Definitions.
- Sec. 1-67. Materials management guidelines.
- Sec. 1-68. Inventory management.
- Sec. 1-69. Disposition of surplus property.
- Secs. 1-70--1-74. Reserved.

Article IX. Legal and Contractual Remedies

- Sec. 1-75. Definitions.
- Sec. 1-76. Authority of the Chief Procurement Officer.
- Sec. 1-77. Right to protest.
- Sec. 1-78. Filing of a protest.
- Sec. 1-79. Time for filing protests.
- Sec. 1-80. Stay of procurements during the protest.
- Sec. 1-81. Confidential information.
- Sec. 1-82. Decision by the Chief Procurement Officer.
- Sec. 1-83. Remedies.
- Sec. 1-84. Appeals to the Fire Chief.
- Sec. 1-85. Notice of appeal.
- Sec. 1-86. Stay of procurement during appeal.
- Sec. 1-87. Contract procurement officer report.
- Sec. 1-88. Dismissal by the Fire Chief.
- Sec. 1-89. Remedies.
- Sec. 1-90. Filing of a contract claim.
- Sec. 1-91. Chief Procurement Officer's decision.
- Sec. 1-92. Issuance of timely decision.
- Sec. 1-93. Appeals to the Fire Chief.
- Sec. 1-94. Fire Authority claims against a contractor.
- Sec. 1-95. Mediation.
- Sec. 1-96. Arbitration.
- Sec. 1-97. Final decision by the Fire Chief.
- Sec. 1-98. Judicial review of protests or claims.
- Sec. 1-99. Exclusive remedy.
- Secs. 1-100--1-115. Reserved.

Article X. Cooperative Purchasing

- Sec. 1-116. Definitions.

Sec. 1-117. Applicability.

Sec. 1-118. Cooperative purchasing agreements required.

Sec. 1-119. Cooperative purchasing authorized.

Secs. 1-120, 1-121. Reserved.

Article XI. Reserved

Secs. 1-122--1-126. Reserved.

Article XII. Ethics in Public Contracting

Sec. 1-127. Procurement Ethics Standards

Secs. 1-128--1-130. Reserved.

ARTICLE I. GENERAL PROVISIONS

Purpose

The purpose of the Orange County Fire Authority Procurement Code is to:

- (a) Simplify, clarify, centralize, and modernize the Fire Authority's rules and regulations governing procurement.
- (b) Permit the continued development of best value procurement policies and practices.
- (c) Provide for increased public confidence in the procurement procedures followed by the Fire Authority.
- (d) Ensure the fair and equitable treatment of all persons who deal with the procurement system of the Fire Authority.
- (e) Provide increased economy in Fire Authority procurement activities and maximize, to the fullest extent practicable, the purchasing value of public monies of the Fire Authority, and foster effective broad-based competition within the free enterprise system.
- (f) Provide safeguards for the maintenance of a procurement system of quality and integrity.
- (g) Obtain in a cost-effective and timely manner the materials, services, and construction required by the Fire Authority to better serve its citizens.

Sec. 1-1. General Law.

Pursuant to and to the extent required by Government Code Section 6509, the Orange County Fire Authority shall be restricted in the exercises of its powers in the same manner as is a general law city in accordance with the joint power agreement formed as of February 3, 1995, and as subsequently amended.

Sec. 1-2. Applicability.

Sec. 1-2(1). The provisions of this code shall apply to the following:

- (a) Every expenditure of public monies by the Fire Authority irrespective of their source, including State and Federal assistance monies, for the procurement of materials, services, and public projects;
- (b) Disposal of property; and
- (c) Contracts where there is no expenditure of public monies or where the Fire Authority is offering something of value to the business community when the Fire Authority determines source selection and award of a contract.

Sec. 1-2(2). The following are exempt from the provisions of this code:

- (a) Grants awarded by the Fire Authority and approved by the Board of Directors;
- (b) The purchase, sale or lease of Fire Authority real property;
- (c) Contracts for professional witnesses if the purpose of such contracts is to provide for services or testimony relating to an existing or probable judicial proceeding in which the Fire Authority

is or may become a party to, and contracts for special investigative services for law enforcement purposes;

(d) Agreements negotiated by the Fire Authority in settlement of litigation or threatened litigation; or

(e) Contracts with other governmental agencies.

Sec. 1-3. Definitions.

In this code, unless the context otherwise requires:

Sec. 1-3(1). "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.

Sec. 1-3(2). "Change order" means a written document authorized by the Chief Procurement Officer which directs the contractor to make changes with or without the consent of the contractor.

Sec. 1-3(3). "Chief Procurement Officer" means the official appointed by the Fire Chief as the purchasing and materials manager and the central procurement and contracting authority for the Fire Authority.

Sec. 1-3(4). "Contract" means all types of Fire Authority agreements, regardless of what they may be called, for the procurement of materials, maintenance, services, public works, construction or the disposal of materials.

Sec. 1-3(5). "Construction" means the process of building, reconstructing, erecting, altering, renovating, improving, demolishing, or repairing any Fire Authority owned, leased, or operated facility. Construction does not include maintenance work, which is defined to include routine, recurring, and usual work for the preservation or protection of any Fire Authority owned or operated facility for its intended purposes.

Sec. 1-3(7). "Contract officer" means any person duly authorized by the Chief Procurement Officer to facilitate the source selection process, including but not limited to; preparing solicitations and written determinations, conducting negotiations, making award recommendations, and administering contracts.

Sec. 1-3(8). "Contractor" or "Consultant" means any person who has a procurement contract with the Fire Authority.

Sec. 1-3(9). "Days", unless otherwise specified, means calendar days and shall be computed by excluding the first day and including the last working day, unless the last day is a holiday, and then it is also excluded.

Sec. 1-3(10). "Department" means the Purchasing Section of the Business Services Department.

Sec. 1-3(11). "Designee" means a duly authorized representative of the Chief Procurement Officer, designated by the Chief Procurement Officer.

Sec. 1-3(12). "Disposal of material" means sale of surplus property by public auction, including online electronic auction, competitive sealed bidding, small purchase procedures, recycling, or other appropriate method designated by this code.

Sec. 1-3(13). "Electronic" means electrical, digital, magnetic, optical, electromagnetic, or any other

similar technology.

Sec. 1-3(14). "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Sec. 1-3(15). "Executive Committee" means the Executive Committee of the Orange County Fire Authority Board of Directors.

Sec. 1-3(16). "Fire Authority" means the Orange County Fire Authority.

Sec. 1-3(17). "Grant" means the furnishing of assistance, whether financial or otherwise, to any person to support a program authorized by law. Grant does not include an agreement whose primary purpose is to procure a specific end product, whether in the form of materials, services or construction. A contract resulting from such an agreement is not a grant but a procurement contract.

Sec. 1-3(18). "Materials" means all property, including but not limited to, equipment, supplies, printing, insurance and buildings but does not include land, a permanent interest in land or leases of real property.

Sec. 1-3(19). "Person" means any corporation, consultant, business, individual, union, committee, club, other organization or group of individuals.

Sec. 1-3(20). "Procurement" means buying, purchasing, renting, leasing, or otherwise acquiring any materials, services, or construction. Procurement also includes all functions that pertain to the acquisition of any material, service, or construction including but not limited to, description of requirements, selection and solicitation of sources, preparation, negotiation and, award of contract, and all phases of contract administration.

Sec. 1-3(21). "Professional service" means a unique, technical function performed by an independent contractor or firm qualified by education, experience, and/or technical ability to provide services and may include consulting, marketing analysis, banking services, auditing, software development/design, and editing services.

Sec. 1-3(22). "Public notice" means the distribution or dissemination of information to interested parties using methods that are reasonably available. Such methods may include electronic mailing lists and a website maintained for that purpose.

Sec. 1-3(23). "Services" means the furnishing of labor, time or effort by a contractor, consultant, subcontractor or sub-consultant which does not involve the delivery of a specific end product other than required design documents or reports and performance. Services do not include employment agreements or collective bargaining agreements. The definition of services includes, but is not limited to: consulting, personal, professional, legal counsel, auditing, technical, professional design and construction services.

Sec. 1-3(24). "Sole Source" means a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions.

Sec. 1-3(25). "Subcontractor or subconsultant" means a person who contracts to perform work or render service to a contractor or consultant as defined by this section or to another subcontractor or subconsultant as a part of a contract with the Fire Authority.

Sec. 1-3(26). "Written or in writing" means the product of any method for forming characters on paper or other material or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

Sec. 1-3(27). "Using department" means any organizational unit of the Fire Authority, which utilizes any materials, services or construction procured under this code.

Sec. 1-4. Supplementary general principles of law applicable.

Unless displaced by the particular provisions of this code, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this code.

Sec. 1-5. Requirement of good faith.

This code requires all parties involved in the negotiation, performance, or administration of Fire Authority contracts to act in good faith.

Sec. 1-6. Confidential information.

All bids, proposals, offers, specifications, or protests submitted to the Fire Authority are subject to public inspection and disclosure under the California Public Records Act (Government Code Section 6250 et seq.). If a person believes that any portion of its bid, proposal, offer, specifications or protest is exempt from public disclosure, such portion may be marked "confidential." Except as required by law or court order, the Fire Authority will use reasonable means to ensure that such confidential information is safeguarded.

Secs. 1-7--1-10. Reserved.

ARTICLE II. CHIEF PROCUREMENT OFFICER AUTHORITY

Sec. 1-11. Authority of the Chief Procurement Officer.

Sec. 1-11(1). Except as otherwise provided in this code, the Chief Procurement Officer may adopt operational procedures consistent with this code governing the procurement and management of all materials, services, and construction to be procured by the Fire Authority and the disposal of materials.

Sec. 1-11(2). The Chief Procurement Officer shall serve as the central procurement and contracting authority of the Fire Authority.

Sec. 1-11(3). Except as otherwise provided in this code, the Chief Procurement Officer shall:

- (a) Procure or supervise the procurement of all materials, services and construction needed by the Fire Authority and establish the methods and procedures necessary for the proper, efficient, and economical functioning of the procurement program.
- (b) Establish guidelines for the management of all inventories of materials belonging to the Fire Authority.
- (c) Sell, trade or otherwise dispose of surplus materials belonging to the Fire Authority in accordance with the provisions of Section 1-69.

- (d) Prepare, issue, revise, maintain, and monitor the use of specifications for materials, services and construction required by the Fire Authority.
- (e) Manage the Fire Authority's procurement card (pCard) program.
- (f) Furnish the Board of Directors with such reports and information as the Board may require.

Sec. 1-11(4). The Chief Procurement Officer may delegate procurement authority to designees or to any using department or official of the Fire Authority.

Sec. 1-11(5). The Chief Procurement Officer may determine in writing that noncompliance with any provision of this code is not substantial and may allow for correction or may waive minor informalities or irregularities. The basis for the decision shall be included in the determination.

Sec. 1-11(6). The Chief Procurement Officer, in accordance with this code, shall have the authority to award contracts not exceeding the amount defined under management authority in the Roles and Responsibilities Matrix. Contracts exceeding management authority shall be executed by the Chief Procurement Officer upon approval by the Executive Committee or the Board of Directors.

Sec. 1-11(7). Except in cases of emergency, pursuant to Section 1-22, or where the Board of Directors or the Executive Committee has retained authority, no purchase of services, supplies and equipment by any person other than the Chief Procurement Officer or designee shall be binding upon the Fire Authority or constitute lawful charge against Fire Authority funds.

Sec. 1-12. Written determinations.

Written determinations required by this code shall be retained in the department.

Secs. 1-13, 1-14. Reserved.

ARTICLE III. SOURCE SELECTION AND CONTRACT FORMATION

Sec. 1-15. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-15(1). "Best value" means a method in the competitive sealed proposal process which permits the evaluation of criteria to determine the best overall value to the Fire Authority.

Sec. 1-15(2). "Discussions" means communication with an offeror, bidder or respondent for the purpose of:

- (a) Eliminating minor irregularities, informalities, or apparent clerical mistakes in the offer or response;
- (b) Clarifying any offer or response to assure full understanding of, and responsiveness to, solicitation requirements;
- (c) Resolving minor variations in contract terms and conditions; or
- (d) Establishing the competency or financial stability of any offeror, bidder or respondent.

Sec. 1-15(3). "Invitation for bid" means all documents, written or electronic, whether attached or

incorporated by reference, which are used for soliciting bids in accordance with the procedures prescribed in Section 1-17.

Sec. 1-15(4). "Minor informalities or irregularities" means mistakes, or non-judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms whereby the waiver or correction of such mistakes does not prejudice other bidders, offerors or respondents.

Sec. 1-15(5). "Negotiations" means an exchange of information or any form of cooperation during which the offeror and the Fire Authority may alter or otherwise change the conditions, terms, and price, unless prohibited, of the proposed contract.

Sec. 1-15(6). "Registered supplier" means a supplier, vendor, or contractor that that has registered as an interested party to do business with the Fire Authority.

Sec. 1-15(7). "Request for proposals" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting proposals in accordance with procedures prescribed in Section 1-18.

Sec. 1-15(8). "Request for qualifications" means all documents, written or electronic, whether attached or incorporated by reference, which are used for soliciting responses from qualified respondents in accordance with Article V.

Sec. 1-15(9). "Responsible bidder, offeror, or respondent" means a person who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the procurement contract.

Sec. 1-15(10). "Responsive bidder" means a person who submits a bid which conforms in all material respects to a solicitation.

Sec. 1-15(11). "Solicitation" means an invitation for bids, a request for technical proposals, a request for proposals, a request for qualifications, a request for quotations, or any other invitation or request by which the Fire Authority invites a person to participate in a procurement.

Sec. 1-16. Methods of source selection.

All contracts of the Fire Authority shall be awarded by one of the methods of source selection specified in this code.

Sec. 1-17. Competitive sealed bidding.

Sec. 1-17(1). Invitation for bids.

- (a) Competitive sealed bids shall be solicited through an invitation for bids. The invitation for bids shall include specifications and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.
- (b) A prequalification process may be conducted prior to the issuance of an invitation for bids in order to establish a list of qualified bidders. In the event a prequalification process is used, the contract officer shall only consider bids that are submitted from prequalified bidders.

Sec. 1-17(2). Public notice. Notice of the invitation for bids shall be electronically posted and the invitation for bids shall be available for public inspection not less than fourteen (14) days prior to the date set forth therein for the opening of bids. A shorter time may be deemed necessary for a particular procurement as determined in writing by the Chief Procurement Officer. The public notice

shall state the place, date, and time of bid opening.

Sec. 1-17(3). Pre-bid conference. The Chief Procurement Officer may conduct a pre-bid conference. If a pre-bid conference is conducted, it shall be not less than seven days before the bid due date and time, unless the Chief Procurement Officer makes a written determination that the specific needs of the procurement justify a shorter time.

Sec. 1-17(4). Solicitation amendment. The Chief Procurement Officer shall issue a solicitation amendment to do any or all of the following:

- (a) Make a correction in the solicitation;
- (b) Correct defects or ambiguities;
- (c) Provide additional information or instructions; or
- (d) Extend the offer due date and time if the Chief Procurement Officer determines that an extension is in the best interest of the Fire Authority.

If a solicitation is changed by a solicitation amendment, the Chief Procurement Officer shall post the amendment electronically and notify registered suppliers. It is the responsibility of the offeror to obtain any solicitation amendments and acknowledge receipt of amendment as specified in the solicitation amendment.

Sec. 1-17(5). Late bids. A bid is late if it is received at the location designated in the invitation for bids after the time and date set for bid opening. A late bid shall be rejected. Bidders submitting bids that are rejected as late shall be so notified.

Sec. 1-17(6). Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. A secure web-based system or other appropriate media may be used in lieu of public bid opening, provided that the accuracy, confidentiality, and reliability is maintained. The name of each bidder and the amount of each bid, as well as other relevant information as the Chief Procurement Officer deems appropriate shall be recorded. Unless otherwise determined by the Chief Procurement Officer, this record shall be open to public inspection. In the event no attendees are present for bid opening, the sealed bids shall be opened by the department and a "bid" or "no bid" may be recorded on the tabulation. The bids shall not be available for public inspection until after a contract is awarded. After a notice of intent to award is issued or, in the absence of a notice of intent to award, after final execution of the contract, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.

Sec. 1-17(7). Bid acceptance and bid evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this code. Bids shall be evaluated based on the requirements set forth in the invitations for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that is not set forth in the invitation for bids.

Sec. 1-17(8). Correction or withdrawal of bids; cancellation of awards. Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such bid mistakes, may be permitted where appropriate. Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the department prior to the time set for bid opening.

Mistakes discovered after bid opening may be modified or withdrawn only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other bid provisions prejudicial to the interest of the Fire Authority or fair competition shall be permitted. In lieu of bid correction, a bidder alleging a mistake may be permitted to withdraw its bid if:

- (a) The mistake is clearly evident on the face of the bid document but the intended correct bid is not similarly evident; or
- (b) The bidder submits evidence that clearly and convincingly demonstrates that a mistake was made.

All decisions to permit the correction or withdrawal of bids, or to cancel awards based on bid mistakes, shall be supported by a written determination made by the Chief Procurement Officer.

Sec. 1-17(9). Contract award.

- (a) *General.* The contract shall be awarded by appropriate notice to the lowest responsible and responsive bidder whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids.
- (b) *Public record.* After the Fire Authority issues a notice of intent to award, or in the absence of a notice of intent to award upon final contract execution, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.
- (c) *Encumbrance of funds.* Except in cases of emergency, or in cases where specific authority has been first obtained from the Fire Chief, the Chief Procurement Officer shall not issue any purchase orders for supplies or equipment unless there exists an unencumbered appropriation in the fund account against which said purchase is to be charged. All purchases, regardless of encumbrances, shall be made in conformance with the policies established by this code.
- (d) *Procurement of recycled material.* Recycled products shall be used whenever practicable when they are of comparable quality, of equivalent price and appropriate for the intended use. Recycled products shall be procured in accordance with Public Contract Code, Section 22150, et seq.

Sec. 1-17(10). Low tie bids. If there are two (2) or more low responsive bids from responsible bidders that are identical in price and other evaluation criteria and that meet all the requirements and criteria set forth in the invitation for bids, award may be made by random selection in a manner prescribed by the Chief Procurement Officer.

Sec. 1-18. Competitive sealed proposals.

Sec. 1-18(1). Request for proposals.

- (a) Competitive sealed proposals shall be solicited through a request for proposals. The request for proposals shall include a scope of work and any applicable evaluation criteria. Contractual terms and conditions may be included within the solicitation document or incorporated by reference.

- (b) A prequalification process may be conducted prior to the issuance of a request for proposals in order to establish a list of qualified offerors. In the event a prequalification process is used, the contract officer shall only consider proposals that are submitted from prequalified offerors.

Sec. 1-18(2). Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided in Section 1-17(2).

Sec. 1-18(3). Pre-proposal conference. The Chief Procurement Officer may conduct a pre-proposal conference. If a pre-proposal conference is conducted, it shall be not less than seven days before the offer due date and time, unless the Chief Procurement Officer makes a written determination that the specific needs of the procurement justify a shorter time.

Sec. 1-18(4). Solicitation amendment. Solicitation amendments shall be handled in the same manner as provided in Section 1-17(4).

Sec. 1-18(5). Late proposals. A proposal is late if it is received at the location designated in the request for proposals after the time and date set for receipt of proposals. Late proposals shall be rejected in accordance with Section 1-17(5).

Sec. 1-18(6). Receipt of proposals. Proposals shall not be opened publicly. No proposals shall be handled as to permit disclosure of the contents of any proposal to competing offerors. Proposals shall be open for public inspection after final execution of the contract, except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with Section 1-6.

Sec. 1-18(7). Evaluation of proposals.

- (a) *Evaluation criteria.* The request for proposals shall state the criteria to be used in the evaluation of the proposals and shall include their relative importance. Specific numerical weighting is not required.
- (b) *Selection committee.* The Chief Procurement Officer shall appoint a selection committee to evaluate the proposals and make a recommendation based on the criteria set forth in the request for proposals. No other factors or criteria may be used in the evaluation.

Sec. 1-18(8). Discussion with offerors. Discussions may be conducted with offerors.

Sec. 1-18(9). Negotiations with offerors and revisions to proposals. Negotiations may be conducted with offerors. Offerors shall be accorded fair and equal treatment in conducting negotiations and there shall be no disclosure of any information derived from proposals submitted by competing offerors.

- (a) *Concurrent negotiations.* Negotiations may be conducted concurrently with offerors for the purpose of determining source selection and/or contract award.
- (b) *Exclusive negotiations.* Exclusive negotiations may be conducted with the offeror whose proposal is determined in the source selection process to be most advantageous to the Fire Authority. Exclusive negotiations may be conducted subsequent to concurrent negotiations or may be conducted without requiring previous concurrent negotiations. Exclusive negotiations shall not constitute a contract award nor shall it confer any property rights to the successful offeror. If exclusive negotiations are conducted and an agreement is not reached, the Fire

Authority may enter into exclusive negotiations with the next highest ranked offeror without the need to repeat the formal solicitation process.

Sec. 1-18(10). Contract award. Contract award shall be made by the Chief Procurement Officer to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Fire Authority taking into consideration the evaluation criteria set forth in the request for proposals. The contract file shall contain the basis on which the award is made.

Sec. 1-19. Contracting for legal counsel.

Sec. 1-19(1). Authority. For the purpose of procuring the services of legal counsel, as defined by the laws of the state, contracts for the services of legal counsel shall be awarded with the authorization of the Board of Directors or the Executive Committee except as otherwise provided by law.

Sec. 1-19(2). Conditions for use. Unless determined by the Board of Directors or the Executive Committee that direct selection is in the best interest of the Fire Authority, the services of legal counsel shall be procured in accordance with this code.

Sec. 1-20. Small purchases.

Sec. 1-20(1). General. Any contract for the purchase of supplies, equipment and services (including maintenance) not exceeding fifty thousand dollars (\$50,000.00) may be made by the Chief Procurement Officer in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.

Sec. 1-20(2). Small purchases over ten thousand dollars (\$10,000.00). Insofar as it is practical for small purchases in excess of ten thousand dollars (\$10,000.00) but less than fifty thousand dollars (\$50,000.00), no less than three (3) businesses shall be solicited to submit quotations. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the Fire Authority and conforms in all material respects to the solicitation. The names of the businesses submitting quotations, and the date and amount of each quotation, shall be maintained as a public record. Nothing herein contained, however, shall preclude the Fire Authority from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded or when the Chief Procurement Officer determines it is in the best interest of the Fire Authority to do so.

Sec. 1-20(3). Small purchases less than ten thousand dollars (\$10,000.00). The Chief Procurement Officer shall adopt operational procedures for making small purchases of ten thousand dollars (\$10,000.00) or less.

Sec. 1-21. Sole source procurement.

Notwithstanding any other provisions of this code, a contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item. The using department requesting a sole source procurement shall provide written evidence to support a sole source determination. The Chief Procurement Officer may require that negotiations are conducted as to price, delivery, and terms. The Chief Procurement Officer may require the submission of cost or pricing data in connection with an award under this section. Sole source procurements exceeding the amount defined in the roles and responsibilities matrix shall be executed by the Chief Procurement Officer upon approval by the Executive Committee or Board of Directors. Sole source procurement shall be avoided, except when no reasonable alternative sources exist. A record of sole source procurements shall be maintained as a

public record.

Sec. 1-22. Emergency procurements.

Notwithstanding any other provisions of this code, the Fire Chief may make or authorize others to make emergency procurements of materials, services, or construction when there exists a threat to public health, welfare, or safety or if a situation exists which makes compliance with Sections 1-17, 1-18, 1-49, or 1-50 contrary to the public interest; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The using department requesting an emergency procurement shall provide written evidence to support an emergency determination. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need. Emergency procurements exceeding the amount defined in the roles and responsibilities matrix shall be executed by the Chief Procurement Officer upon approval by the Chair or Vice Chair of the Board of Directors. A written determination of the basis for the emergency and for the selection of the particular contractor shall be maintained as a public record.

Sec. 1-23. Special procurements.

Notwithstanding any other provisions of this code, the Executive Committee or the Board of Directors may authorize procurements above the small purchase amount specified in Section 1-20 for supplies, equipment or services (including maintenance) when, due to unusual or special circumstances, it would be in the best interest of the Fire Authority to accomplish the procurement without compliance with Sections 1-17 (competitive sealed bidding), 1-18 (competitive sealed proposals), or 1-51 (procurement of professional design services). This is not applicable to the procurement of construction services (Section 1-50). The using department requesting a special procurement shall provide written evidence to support a special procurement determination. Any special procurement under this section shall be limited to those materials, equipment or services, necessary to satisfy the Fire Authority's need and shall be made with sound fiscal discretion. A written determination by the Chief Procurement Officer with review and approval from the Assistant Chief, Business Services of the basis for the special procurement and for the selection of the particular contractor shall be maintained as public record. The determination and the award shall be made in accordance with internal departmental procedures ensuring that the procurement is fair, honest, prudent, and a wise exercise of discretion and is in the public interest.

Sec. 1-24. Cancellation of solicitations.

Sec. 1-24(1). Cancellation of solicitations. An invitation for bids, a request for proposals, a request for qualifications, or other solicitation may be cancelled, or any or all bids, proposals or statements of qualifications may be rejected in whole or in part as may be specified in the solicitation, when it is in the best interest of the Fire Authority.

Sec. 1-24(2). Prior to opening.

- (a) As used in this section, "opening" means the date and time set for opening of bids, receipt of statements of qualifications or receipt of proposals in competitive sealed proposals.
- (b) Prior to opening, a solicitation may be cancelled in whole or in part when the Chief Procurement Officer determines in writing that such action is in the Fire Authority's best interest for reasons including but not limited to:
 - i. The Fire Authority no longer requires the materials, services, or construction;
 - ii. The Fire Authority no longer can reasonably expect to fund the procurement; or
 - iii. Proposed amendments to the solicitation would be of such magnitude that a new solicitation is in the best interest of the Fire Authority.

- (c) When a solicitation is cancelled prior to opening, notice of cancellation shall be publicly posted.
- (d) The notice of cancellation shall:
 - i. Identify the solicitation;
 - ii. Briefly explain the reason for cancellation; and
 - iii. Where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar materials, services, or construction.

Sec. 1-24(3). After opening.

- (a) After opening but prior to award, all bids, proposals or statements of qualifications may be rejected in whole or in part when the Chief Procurement Officer determines in writing that such action is in the Fire Authority's best interest for reasons including but not limited to:
 - i. The Fire Authority no longer requires the materials, services or construction;
 - ii. Ambiguous or otherwise inadequate specifications or scopes of work were part of the solicitation;
 - iii. The solicitation did not provide for consideration of all factors of significance to the Fire Authority;
 - iv. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - v. All otherwise acceptable bids, statements of qualifications or proposals received are at clearly unreasonable prices;
 - vi. There is reason to believe that the bids, statements of qualifications or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - vii. Competition was insufficient.
- (b) A notice of rejection shall be sent to all persons that submitted bids, statements of qualifications or proposals, and it shall conform to subsection 1-24(2) (d) of this section.
- (c) If all bids, proposals or request for qualifications are rejected, all bids, proposals or statements received shall remain, to the extent possible, confidential.

Sec. 1-24(4). Documentation. The reasons for cancellation or rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 1-25. Rejection of individual bids, proposals, quotations or statements of qualifications.

- (a) A bid may be rejected if:
 - i. The bidder is determined to be non-responsible pursuant to Section 1-26;
 - ii. The bid is nonresponsive in accordance with Section 1-17; or
 - iii. It is otherwise not advantageous to the Fire Authority.
- (b) A proposal, statement of qualifications, or quotation may be rejected if:

- i. The person responding to the solicitation is determined to be non-responsible pursuant to Section 1-26; or
- ii. The proposal is incomplete, nonresponsive to solicitation requirements; or
- iii. The proposed price exceeds available funds or is unreasonable; or
- iv. It is otherwise not advantageous to the Fire Authority.

(c) The reasons for rejection shall be made a part of the procurement file and shall be available for public inspection.

Sec. 1-26. Responsibility of bidders, offerors and respondents.

Sec. 1-26(1). Findings of non-responsibility. If a bidder, offeror or respondent who otherwise would have been awarded a contract is found non-responsible, a written finding of non-responsibility, setting forth the basis of the finding, shall be prepared by the contract officer. The unreasonable failure of a bidder, offeror or respondent to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a finding of non-responsibility with respect to such bidder or offeror. The written finding shall be made part of the contract file and be made a public record.

Sec. 1-26(2). Right of nondisclosure. Except as required by law or court order, confidential information furnished by a bidder, offeror or respondent pursuant to this section shall not be disclosed by the Fire Authority outside of the agency, or using department, without prior written consent by the bidder, offeror or respondent.

Sec. 1-26(3). Factors. Factors to be considered in determining if a prospective contractor is responsible include:

- (a) The proposed contractor's financial, physical, personnel or other resources, including subcontracts;
- (b) The proposed contractor's record of performance and integrity;
- (c) Whether the proposed contractor is qualified legally to contract with the Fire Authority; and
- (d) Whether the proposed contractor supplied all necessary information concerning its responsibility.

Sec. 1-26(4). Responsibility criteria. The contract officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.

Sec. 1-27. Bid and contract security, material or service contracts.

The Chief Procurement Officer may require the submission of security to guarantee faithful bid and contract performance. In determining the amount and type of security required for each contract, the Chief Procurement Officer shall consider the nature of the performance and the need for future protection to the Fire Authority. The requirement for security must be included in the invitation for bids, ~~invitation for reverse auction bids~~ or request for proposals. Failure to submit security in the amount and type of security required may result in the rejection of the bid or proposal.

Sec. 1-28. Types of contracts.

Subject to the limitations of this code, any type of contract which will promote the best interests of the Fire Authority may be used.

Sec. 1-29. Approval of accounting system.

The Chief Procurement Officer may require that the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted cost accounting principles prior to award of a contract.

Sec. 1-30. Multi-year contracts.

Unless otherwise provided by law, a contract for materials, services or construction may be entered into for any period of time deemed to be in the best interest of the Fire Authority, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of monies.

Sec. 1-31. Right to inspect.

The Fire Authority may, at reasonable times, inspect the part of the plant or place of business of a contractor, consultant or any subcontractor or sub-consultant that is related to the performance of any contract awarded or to be awarded by the Fire Authority.

Sec. 1-32. Right to audit records.

Sec. 1-32(1). The Fire Authority may, at reasonable times and places, audit the books and records of any person who submits cost or pricing data as provided in Article VII of this code to the extent that the books and records relate to the cost or pricing data. Any person who is awarded a contract, change order or contract modification for which cost or pricing data is required shall maintain the books and records that relate to the cost or pricing data for three (3) years from the date of final payment under the contract, unless otherwise specified in the contract.

Sec. 1-32(2). The Fire Authority is entitled to audit the books and records of a contractor, consultant or any subcontractor or sub-consultant under any contract or subcontract to the extent that the books and records relate to the performance of the contract or subcontract. The books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the prime contractor or consultant, and by the subcontractor or sub-consultant for a period of three (3) years from the date of final payment under the subcontract, unless otherwise specified in the contract.

Sec. 1-33. Reporting of anticompetitive practices.

If for any reason collusion or other anticompetitive practices are suspected among any bidders, offerors or respondents a notice of the relevant facts shall be transmitted to the Chief Procurement Officer. This section does not require a law enforcement agency conducting an investigation into such practices to convey such notice to the Chief Procurement Officer.

Sec. 1-34. Prospective vendors lists.

Sec. 1-35(1). The Chief Procurement Officer shall maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a Fire Authority contract.

Sec. 1-35(2). Persons desiring to be included on the prospective vendors list may register with the department electronically. The department may remove a person from the prospective vendors list if it is determined that inclusion is not advantageous to the Fire Authority.

Sec. 1-35(3). It shall be the vendor's sole responsibility to ensure that vendor registration information is current and active.

Sec. 1-35. Contract form and execution.

All contracts entered into under this code not exceeding the amount established by Section 1-11(6) shall be executed in the name of the Fire Authority by the Chief Procurement Officer. Contracts entered into under this code exceeding the amount established by Section 1-11(6) approved by the Executive Committee shall be executed by the Fire Chief, approved as to form by the General Counsel to the Fire Authority and countersigned by the Clerk of the Authority.

Sec. 1-36. Assignment of rights and duties.

The Chief Procurement Officer shall have the rights and duties of the Fire Authority to contract for the purchase of all services, supplies, equipment and other personal property required by the Fire Authority in accordance with the code and all policies and procedures adopted by the Board of Directors, and administrative procedures approved by the Fire Chief, or as otherwise provided by law. Except in cases where the Board of Directors or the Executive Committee has retained authority, the purchase of services, supplies and equipment are not transferable or otherwise assignable without the written consent of the Chief Procurement Officer.

Sec. 1-37--1-40. Reserved.

ARTICLE IV. SPECIFICATIONS

Sec. 1-41. Definition.

As used in this article, "specification" is used interchangeably with "scope", "scope of services", or "scope of work" and means any description of the physical or functional characteristics, or of the nature of a material, service or construction item. Specification may include a description of any requirement for inspecting, testing, or preparing a material, service, or construction item for delivery.

Sec. 1-42. Maximum practicable competition.

Sec. 1-42(1). All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the Fire Authority's needs and shall not be unduly restrictive.

Sec. 1-42(2). To the extent practicable and unless otherwise permitted by this code, all specifications shall describe the Fire Authority's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.

Sec. 1-42(3). Restrictive specifications shall not be used unless such specifications are required and it is not practicable or advantageous to use a less restrictive specification. The using department requesting a restrictive specification shall provide written evidence to support the restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of restrictive specifications.

Sec. 1-42(4). To the extent practicable, the Fire Authority shall use accepted commercial specifications and shall procure standard commercial materials.

Sec. 1-43. Specifications prepared by other than Fire Authority personnel.

The requirements of this code regarding the purposes and non-restrictiveness of specifications shall apply to all specifications prepared other than by Fire Authority personnel, including, but not limited to, those prepared by architects, engineers, designers, and consultants for public contracts, or subcontractors. No person preparing specifications shall receive any direct or indirect benefit from the utilization of such specifications.

Sec. 1-44. Brand name or equal specification.

A brand name or equal specification may be used to describe the standards of quality, performance, and other characteristics needed to meet the requirements of a solicitation, and which invites offers for equivalent products from a manufacturer.

Sec. 1-45. Brand name specification.

A brand name specification may be used to identify the sole acceptable item that meets the Fire Authority's needs. The using department requesting a brand name specification shall provide written evidence to support a brand name determination. A written determination by the Chief Procurement Officer of the basis for the brand name shall be maintained as public record. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of a brand name specification.

Sec. 1-46. Reserved.

**ARTICLE V.
PROCUREMENT OF PUBLIC WORKS PROJECTS AND
PROFESSIONAL DESIGN SERVICES**

Sec. 1-47. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-47(1). "Capital improvement" means an outlay of funds for the acquisition or improvement of real property, which extends the life or increases the productivity of the real property.

Sec. 1-47(2). "Contractor" shall mean any corporation, partnership, individual, sole proprietorship, joint venture or other legal entity which enters into a contract to sell commodities, services, or construction services to the Fire Authority.

Sec. 1-47(4). "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor.

Sec. 1-47(5). "Construction services" means either of the following for construction- manager-at-risk, and design-build project delivery methods:

- (a) Construction, excluding services, through the construction-manager-at-risk project delivery methods.
- (b) A combination of construction and, as elected by the Fire Authority, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction- manager-at-risk, and design-build in this section.

Sec. 1-47(6). "Construction-manager-at-risk" means a project delivery method in which:

- (a) There is a separate contract for design services and a separate contract for construction services.
- (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

- (c) Design and construction of the project may be in sequential phases or concurrent phases.
- (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 1-47(7). "Cost" means the aggregate cost of all materials and services, including labor performed by force account.

Sec. 1-47(8). "Design-bid-build" means a project delivery method in which:

- (a) There is a sequential award of two (2) separate contracts.
- (b) The first contract is for design services.
- (c) The second contract is for construction.
- (d) Design and construction of the project are in sequential phases.
- (e) Finance services, maintenance services and operations services are not included.

Sec. 1-47(9). "Design-build" means a project delivery method in which:

- (a) There is a single contract for design services and construction services.
- (b) Design and construction of the project may be in sequential phases or concurrent phases.
- (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

Sec. 1-47(10). "Design professional" means an architect or engineer, or both, duly licensed for professional practice, who may be employed by an owner for the purpose of designing a project.

Sec. 1-47(11). "Emergency for Public Projects" shall have the meaning provided in Public Contract Code Sections 22035 and 22050.

Sec. 1-47(12). "Facility" means any plant, building, structure, ground facility, real property, street, highway or other public work improvement.

Sec. 1-47(13). "Firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

Sec. 1-47(14). "Finance services" means financing for a construction services project.

Sec. 1-47(15). "Force account" means work performed on public projects by the Fire Authority's regularly employed personnel.

Sec. 1-47(16). "Maintenance work" shall have the meaning provided in Public Contract Code Section 22002(d), as that section may be amended from time to time, and shall include the following:

- (a) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

- (b) Minor repainting.
- (c) Resurfacing of streets and highways at less than one inch.
- (d) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

Sec. 1-47(17). "Preconstruction services" means advice during the design phase.

Sec. 1-47(18). "Professional design services" means architect services, engineering services, geologist services, landscape architect services, and land surveying service or any combination of those services that are legally required to be accomplished, reviewed, and approved by professionals registered to practice in the pertaining discipline in the State of California.

Sec. 1-47(19). "Professional engineer" refers to a person engaged in the professional practice of rendering service or creative work requiring education, training and experience in engineering sciences and the application of special knowledge of the mathematical, physical and engineering sciences in such professional or creative work as consultation, investigation, evaluation, planning or design of public or private utilities, structures, machines processes, circuits, buildings, equipment or projects, and supervision of construction for the purpose of securing compliance with specifications and design for any such work.

Sec. 1-47(20). "Public project" shall have the meaning provided in Public Contract Code Section 22002(c), as that section may be amended from time to time, and shall include the following:

- (a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- (b) Painting or repainting of any publicly owned, leased, or operated facility.
- (c) *"Public project"* does not include maintenance work.

Sec. 1-47(21). "Public works contract" means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

Sec. 1-47(22). "Solicitation" shall mean an invitation for bids, request for quotations, request for qualifications, or request for proposals issued by the Fire Authority for the purpose of requesting bids, quotes or proposals to perform a contract.

Sec. 1-47(23) "Uniform Public Construction Cost Accounting Act" is an alternative method for public project work performed or contracted by public entities in California as defined by Public Contract Code Section 22000 et seq. The Fire Authority adopted the alternative informal bidding procedures on February 22, 1996 establishing informal bidding procedures for public works.

Sec. 1-48 Procurement of public projects.

Sec. 1-48(1). Procurement of public projects, in accordance with the limits listed in Section 22302 of the Public Contract Code, as those limits may be amended from time to time, may be let to contract by informal procedures as set forth in Section 22032, et seq., of the Public Contract Code. Nothing herein contained, however, shall preclude the Fire Authority from utilizing more restrictive procedures if, and when required by federal or state law, where federal or state funds are involved in the contract to be awarded or when the Chief Procurement Officer determines it is in the best interest

of the Fire Authority.

Sec. 1-48(2). Contracts for construction shall be solicited through a competitive sealed bid process except as otherwise provided for in Sections 1-52 (procurement of construction services), 1-20 (small purchases), 1-21 (sole source procurement), and 1-22 (emergency procurements). The Chief Procurement Officer shall award contracts for public projects in accordance with the requirements of Public Contract Code Section 22000 et seq. and this code.

Sec. 1-48(3). Force Account and informal bidding procedures. Public works projects of the amount set forth in Public Contract Code Section 22032(a), as amended from time to time, may be performed by the employees of the Fire Authority, by negotiated contract, or by purchase order.

Sec. 1-48(4). Informal bidding procedures. Public works projects of the amount set forth in Public Contract Code Section 22032(b), as amended from time to time, may be let to contract by informal bidding procedures as set forth in Section 1-49(1).

Sec. 1-48(5). Formal bidding procedures. Public projects exceeding the amount set forth in Public Contract Code Section 22032(c), as may be amended from time to time, shall be let to contract by formal bidding procedures as set forth in Section 1-50.

Sec. 1-48(6) Payment bond. In accordance with the Civil Code Section 9550 et seq. all public works bids involving an expenditure in excess of twenty-five thousand dollars (\$25,000) shall require a payment bond in an amount not less than 100 percent of the total amount payable pursuant to the public works contract.

Sec. 1-49. Public project informal bidding procedures.

Sec. 1-49(1). Public projects which are subject to the informal bidding procedures as set forth in Section 1-48, shall be awarded to the lowest responsible bidder in accordance with the Public Contract Code Section 22000 et seq.

Sec. 1-49(2). Contractors list. The Fire Authority shall maintain a list of qualified contractors, identified according to categories of work. The development and maintenance of the list shall be in accordance with the provisions in the Public Contract Code Section 22034 and criteria established from time to time by the California Uniform Construction Cost Accounting Commission.

Sec. 1-49(3). Notice inviting informal bids. All contractors on the list of qualified contractors for the category of work to be bid or all construction trade journals as specified in the Public Contract Code Section 22036, or both, shall be sent a notice inviting informal bids unless the product or service delivery is proprietary. Additional contractors and/or construction trade journals may be notified at the discretion of the Chief Procurement Officer. If there is no list of qualified contractors maintained by the Fire Authority for the particular category of work to be performed, the notice shall be sent to the construction trade journals specified by the Commission.

Sec. 1-49(4). Sending notices and descriptions of project. All sending of notices to contractors and construction trade journals pursuant to Section 1-49(3) shall be completed not fewer than ten calendar days before bids are due. The notice inviting informal bids shall describe the project in general terms, how to obtain more detailed information about the project, and state the time and place for the submission of bids.

Sec. 1-49(5). Award of informal bids. The Chief Procurement Officer is authorized to award informal bids for public projects.

Sec. 1-49(6). Bids in excess of the formal bid limit. If all bids received are in excess of the amount set forth in Public Contract Code Section 22032(b), as may be amended from time to time, the Board of Directors may by passage of a resolution by a four-fifths vote, award the contract, to the lowest responsible bidder, if it determines the cost estimate was reasonable and the contract amount will not exceed the amount set forth in Public Contract Code Section 22034(d), as may be amended from time to time.

Sec. 1-50. Public project formal bidding procedures.

Sec. 1-50(1). Public projects which are subject to formal bidding procedures, shall be awarded to the lowest responsive and responsible bidder in accordance with the procedures set forth in this section.

Sec. 1-50(2). Notice inviting formal bids. The notice inviting bids shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project. The notice shall be published at least fourteen (14) calendar days before the date of opening the bids, in a newspaper of general circulation within the jurisdiction of the Fire Authority. The notice inviting formal bids shall also be sent electronically to all construction trade journals specified for the County of Orange in the Public Contract Code Section 22036 at least fifteen (15) calendar days before the date of bid opening. In addition to notice required by this section, the Fire Authority may give other notice as it deems proper.

Sec. 1-50(3). Adopt plans. The Board of Directors of the Fire Authority shall adopt plans, specifications, and working details for all public projects as required by Public Contract Code 22039, exceeding the amount specified in the Public Contract Code Section 22032(c).

Sec. 1-50(4). Bidder security. All formal public projects shall require bidder's security as required by state law. Bid security shall be in an amount equal to at least ten percent of the amount bid, or such other amount as may be set forth in Public Contract Code Section 20171, as may be amended from time to time. Any bid bond submitted shall be executed by an admitted surety insurer which meets the rating requirements established by the risk manager or designee, made payable to the Fire Authority.

Sec. 1-50(5). Prequalification. The Fire Authority may require bidders to meet certain criteria in order to be placed upon a bidder's list to bid on formal public projects.

Sec. 1-50(6). Award of formal bids. The Board of Directors of the Fire Authority shall award all formal public works projects.

Sec. 1-51. Procurement of professional design services.

Contracts for professional design services shall be solicited and selected in accordance with Government Code Section 4525 et seq. through a request for qualifications.

Sec. 1-52. Procurement of construction services.

Contracts for construction services shall be solicited through a design-bid build or a design-build process in accordance with Public Contract Code Section 22160 et seq. except as otherwise provided for in Section 1-53. The Board of Directors or delegated authority shall award all contracts for construction services in accordance with the state requirements and this code.

Sec. 1-53. Public project emergencies procedure.

In cases of emergency, when repair or replacements are necessary to permit the continued conduct of the operation or services of the Fire Authority or to avoid danger to life or property, the Chair or Vice Chair

of the Board of Directors, after making a finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and, that the action is necessary to respond to the emergency, may by a four-fifths vote, proceed at once to replace or repair any public facility, take any directly related and immediate action required by that emergency, and procure the necessary equipment, services and supplies for those purposes, without giving notice for bids to let contracts. The Fire Chief shall have the power to declare a public emergency when it is impractical to convene a meeting of the Board of Directors, subject to confirmation by the Board, by a four-fifths vote, at its next meeting and reviewed at least at every regularly scheduled meeting thereafter until the action is terminated. This procedure shall be subject to any other requirements of Public Contract Code Sections 22035 and 22050, as may be amended from time to time.

Sec. 1-54--1-57. Reserved.

ARTICLE VI. CONTRACT TERMS AND CONDITIONS

Sec. 1-58. Contract terms and conditions.

All Fire Authority contracts shall include provisions necessary to define the responsibilities and rights of the parties to the contract. The Chief Procurement Officer shall have the authority to establish and modify any such terms and conditions.

Secs. 1-59--1-61. Reserved.

ARTICLE VII. COST PRINCIPLES

Sec. 1-62. Cost principles.

The Chief Procurement Officer shall establish cost principles which shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs.

Sec. 1-63. Cost or pricing data.

The submission of current cost or pricing data may be required in connection with any award, change order or contract modification.

Secs. 1-64, 1-65. Reserved.

ARTICLE VIII. MATERIALS MANAGEMENT

Sec. 1-66. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-66(1). "Property" means controlled fixed assets including supplies, materials or equipment with a useful life of more than one (1) year and value greater than \$5,000.

Sec. 1-66(2). "Property transfer" means the transfer of controlled fixed assets between using agencies or transfer of property to or from the surplus property program.

Sec. 1-66(3). "Surplus property" means property no longer needed by using department for their operations, property in poor or non-working condition, or property that is a by-product (e.g. scrap metal, used tires and oil, etc.).

Sec. 1-67. Materials management guidelines.

The Chief Procurement Officer shall establish guidelines as may be required governing:

Sec. 1-67(1). The transfer of surplus property and operation of the surplus property program.

Sec. 1-67(2). The sale or disposal of surplus property, by auction, competitive sale or other authorized method.

Sec. 1-67(3). The trade-in of surplus property for purchase of new equipment.

Sec. 1-68. Inventory management.

The Chief Procurement Officer shall manage the Fire Authority service center which provides warehousing services including inventory management, shipping, receiving, storing, issuing and servicing of supplies and inventory for the Fire Authority. The Chief Procurement Officer will establish policies and procedures required for efficient and effective operation of the inventory system including the purchase of inventory, sale or other disposal of inventory items no longer needed, delivery and other services provided to using agencies.

Sec. 1-69. Disposition of surplus property.

Sec. 1-69(1). The Chief Procurement Officer will operate a surplus property program for the purpose of receiving, storing, transferring, or selling surplus property no longer needed by using agencies.

Sec. 1-69(2). Using agencies shall request department authorization to transfer controlled fixed assets to another using department, or to request transfer of property into or from the surplus property program.

Sec. 1-69(3). Unless otherwise provided for, surplus property no longer needed by any using department shall be offered through competitive sale to the highest responsible bidder.

Sec. 1-69(4). Unless otherwise provided, all proceeds from the sale of surplus property will be deposited into the Fire Authority's general fund. Proceeds from sale of enterprise, federal, grant or other special designation property will be reimbursed, less pro-rated selling expenses, to the appropriate fund, after completion of each sale.

Sec. 1-69(5). If surplus property has an estimated value of less than five thousand dollars (\$5,000) and it is proposed that the property may be donated, the Chief Procurement Officer has the authority to determine whether the proposed donation of the surplus property to another local agency or non-profit organization meets the intent of the California Constitution whereby when a public agency gives a surplus item to another organization, the item must be used for a public purpose of interest and benefit generally to the people of the agency's jurisdiction and in keeping with the agency's purpose. Said donations shall require the prior approval of the Fire Chief and a release of liability to the Fire Authority from the agency accepting the donated surplus property. Any request for donation with a fair market value exceeding five thousand dollars (\$5,000) shall require prior approval by the Board of Directors or the Executive Committee.

Sec. 1-69(6). If surplus property is deemed to have historical significance by the Fire Chief and or/his designee, the historical property will be transferred and placed in the custody of a designated

section manager for safe keeping.

Secs. 1-70--1-74. Reserved.

ARTICLE IX. LEGAL AND CONTRACTUAL REMEDIES

Sec. 1-75. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-75(1). "Adequate evidence" means more than mere accusation but less than substantial evidence. Consideration shall be given to the amount of credible information available, reasonableness in view of surrounding circumstances, corroboration, and other inferences that may be drawn from the existence or absence of affirmative facts.

Sec. 1-75(2). "Contract claim" means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, payment in a sum certain, adjustment or interpretation of contract terms, or other relief arising under or relating to the contract.

Sec. 1-75(3). "Filed" means delivery to the contract officer or to the Chief Procurement Officer, whichever is applicable. A time and date of receipt shall be documented in a verifiable manner for purposes of filing.

Sec. 1-75(4). "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.

Sec. 1-75(5). "Interested party" means an actual or prospective bidder, respondent or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an economic interest exists will depend upon the circumstances of each case. An interested party does not include a supplier, subconsultant or subcontractor to an actual or prospective bidder, respondent or offeror.

Sec. 1-75(6). "Receipt" means the earlier of actual receipt or the first attempted delivery by certified mail, or by any other means that provides evidence of the attempt, to the persons last known address.

Sec. 1-75(7). "Substantial evidence" means such relevant evidence as a reasonable person might accept as sufficient to support a particular conclusion.

Sec. 1-76. Authority of the Chief Procurement Officer.

The Chief Procurement Officer shall have the authority to settle and resolve protests and contract claims. Appeals from the decisions of the Chief Procurement Officer may be made to the Fire Chief pursuant to the provisions of this article.

Sec. 1-77. Right to protest.

Any actual interested party who is aggrieved in connection with the solicitation or award of a contract may

protest to the Chief Procurement Officer.

Sec. 1-78. Filing of a protest.

Sec. 1-78 (1). "Content of protest". The protest shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the protestant;
- (b) The signature of the protestant or its representative;
- (c) Identification of the solicitation or contract number;
- (d) A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 1-79. Time for filing protests.

Sec. 1-79(1). Protests concerning improprieties in a solicitation. Protests based upon alleged improprieties in a solicitation that are apparent before the solicitation due date shall be filed not less than five (5) working days before the solicitation due date.

Sec. 1-79(2). In cases other than those covered in subsection (1) of this section, protests shall be filed within seven (7) days after the aggrieved person knows or should have known of the facts giving rise thereto; however, in no event shall the protest be filed later than seven (7) days after issuance of intent to award.

Sec. 1-79(3). The Chief Procurement Officer, without waiving the Fire Authority's right to dismiss the protest for lack of timeliness, may consider any protest that is not filed timely.

Sec. 1-79(4). The Chief Procurement Officer shall give notice of the protest to the successful contractor if award has been made or, if no award has been made, to all interested parties. Interested parties have the right to intervene.

Sec. 1-80. Stay of procurements during the protest.

In the event of a timely protest under Section 1-79, the Fire Authority may proceed further with the solicitation or with the award of the contract unless the Chief Procurement Officer makes a written determination that there is a reasonable probability that the protest will be sustained or that the stay of procurement is not contrary to the substantial interests of the Fire Authority.

Sec. 1-81. Confidential information.

Sec. 1-81(1). Material submitted by a protestant shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law or as determined pursuant to Section 1-6.

Sec. 1-81(2). If the protestant believes the protest contains material that should be withheld, a statement advising the Chief Procurement Officer of this fact shall accompany the protest submission in accordance with Section 1-6.

Sec. 1-82. Decision by the Chief Procurement Officer.

Sec. 1-82(1). The Chief Procurement Officer shall issue a written decision within fourteen (14) days after a protest has been filed pursuant to Section 1-78. The decision shall contain an explanation of the basis of the decision.

Sec. 1-82(2). The Chief Procurement Officer shall furnish a copy of the decision to the protestant, by e-mail and/or certified mail, return receipt requested, or by any other method that provides evidence of receipt.

Sec. 1-82(3). The time limit for decisions set forth in subsection (1) of this section may be extended by the Fire Chief for a reasonable time not to exceed thirty (30) days. The Chief Procurement Officer shall notify the protestant in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Sec. 1-82(4). If the Chief Procurement Officer fails to issue a decision within the time limits set forth in subsection (1) or (3) of this section, the protestant may proceed as if the Chief Procurement Officer had issued an adverse decision.

Sec. 1-82(5). The Chief Procurement Officer's decision shall contain a statement regarding the appeals process that is available pursuant to this article.

Sec. 1-83. Remedies.

Sec. 1-83(1). If the Chief Procurement Officer sustains the protest in whole or part and determines that a solicitation, evaluation process, proposed contract award, or contract award does not comply with the procurement code, the Chief Procurement Officer shall implement an appropriate remedy.

Sec. 1-83(2). In determining an appropriate remedy, the Chief Procurement Officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to:

- (a) The seriousness of the procurement deficiency;
- (b) The degree of prejudice to other interested parties or to the integrity of the procurement process;
- (c) The good faith of the parties;
- (d) The extent of performance;
- (e) Costs to the Fire Authority;
- (f) The urgency of the procurement; and
- (g) The impact of the relief on the using department's mission.

Sec. 1-83(3). An appropriate remedy may include one or more of the following:

- (a) Reject all bids, responses or proposals;
- (b) Terminate the contract;

- (c) Reissue the solicitation;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the procurement code;
- (f) Such other relief as is determined necessary to ensure compliance with the General Law and this code.

Sec. 1-84. Appeals to the Fire Chief.

Sec. 1-84(1). Appeal. An appeal from a decision entered or deemed to be entered by the Chief Procurement Officer shall be filed with the Fire Chief within seven (7) days from the date the decision is issued. The appellant shall also file a copy of the appeal with the Chief Procurement Officer.

Sec. 1-84(2). Content of appeal. The appeal shall contain:

- (a) The information set forth in Section 1-78, including the identification of confidential information in the manner set forth in Section 1-81;
- (b) A copy of the decision of the Chief Procurement Officer; and
- (c) The precise factual or legal error in the decision of the Chief Procurement Officer from which an appeal is taken.

Sec. 1-85. Notice of appeal.

Sec. 1-85(1). The Fire Chief shall give notice of the appeal to the successful contractor if award has been made or, if no award has been made, to interested parties. Such interested parties shall have the right to request copies of the appeal and to intervene in the proceedings.

Sec. 1-85(2). The Fire Chief shall, upon request, furnish copies of the appeal to those named in subsection (1) of this section subject to the provisions of Section 1-81.

Sec. 1-86. Stay of procurement during appeal.

If an appeal is filed during the procurement and before an award of a contract and the procurement or award of the contract was stayed by the Chief Procurement Officer pursuant to Section 1-80, the filing of an appeal shall automatically continue the stay unless the Fire Chief makes a written determination that the procurement or award of the contract without delay is necessary to protect substantial interests of the Fire Authority.

Sec. 1-87. Chief Procurement Officer's report.

Sec. 1-87(1). Report. The Chief Procurement Officer shall file a report on the appeal with the Fire Chief within seven (7) days from the date the appeal is filed. At the same time, Chief Procurement Officer shall furnish a copy of the report to the appellant by e-mail and/or certified mail, return receipt requested or any other method that provides evidence of receipt, and to any interested parties who have responded to the notice given pursuant to Section 1-85(2). The report shall contain copies of:

- (a) The appeal;
- (b) Any other documents that are relevant to the protest; and

- (c) A statement by the Chief Procurement Officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

Sec. 1-87(2). Extension for filing of report.

- (a) The Chief Procurement Officer may request in writing an extension of the time period setting forth the reason for extension.
- (b) The Fire Chief's determination on the request shall be in writing, state the reasons for the determination and, if an extension is granted, set forth a new date for the submission of the report. The Chief Procurement Officer shall notify the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.

Sec. 1-87(3). Comments on report.

- (a) The appellant shall file comments on the Chief Procurement Officer's report with the Fire Chief within seven (7) days after receipt of the report. Copies of the comments shall be provided by the appellant to the Chief Procurement Officer and all other interested parties. The comments must contain a statement or confirmation as to the appellant's requested form of relief.
- (b) The Fire Chief may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in subsection (3)(a) of this section stating the reason an extension is necessary. The Fire Chief's determination on the request shall be in writing, state the reasons for the determination and, if the extension is granted, set forth a new date for the filing of comments. The Fire Chief shall notify the Chief Procurement Officer of any extension.

Sec. 1-88. Dismissal by the Fire Chief.

The Fire Chief shall dismiss, upon a written determination, an appeal if:

Sec. 1-88(1). The appeal does not state a valid basis, including a detailed statement of the legal and factual grounds, for protest; or

Sec. 1-88(2). The appeal is untimely pursuant to Section 1-84(1).

Sec. 1-89. Remedies.

If the Fire Chief sustains the appeal in whole or part and determines that a solicitation, evaluation process, proposed award, or award does not comply with the general law and/or this code, remedies may be implemented pursuant to Section 1-83.

Sec. 1-90. Filing of a contract claim.

Sec. 1-90(1). "Content of claim". The claim shall be in writing and shall include the following information:

- (a) The name, address, telephone number and email address of the claimant;
- (b) The signature of the claimant or its representative;
- (c) Identification of the solicitation or contract number;

- (d) A detailed statement of the legal and factual grounds of the claim including copies of relevant documents; and
- (e) The form of relief requested.

Sec. 1-91. Chief Procurement Officer's decision.

Sec. 1-91(1). Written decision. If a contract claim cannot be resolved by mutual agreement, the Chief Procurement Officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than sixty (60) days after the request is filed. Before issuing a final decision, the Chief Procurement Officer shall review the facts pertinent to the contract claim or controversy and secure any necessary assistance from legal, financial, procurement, and other advisors.

Sec. 1-91(2). Final decision. The Chief Procurement Officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:

- (a) A description of the claim;
- (b) A reference to the pertinent contract provision;
- (c) A statement of the factual areas of agreement or disagreement;
- (d) A statement of the Chief Procurement Officer's decision, with supporting rationale;
- (e) A statement regarding the appeals process that is available pursuant to this article.

Sec. 1-92. Issuance of a timely decision.

Sec. 1-92(1). The time limit for decisions set forth in Section 1-91(1) may be extended for good cause. The Chief Procurement Officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision is anticipated.

Sec. 1-92(2). If the Chief Procurement Officer fails to issue a decision within sixty (60) days after the request on a claim is filed or within the time prescribed under subsection (1) of this section, the contractor may proceed as if the Chief Procurement Officer had issued an adverse decision.

Sec. 1-93. Appeals to the Fire Chief.

Sec. 1-93(1). Appeal of final decision. An appeal of a final decision of a Chief Procurement Officer on a claim shall be filed with the Fire Chief within five (5) days from the date the decision is received. The appellant shall also file a copy of the appeal with the Chief Procurement Officer.

Sec. 1-93(2). Content of appeal. The appeal shall contain a copy of the decision of the Chief Procurement Officer and the basis for the precise factual or legal error in the decision of the Chief Procurement Officer from which an appeal is taken.

Sec. 1-93(3). Final decision, mediation service or arbitration. The Fire Chief may make the final decision in accordance with Section 1-97 or to refer to mediation services in accordance with Section 1-95 or refer to arbitration in accordance with Section 1-96.

Sec. 1-94. Fire Authority claims against a contractor.

All contract claims asserted by the Fire Authority against a contractor that are not resolved by mutual agreement shall promptly be referred by the Chief Procurement Officer to the Fire Chief for a final decision in accordance with Section 1-97, or mediation, in accordance with Section 1-95, or arbitration in accordance with Section 1-96.

Sec. 1-95. Mediation.

Contract claims may be resolved utilizing mediation services if the Fire Chief determines the use of such services is in the best interest of the Fire Authority.

Sec. 1-96. Arbitration.

Contract claims may be resolved utilizing arbitration if the Fire Chief determines the use of arbitration is in the best interest of the Fire Authority. The claim shall be settled by arbitration in accordance with the current construction industry arbitration rules of the American Arbitration Association or, at the option of the Fire Authority, in accordance with the provisions of the California Arbitration Act (CAA) (Cal. Civ. Proc. Code §§ 1280-1294.2) or the Federal Arbitration Act (FAA) (9 U.S.C. §§ 1-16, 201-208, 301-307).

Sec. 1-97. Final decision by the Fire Chief.

Sec. 1-97(1). The Fire Chief may affirm, modify, or reject the Chief Procurement Officer's decision in whole or in part, or make any other appropriate disposition.

Sec. 1-97(2). A decision by the Fire Chief shall be final. The decision shall be sent to all parties by e-mail, certified mail, return receipt requested or by any other method that provides evidence of receipt. If a stay was issued, the final decision by the Fire Chief shall lift any such stay, unless the Fire Chief determines that the continued stay is necessary to protect the substantial interest of the Fire Authority.

Sec. 1-98. Judicial review of protests or claims.

Any decision of the Fire Chief regarding a protest (§ 1-77 et seq.) or claim (§ 1-90 et seq.) under this code shall be final. Exhaustion of the procedures set forth in this code shall be a condition precedent to any person seeking judicial review of a final decision by the Fire Chief.

Sec. 1-99. Exclusive remedy.

Notwithstanding any law to the contrary, this article shall provide the exclusive procedure for asserting a claim or cause of action against the Fire Authority arising in relation to any procurement conducted under this code.

Secs. 1-100--1-115. Reserved.

ARTICLE X. COOPERATIVE PURCHASING

Sec. 1-116. Definitions.

In this article, unless the context otherwise requires:

Sec. 1-116(1). "Cooperative purchasing" means procurement conducted by, or on behalf of, more than one public procurement unit.

Sec. 1-116(2). "Eligible public procurement unit" means any state, county, city, town, and any other political subdivision, public authority, educational, health or other institution, and to the extent provided by law, any other entity which expends public funds for the procurement of supplies,

services and construction, and any not-for-profit entity.

Sec. 1-117. Applicability.

Agreements entered into pursuant to this article shall be limited to the areas of procurement, warehousing or materials management.

Sec. 1-118. Cooperative purchasing authorized.

The Fire Authority may participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any materials, services, or construction with one or more eligible procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to joint or multi-party contracts between public procurement unit and open-ended public procurement unit contracts that are made available to other public procurement units. Parties under a cooperative purchasing agreement may:

Sec. 1-118(1). Sponsor, conduct or administer a cooperative agreement for the procurement or disposal of any materials, services, or construction.

Sec. 1-118(2). Cooperatively use materials or services.

Sec. 1-118(3). Commonly use or share warehousing facilities, capital equipment and other facilities.

Sec. 1-118(4). Provide personnel, except that the requesting eligible procurement unit may pay the public procurement unit providing the personnel the direct and indirect cost of providing the personnel, in accordance with the agreement.

Sec. 1-118(5). On request, make available to other eligible public procurement units informational, technical or other services that may assist in improving the efficiency or economy of procurement. The public procurement unit furnishing the informational or technical services has the right to request reimbursement for the reasonable and necessary costs of providing such services.

The activities described in paragraphs (1) through (5) do not limit the activities of parties under a cooperative purchasing agreement.

Sec. 1-119. Cooperative purchasing source selection methods.

All cooperative purchasing conducted under this Article shall be through contracts awarded by a public agency through full and open competition, including use of source selection methods substantially equivalent to those specified in Article III (Source Selection and Contract Formation) of this code.

Secs. 1-120, 1-121. Reserved.

**ARTICLE XI.
RESERVED**

Secs. 1-122--1-126. Reserved.

**ARTICLE XII.
ETHICS IN PUBLIC CONTRACTING**

Sec. 1-127. Procurement Ethics Standards

Sec. 1-127(1). The Chief Procurement Officer, as well as those involved in Fire Authority procurement shall discharge their duties in accordance with high ethical standards by practicing their profession with integrity, honesty, truthfulness and adherence to the absolute obligation to safeguard the public trust.

Sec 1-127(2). The Chief Procurement Officer, as well as those involved in Fire Authority procurement, shall be subject to the Conflict of Interest Code and subsequent amendments adopted by the Fire Authority.

Sec. 1-127(3). The Chief Procurement Officer shall adopt a Procurement Ethics Policy and Procedures applicable to all Fire Authority procurement functions.

Secs. 1-128--1-130. Reserved.

ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities

Attachment 3

All authority rests with the Board of Directors unless it is delegated by statute or board action. When delegated, these authorities are further defined by contracts, resolutions, policies, or other board actions. The following chart defines OCFA's levels of authority. The Board of Directors has the authority to change these delegations within the parameters of legal and contractual restrictions.

	Authority Management	Executive Committee	Board of Directors
Commodity purchases (materials, equipment & supplies) Ord. 8, Sec. 1-3(18)	Approve purchase of all commodities contracts (selection process per Ord. 8, per Art. III selection process or Art. X cooperative purchasing).		Approve commodity purchases with the annual adoption of the budget, no further approval is required.
Fixed asset purchases	Approve purchase of all fixed asset contracts (selection process per Ord. 8 per Art. III selection process or Art. X cooperative purchasing) within the budgeted amount approved by the Board of Directors.	Approve purchase of fixed assets that exceed the budgeted amount by more than 15% or \$100,000 (whichever is less).	Approve purchase of fixed assets included in the annual budget with the annual adoption of the budget, no further approval is required.
Professional and Consulting Services Contracts - general <i>services and consulting including architectural, engineering, and project management services.</i>	Approve all professional and consulting service contracts (selection process per Ord. 8, Art. III, or Art. X) for annual contract where the annual value to any one firm is less than \$100,000. Approve multi-year contracts (maximum five years) so long as the total annual contract amount does not exceed Authority Management.	Approve all professional and consulting service contracts in which the annual contract value to any one firm exceeds \$100,000. Contract extensions beyond the initial contract term and allowable contract extensions (exceeding five years) will require Executive Committee approval prior to contract extension.	

**ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities**

	Authority Management	Executive Committee	Board of Directors
<p>Contract Duration</p> <p>Five years (three years plus two additional one-year periods)</p> <p><i>Applies to contracts exceeding small purchases as defined in Ord. 8 Sec 1-20</i></p>	<p>Approve extension of contracts within management delegated authority for contracts with a duration up to five years.</p>	<p>Approve extension of contracts exceeding five years or contracts that exceed management delegated authority.</p>	
<p>Maintenance Service Contracts - includes <i>repair and maintenance for facilities & equipment</i>.</p>	<p>Approve all maintenance service contracts (selection process per Ord. 8, Art. III, or Art. X) for annual contract where the annual value to any one contractor is less than \$200,000.</p> <p>Approve multi-year contracts (maximum five years) so long as the total annual contract amount does not exceed Authority Management.</p> <p>Approve maintenance service contract increases within limits delegated herein to Authority Management.</p>	<p>Approve all maintenance service contracts in which the annual value to any one contractor exceeds \$200,000.</p> <p>Contract extensions beyond the initial contract term and allowable contract extensions (five year maximum) will require Executive Committee approval prior to contract extension.</p>	
<p>Change Orders/ Modifications Professional & Consulting Service Contract Amendments (<i>Non Public Projects</i>)</p>	<p>For professional & consulting service contracts within the limits delegated herein to Authority Management, approve change orders in any amount so long as the revised amount remains within the delegated limits.</p> <p>For contracts originally approved by the Executive Committee or Board of Directors, approve change orders within the original scope of work, less than 15%.</p>	<p>Approve change order/modifications to professional & consulting service contracts with original or revised values that exceed those amounts delegated herein to Authority Management.</p>	.

**ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities**

	Authority Management	Executive Committee	Board of Directors
Emergency Purchases (commodity and service contracts)	Approve emergency purchases, as defined in Ord. 8, Sec. 1-3(14) & Sec. 1-22, up to the amounts delegated to Authority Management herein for purchases following standard selection process.	Purchases in excess of the amounts delegated to Authority Management require prior approval of Chair or Vice Chair and must be reported at the next Executive Committee meeting.	
Sole Source Contracts	Approve any sole source contract less than \$50,000 annually, so long as acceptable justification is provided by the using department per the requirements in Ord. 8, Sec. 1-21.	Approve any sole source contract when the annual amount exceeds \$50,000 or the three-year aggregate amount exceeds \$150,000. <i>Sole source justification form is a required attachment to the staff report.</i>	
Special Procurement Contracts – <i>utilized when it is in the best interest of OCFA to award a contract without bidding requirements and the procurement does not meet the definition of a sole source.</i>	Approve any special procurement contract less than \$50,000 annually, so long as acceptable justification is provided by the using department per the requirements in Ord. 8, Sec. 1-23.	Approve any special procurement contract when the annual amount exceeds \$50,000 or the three-year aggregate amount exceeds \$150,000. <i>Special procurement justification form is a required attachment to the staff report.</i>	
Public Projects - Informal & Formal as set forth in the California Public Contract Code Section 22032.	Approve all informal public projects in amounts up to the statutory limits authorized by Public Contract Code Section 22032 (Projects under \$200,000 effective 1-1-19).		Approve all formal public works contracts in amounts at or above the statutory limits authorized by Public Contract Code Section 22032(Projects over \$200,000 effective 1-1-19).

**ORANGE COUNTY FIRE AUTHORITY
Roles/Responsibilities/Authorities**

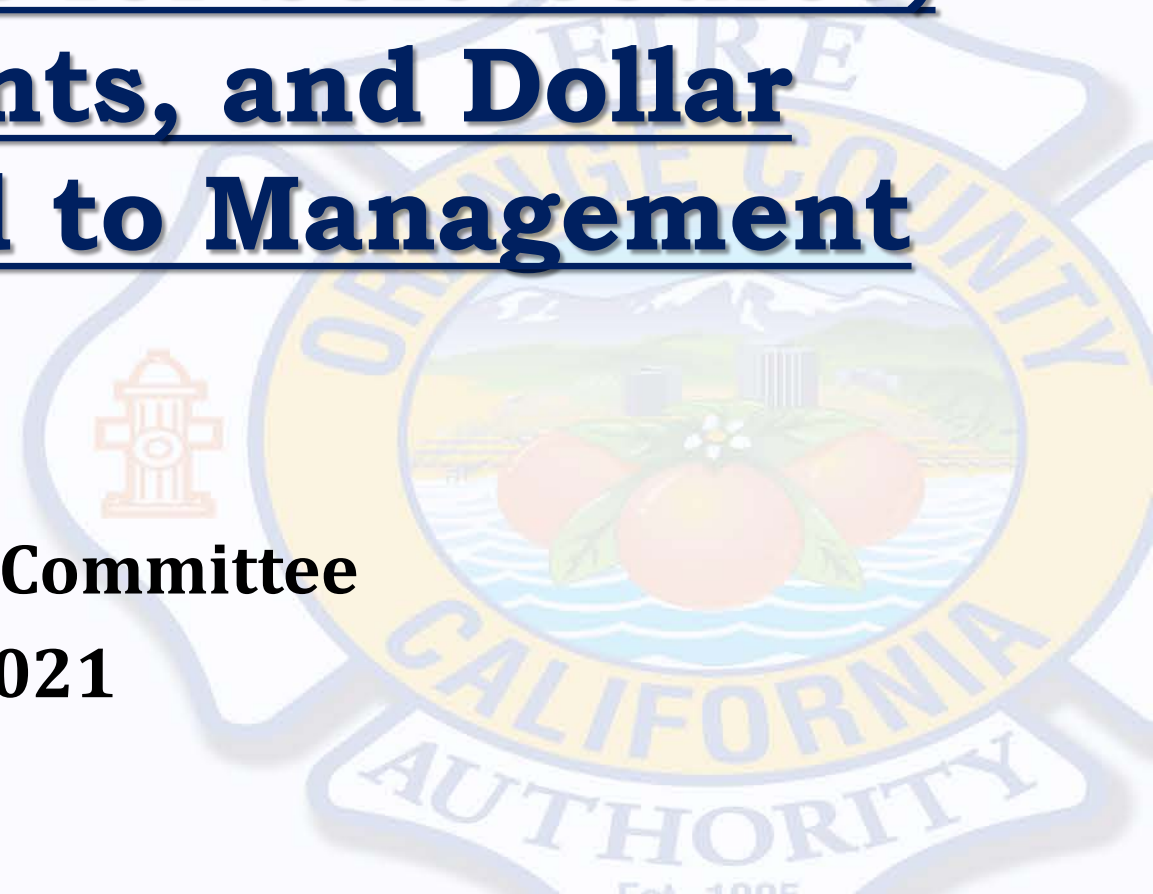
	Authority Management	Executive Committee	Board of Directors
Public Projects - Change Orders/ Modifications for informal and formal Public Projects as set forth in Public Contract Code Section 22032	For informal public projects within the original scope of work, approve change orders in any amount so long as the revised total remains below the statutory limits authorized by Public Contract Code Section 22032 (b). For formal public projects originally approved by the Board of Directors, approve change orders within the original scope of work up to 15% of original contract amount.		Approve change order/modification on formal public projects over 15% of original contract amount.
Public Projects – Emergency as defined in Public Contract Code Sections 22035 and 22050 (Ord. 8, Sec. 1-53)	Fire Chief or designee has authority to declare an emergency and authorize procurement of construction services and supplies without the competitive bidding requirements when it is impactable to convene a meeting of the Board of Directors prior to addressing the emergency needs.		Authorize exemption from procurement requirements by four-fifths vote (at next scheduled meeting) as required per Public Contract Code Sections 22035 and 22050.
Accept Real Property Interests	Accept interest in real property if the Board of Directors or Executive Committee has previously approved.		Approve Purchase Agreements for the acquisition of real property.

Orange County Fire Authority

Purchasing Provisions for Sole Source, Special Procurements, and Dollar Thresholds Delegated to Management

Budget & Finance Committee

April 14, 2021



Sole Source Procurements

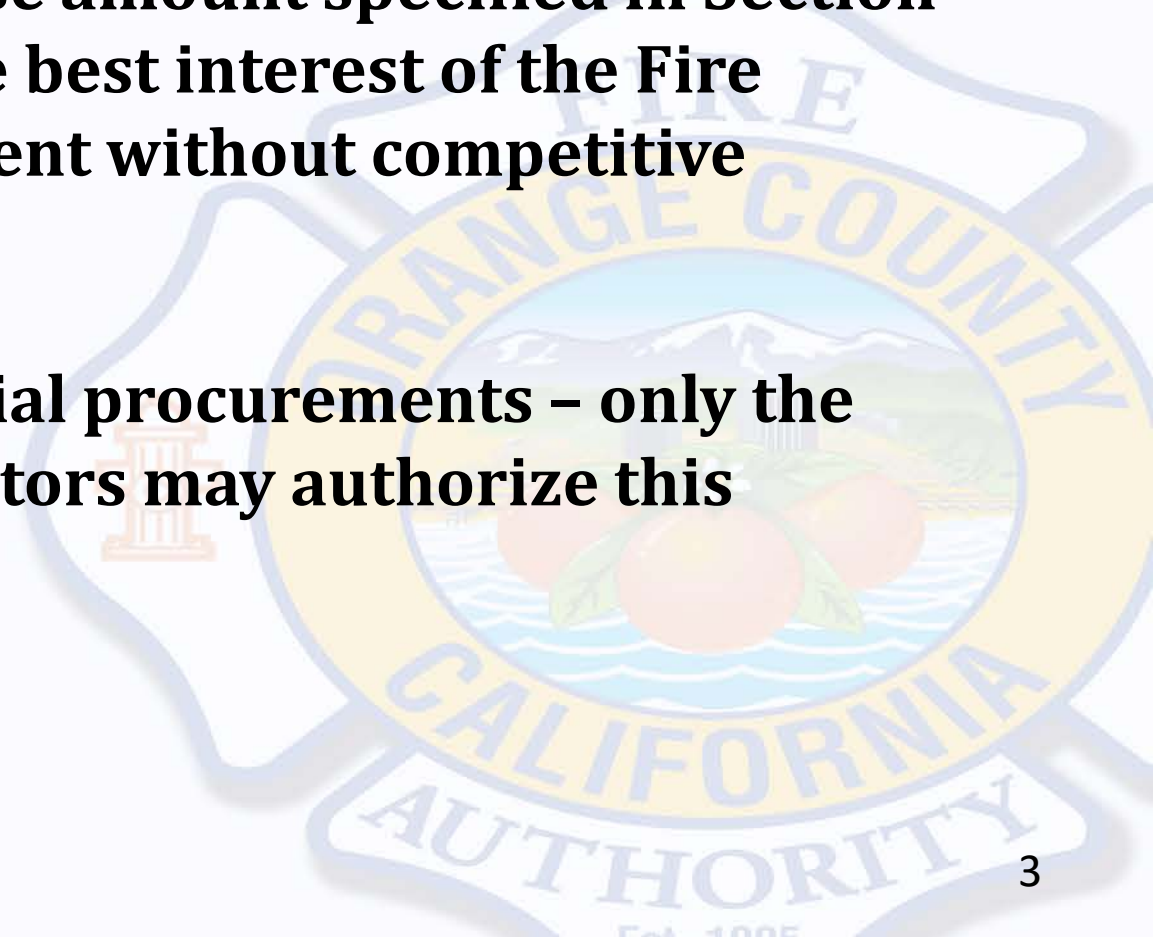
(See Staff Report and Ordinance for full detailed definition)

- **A contract may be awarded without competition when the Chief Procurement Officer determines in writing, after conducting a good faith review of available sources, that there is only one source for the required material, service, or construction item**
- **Sole source procurements exceeding an annual amount of \$50,000 or three-year aggregate amount of \$150,000 must be approved by the Executive Committee or Board of Directors**
- **Sole source procurements shall be avoided, except where no reasonable alternative sources exist**

Special Procurements

(See Staff Report and Ordinance for full detailed definition)

- **The Executive Committee or Board of Directors may authorize procurements above the small purchase amount specified in Section 1-20 (\$50,000) when it would be in the best interest of the Fire Authority to accomplish the procurement without competitive bidding or RFP**
- **Staff is not authorized to approve special procurements – only the Executive Committee or Board of Directors may authorize this provision**



Dollar Thresholds Delegated to Management

- **Aside from small dollar transactions (training enrollment, conference registration, etc.), OCFA managers cannot make purchases without going through the OCFA's Purchasing Division for completion of the purchase**
 - This includes upper levels of management such as Division Chiefs, Administrative Managers, Executive Management, and the Fire Chief
- **Per the Ordinance, the Chief Procurement Officer may complete purchases within the dollar thresholds delegated to "Authority Management" per the roles and responsibilities matrix (for competitively bid procurements)**
 - Professional and consulting services less than \$100,000/year (up to 5-year term)
 - Maintenance services less than \$200,000/year (up to 5-year term)
 - Public works projects less than \$200,000

Sole Sources & Special Procurement Examples

Sole Source	Special Procurement
1. Vendor: Teleflex, Inc. Service/Product: EZ-IO Infusion System Date Approved: 11/21/2019 (Renewal)	1. Vendor: Allstar Fire Equipment Company Service/Product: Lion Firefighter Turnouts and Gloves Date Approved: 2/27/2020 (Renewal)
2. Vendor: ESRI Service/Product: GIS Software Licensing, Maint. & Support Date Approved: 1/25/2018 (Renewal)	2. Vendor: Orange County Council of Governments Service/Product: Aerial Imagery Services OC Data Acquisition Partnership Participation (OCDAP) Date Approved: 6/25/2020
3. Vendor: Orange County Sheriff's Department Service/Product: 800 MHz Radio & 900 MHz Pager System Date Approved: 5/13/2020 (Renewal)	3. Vendor: The Counseling Team International (TCTI) Service/Product: Behavioral Health Services Date Approved: 10/26/2017
4. Vendor: UCSD Service/Product: Wildfire Cameras and Meteorological Systems Date Approved: 3/28/2019	4. Vendor: Courtney Aviation Service/Product: Aircraft for FIRIS Pilot Program Date Approved: 8/22/19

Renewal: represents the action of extending a contract or agreement that was previously approved by the Executive Committee or Board of Directors in order to continue current service or product delivery. In some instances renewals are recommended as a result of a prior RFP, RFI, or RFQ processes. As requested by a prior Board Chair, staff reports for renewals do not include the reference of "Sole Source" or "Special Procurement" in the staff report title. However, the reference is included in the recommended action.

5-year Analysis on the use of Sole Source & Special Procurements

	FY16/17	FY17/18	FY18/19	FY19/20	FY20/21 (as of March 2021)
Standard Purchase & Blanket Orders (excluding SS & SP)	1,232	1,237	1,263	1,526	965
Sole Source (SS)	6 5 Renewals	9 11 Renewals	7 2 Renewals	2 3 Renewals	1 1 Renewal
Special Procurement (SP)	3 0 Renewals	6 1 Renewal	5 1 Renewal	7 4 Renewals	3 0 Renewals

Procurement 5-Year Average	
Standard Purchase & Blanket Orders	98.74%
Sole Source (SS)	0.78%
Special Procurement (SP)	0.48%

Questions?





Orange County Fire Authority
AGENDA STAFF REPORT

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 3D
Discussion Calendar

Quick Reaction Force (QRF) Pilot Program

Contact(s) for Further Information

Brian Fennessy, Fire Chief

brianfennessy@ocfa.org

714.573.6010

Summary

This item is submitted for approval of the 180-day Quick Reaction Force (QRF) Pilot Program in collaboration with Southern California Edison (SCE), Coulson Aviation (USA), Inc. (CAI), and the Orange County Fire Authority to enhance regional aerial wildland fire response. The regional QRF Pilot Program will operate in conjunction with Los Angeles County Fire Department (LACoFD) and Ventura County Fire Department (VCFD), which will be available 24 hours a day, for daytime and nighttime firefighting. It is anticipated that the program will commence on June 15, 2021.

Prior Board/Committee Action

Not applicable.

RECOMMENDED ACTION(S)

Direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors:

1. Approve the Funding Agreement with Southern California Edison in a form substantially consistent with the attachment and approved by legal counsel to accept funding in the amount of \$7,725,000 to fund the Quick Reaction Force Pilot Program for 150-days and an additional \$1,545,000 for a 30-day program extension. Funds will cover the cost of the daily standby lease for one CH-47 Helitanker, daily standby lease for one S-76 Aerial Supervision aircraft, Air Tactical Group Supervisors, and standby lease for one mobile retardant plant to enhance the effectiveness of aerial responses to wildland fires.
2. Approve and authorize the Purchasing Manager to execute the Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc. in a form substantially consistent with the attachment and approved by legal counsel utilizing the sole source procurement provision in the Purchasing Ordinance for the provision of aircraft and other operational related services in an amount not to exceed \$8,710,000.
3. Approve and authorize the Purchasing Manager to enter into new Professional Services Agreements with Perimeter Solutions in a form substantially consistent with the attachment and approved by legal counsel utilizing the sole source procurement provision in the Purchasing Ordinance for the provision of a mobile fire retardant plant and related services in an amount not to exceed \$1,490,000.
4. Approve and authorize the Purchasing Manager to enter into new Professional Services Agreements with the Air Tactical Group Supervisors (ATGS') in a form substantially consistent with the attachment and approved by legal counsel at annual amounts not to exceed \$250,000 each with an aggregate program spending cap not to exceed \$720,000.

5. Approve and authorize a FY 2020/21 General Fund (121) budget adjustment to recognize funding from SCE for a revenue increase of \$9,270,000 and to increase appropriations by the same amount.
6. Approve the updated Cost Reimbursement Rate schedule to include the CH-47 Helitanker and S-76 Helitanker hourly flight rates, and mobile fire retardant plant rates to be effective June 15, 2021.
7. Adopt an exemption from the California Environmental Quality Act (CEQA) pursuant to Title 14, California Code of Regulations, Section 15301 (Existing Facilities) and direct staff to file a Notice of Exemption.

Impact to Cities/County

The QRF services will enhance regional aerial wildland fire response.

Fiscal Impact

Authorization of the Budget Adjustment will increase revenues and expenditures by \$9,270,000 in the FY 2020/21 budget. Funding for QRF services will come in the form of SCE funds and ABH reimbursements from other fire agencies requesting QRF services.

Background

Wildland fire remains the most significant threat to life and property in California. A risk assessment conducted by the California Department of Forestry and Fire Protection (CAL FIRE) concluded that an estimated 11 million residents, or the equivalent of 1 in 4 Californians, live in areas considered to be at high risk of a wildfire. Given the devastating and destructive wildfires of recent years, Governor Gavin Newsom, as well as fire agencies and utility companies throughout the state, have emphasized that wildfire mitigation and suppression are a top priority.

The combined residential population of Orange, Los Angeles, and Ventura Counties exceeds one-third of the entire state of California. Wildland fire spread during extreme fire weather conditions has exceeded all historical models. Though each of the aforementioned counties maintains wildland fire aerial suppression programs built around the helicopter platform with the intent to suppress 95% of wildland fires to 10 acres or less, large destructive fires still occur. The ability to rapidly deploy more robust ground and aerial fire suppression resources is an immediate and imperative need. As a regional fire agency, the OCFA plays a key role in wildfire mitigation and suppression in Southern California.

Given this designation, the OCFA has been presented with the opportunity to partner with Southern California Edison (SCE), Coulson Aviation (USA) Inc. (CAI), Perimeter Solutions and the Counties of Los Angeles and Ventura, on a new Pilot Program known as the Quick Reaction Force (QRF). This program will provide Very Large Helitanker, Areal Supervision aircraft, and mobile fire retardant plant services that will benefit Orange County and the residents and businesses within the SCE service territory. When a wildland fire exceeds the suppression effort mounted during initial attack, the QRF Pilot Program will rapidly deploy additional reinforcement aircraft. This will have a significant impact in minimizing large fire spread.

Quick Reaction Force (QRF)

A QRF is a combination of aerial firefighting resources preassembled and organized to work together as a specialized unit twenty-four hours a day. The ability of the QRF to safely drop fire retardant both night and day from Very Large Helitankers (VLHT) and Large Helitankers (LHT) is an unprecedented capability for the wildland fire community. The QRF is organized and dispatched as a complete aviation suppression package with everything it needs to operate at full

capacity without having to rely on logistical support from the incident organization. It is comprised of:

- Multiple 3,000-gallon, CH-47, Very Large Helitankers (VLHT)
- One 1,000-gallon, Sikorsky S-61 Helitanker
- One night-vision-equipped Sikorsky S-76 Aerial Supervision aircraft with qualified and experienced Air Tactical Group Supervisor (ATGS) or Helicopter Coordinator (HLCO)
- Multiple mobile helicopters re-fueling tenders
- Portable retardant mixing plant

Unique Benefits of a Regional QRF

- Improves water and retardant delivery rates - The ability to work multiple CH-47 VLHT and other helitanker aircraft together dramatically improves water and retardant delivery rates and will create a significant and dynamic perimeter control synergy. Each VLHT is capable of delivering 3,000 gallons of water and fire retardant in a single drop, and, made possible with the SMART Delivery System Controller technology, adjust the flow rates to fine tune water/retardant delivery. No other aircraft in the world has the night and day agility and overall capability of (Coulson) CH-47 VLHT.
- New capability to drop large amounts of fire retardant at night - The QRF program aircraft are equipped to safely apply retardant at night after daylight when fixed-wing airtankers have discontinued operations. Dropping large amounts of fire retardant at night under the direct supervision of the QRF aerial supervision coordinator is a completely new capability and is the future of aerial firefighting. The 2021 fire season is the opportunity to pilot fire-retardant application at night.
- Faster retardant delivery - Portable retardant hover-fill dip tank(s) will be mobilized when the QRF is dispatched. The closer the refill tank can be positioned to the fire, the faster the turnaround time of each VLHT and retardant dropping helitanker. This will dramatically increase gallons delivered per hour. The portable retardant hover-fill dip tanks are a very important element of the QRF agility. Long and time-consuming flights to and from a distant fixed-wing retardant base will not be necessary as a result of mobile fire retardant plant use.

The components of the QRF will be strategically located throughout the three partner counties with Orange County's resources based at the Joint Forces Training Base (JFTB) in Los Alamitos. The QRF will operate within the defined fire threat areas of the SCE service territory as illustrated in the map (Attachment 6). Pending Board approval, the QRF Pilot Program will operate 24/7 for up to 180-days and begin on June 15, 2021.

About Coulson Aviation Inc.

Coulson is an industry leader in aerial firefighting and continues to push the boundaries of innovation with the CH-47 Very Large Helitankers. These aircraft are capable of dropping up to 3,000 gallons of water or fire retardant in a single pass. By comparison, the OCFA Bell 412EP helicopters are capable of dropping up to 375-gallons. The VLHT is equipped with Coulson's proprietary Retardant Aerial Delivery System (RADS) tank. The SMART Delivery System Controller technology in these systems will allow for automated target drops for night vision goggle firefighting operations and the pilots will have the capability to adjust water/retardant flow rates based on speed and altitude, providing ground crews the same options as fixed wing air

tankers. The VLHT has other unique capabilities such as night-vision, IFR navigation and hover filling making it the largest and most capable helitanker in the world.

About Perimeter Solutions

Perimeter Solutions is the largest global producer of fire-fighting chemicals with a broad product offering across fire retardant and firefighting foam applications. They are a key supplier of wildland fire fighting products and services to the USDA Forest Service, CAL FIRE and other large fire management agencies across the world. Perimeter Solutions is the only provider of US Forest Service approved long-term fire retardant (Phos-Chek 259-F) for fixed tank helicopter operation. Perimeter Solutions is the only full-service solutions provider with a fire safety office, equipment, personnel, and available long term retardant materials in the Orange County region that can be deployed within 2-3 hours from initial call.

Project Funding

SCE has agreed to provide \$9,270,000 in an effort to increase the effectiveness of aerial response to wildland fires and will cover the fixed costs of the CH-47 and S-76 Aerial Supervision Aircraft, along with the standby lease of one mobile retardant plant and ATGS/HLCO for up to 180 days. Agencies requesting QRF services will cover the variable costs via ABH cost reimbursement.

The table below details the funding and estimated spending caps for the QRF Pilot Program:

Program Funding:			
Funding Source	Description		Total
Southern California Edison	180-day Program Contribution (applicable to fixed costs)		\$9,270,000
Total Funding Sources:			\$9,270,000
Program Spending Caps:			
Contractor	Resource	Detail	Spending Cap
Coulson Aviation Inc.	CH-47 Helitanker	Stand-by Lease: \$32,000 a day x 180-days (fixed-cost)	\$5,760,000
		Flight time: \$8,000 per hour x 100 hours (variable cost)	\$800,000
	S-76 Aerial Supervision Aircraft	Stand-by Lease: \$10,000 a day x 180-days (fixed-cost)	\$1,800,000
		Flight time: \$3,500 per hour x 100 hours (variable cost)	\$350,000
Perimeter Solutions	Mobile Retardant Plant	\$5,500 a day x 180-days (fixed-cost)	\$990,000
		Freight costs, overtime, water tender, etc. (variable cost)	\$500,000
ATGS/HLCO	Air Tactical Group Supervisors/Helicopter Coordinator	\$2,000 a day per ATGS x 180-days. Two ATGS's per day (fixed-cost)	\$720,000
Total Spending Cap:			\$10,920,000

Resources Available to Other Fire Agencies Upon Request

The CH-47 VLHT and S-76 Aerial Supervision Aircraft hourly flight rates, and the mobile retardant plan variable cost rates are being added to the equipment cost reimbursement rate schedule (Attachment 7). This will serve as the basis for OCFA to seek cost reimbursement for services requested by other fire service agencies. OCFA would be responsible for the flight-time charges for OCFA's own use of the CH-47 and S-76 Aerial Supervision Aircraft resource and own use of the mobile retardant plan related variable costs.

California Environment Quality Act (CEQA) Exemptions

CEQA's Class 1, Existing Facilities Exemption, applies to the operation, repair, maintenance, permitting, leasing, licensing or minor alteration of existing public or private facilities, structures or topographical features involving negligible or no expansion of an existing or former use. (14 Cal. Code Regs., tit. 14, § 15301.) The Joint Forces Training Base in Los Alamitos (JFTB) is home to existing aerial facilities and operations. The MOU would result in OCFA's temporary storage and operation of a CH-47 Very Large Helitanker, S-76 coordination helicopter, and mobile fire retardant plant at the JFTB for up to 180 days. The CH-47 Very Large Helitanker was also stored and operated out of the JFTB, and supported by ATGS, for these purposes in 2019 and 2020. Notably, the CH-47 and S-76 helicopters will be made available to over 15 other counties in the Southern California region; therefore, these helicopters could also be fighting fires in those other counties during this time. Based on all of the foregoing, the MOU calls for the operation of existing public and private facilities with no or negligible expansion of an existing use and the Class 1 Exemption therefore applies.

Staff recommends approval of the stated recommended actions in order to begin the 180-day program on June 15, 2021.

Attachment(s)

1. Quick Reaction Force (QRF) Pilot Program White Paper
2. Funding Agreement with Southern California Edison
3. Public Aircraft Lease and Service Agreement with Coulson Aviation (USA), Inc. and Sole Source Form
4. Agreement with Perimeter Solutions and Sole Source Form
5. Agreement with ATGS'
6. Southern California Edison Service Territory Map
7. Proposed Cost Reimbursement Rates – Equipment



Quick Reaction Force (QRF) Pilot Program

The combined residential population of Los Angeles, Orange, and Ventura Counties exceeds one-third of the entire state of California. Wildland fire spread during extreme fire weather conditions has exceeded all historical models. The need for a more rapid and a significant increase of ground and aerial fire suppression resources is both immediate and imperative.

Each of the aforementioned counties have developed their own wildland fire aerial suppression programs around the helicopter platform, with a goal of suppressing 95% of wildland fires to 10 acres or less, still large destructive fires are occurring. When a wildland fire exceeds the suppression capabilities of the initial attack organization, additional aircraft are needed to reinforce the attack. It is here that a rapid response by a Quick Reaction Force or QRF can have a significant impact containing large fire growth.

Quick Reaction Force – QRF

A QRF is a combination of aerial firefighting resources preassembled and organized to work together as a specialized unit twenty-four hours a day. The ability of the QRF to safely drop fire retardant both night and day from Very Large Helitankers (VLHT) and Large Helitankers (LHT) is an unprecedented capability for the wildland fire community.

The QRF is organized and dispatched as a complete aviation suppression package with everything it needs to operate at full capacity without having to rely on logistical support from the incident organization. It is comprised of:

- Multiple 3000-gallon, CH-47D, Very Large Helitankers (VLHT) *
- One 1000-gallon, Sikorsky S-61 Helitanker
- One night-vision-equipped Sikorsky S-76 Aerial Supervision aircraft with qualified and experienced Air Tactical Group Supervisor (ATGS) or Helicopter Coordinator (HLCO).
- Multiple mobile helicopter re-fueling tenders.
- Multiple portable retardant mixing plant(s). **
- Multiple Helicopter Managers (HEMG).

Unique benefits of a Regional QRF

- The ability to work multiple CH-47D VLHT and other helitanker aircraft together dramatically improves water and retardant delivery rates and will create a significant and dynamic perimeter control synergy. Each VLHT is capable of delivering 3000 gallons of water and fire retardant in a single drop, and, made possible with the SMART Delivery System Controller technology, adjust the flow rates to fine tune water/retardant delivery. No other aircraft in the world has the night and day agility and overall capability of (Coulson) CH-47D VLHT and S61 helitankers.

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- The knockdown power of multiple water/retardant night dropping VLHT and other night capable helitankers working together is a game-changer and a capability that has NEVER before been available to local, state, or national wildland fire agencies.
- Southern California Local Government agency aviation programs generally rely upon water dropping helicopters. As a rotary wing element, the QRF aircraft have ability to seamlessly integrate into ongoing operations.
- Decades of experience demonstrate that water dropped from a helicopter is usually good for checking the fire spread for a short period of time, between 5 and 30 minutes, then closely followed up with hand crews constructing control lines and ultimately hose lays to mop-up for final control.
- The number of hand crews available throughout the state system has declined over the last several years by over fifty percent, and the majority of federal agency hotshot crews are not available during the most critical time of fire season in Southern California. As a result, there is often a significant delay before enough hand crews are in place to construct fire control lines where helicopter water drops have slowed fire spread. Therefore, the use of long-term retardant by VLHT and other helitankers during the day and at night is critically important for slowing or stopping the spread of fire for much longer periods of time than water drops are capable and until hand crews arrive.
- The capability to drop large amounts of fire retardant at night under the direct supervision of the QRF aerial supervision coordinator is a completely new capability.
 - The application of fire retardant during the initial attack, extended attack, and multi-operational period phases of a wildland fire has largely been the exclusive domain of the fixed-wing airtanker industry. Fixed-wing aircraft operate only during daylight hours from established retardant bases which are at varying distances from the fire and where the aircraft must return to refill.
 - The application of fire retardant at night after the daylight only fixed-wing airtankers have discontinued operations has not previously existed and is the future of aerial firefighting. The QRF program aircraft are equipped and capable to safely apply retardant at night. The 2021 fire season is the opportunity to pilot fire-retardant application at night.
 - The application of retardant at night is made safer and is enhanced by way of the assigned QRF aerial supervisor, a trained helicopter coordinator (HLCO) or air tactical group supervisor (ATGS), operating in a smaller helicopter above the fire. The HLCO/ATGS coordinates the VLHT's and other helitanker perimeter control drops in collaboration with ground-based commanders. Also, using basic off-the-shelf technology, the supervising helicopter can use infra-red tracking to detect gaps in the



retardant line that need to be filled. Once identified, the HLCO targets those areas using an onboard laser to guide the VLHT's and helitanker drops.

- In many ways, experience has demonstrated that aerial firefighting at night is less complex than during day operations. There are fewer aircraft to see and avoid, less distraction from excessive radio traffic, and fire conditions often improve suppression opportunities due to lower temperatures and higher humidity.
- Portable retardant hover-fill dip tanks will be mobilized when the QRF is dispatched.
 - The VLHT's and helitankers will load/reload retardant from pre-staged portable retardant hover-fill dip tanks that have been quickly and easily set up in close proximity to the fire.
 - The closer the refill tank can be positioned to the fire, the faster the turnaround time of each VLHT and retardant dropping helitanker. This will dramatically increase gallons delivered per hour. The portable retardant hover-fill dip tanks are a very important element of the QRF agility.
 - Long and time-consuming flights to and from a distant fixed-wing retardant base will not be necessary as a result of mobile retardant plant use.

*VLHT – Very Large Helitanker

- Night-vision capability, VFR navigation and hover filling make the (Coulson) CH-47D the largest and only NVG equipped and staffed helitankers in the world.
- Equipped with Coulson's proprietary Retardant Aerial Delivery System (RADS-L) tank which can drop up to 3000 gallons of water or fire-retardant on a single pass. Another unique feature is the SMART Delivery System Controller technology which allows for precision automated drops during night vision goggle firefighting operations.
- Capable of operating in excess of two hours before refueling. Rapid-refuel capable which allows QRF to deliver more water/retardant than having to shut down to refuel.
- Maximum airspeed is 160 knots (significantly faster than any other existing helitanker).

**Portable Retardant Tanks

- Sending a portable retardant hover-fill dip tank to the fire at the time of dispatch is a unique component of the QRF.



- Having the ability to rapidly position a tank at a strategic location close to the fire reduces VLHT “load and return” time (hover fill to retardant application) which will significantly increase retardant delivery, potentially by tens of thousands of gallons a day, for each aircraft, including at night!
- More efficient than retardant dropping fixed-wing airtankers that have much longer “dash” time as they must return to a fixed airfield or airport, land, refill, takeoff, and fly back to the fire. The only way to increase the rate or amount of retardant application is to order additional airtankers which creates a significant increase in cost. The reality is during high operational tempo fire activity additional airtankers are very hard to obtain due to very high demand.

This is not a capability or technology of the future; this can be safely accomplished now.

Pilot program funding has been approved with a start date of June 15, 2021. QRF resources will be interagency approved and available to support Federal, State & Local Government incidents throughout the Southern California Edison service area.

**FUNDING AGREEMENT BY AND BETWEEN THE ORANGE COUNTY FIRE
AUTHORITY AND SOUTHERN CALIFORNIA EDISON COMPANY**

This Funding Agreement (“Agreement”) is by and between THE ORANGE COUNTY FIRE AUTHORITY, a California Joint Powers Authority (“OCFA”) and SOUTHERN CALIFORNIA EDISON COMPANY, a California corporation (“SCE”), and is effective on the last date when both Parties sign this Agreement (the “Effective Date”). OCFA and SCE may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, due to extreme weather associated with climate change, Southern California has experienced longer and more severe wildfire seasons;

WHEREAS, to increase the effectiveness of aerial response to wildfires, OCFA intends to enter into one hundred and fifty (150) day lease agreements (with the option to extend each lease for an additional 30 days) with Coulson Aviation (“Coulson”) for a CH47 helitanker and an S76 coordination helicopter, and with Perimeter Solutions (“Perimeter”) for one mobile fire retardant plant with a twelve-hour supply of retardant (such leased assets together, the “Fire Suppression Assets”);

WHEREAS, OCFA has requested that SCE provide funding of that part of the fixed lease costs relating to stand-by time for the Fire Suppression Assets (with OCFA funding that part of the fixed lease cost relating to flight time) and SCE has determined that the use of the Fire Suppression Assets offers significant benefits for wildfire suppression, protecting lives and property, including mitigating against damage to SCE’s transmission and distribution system, and increasing firefighter safety;

WHEREAS, the Parties intend that in operating the Fire Suppression Assets, OCFA will prioritize fire suppression activities in and throughout SCE’s service territory, unless in the professional judgment of OCFA management to do so in any specific instance would not maximize the benefits described above or as otherwise directed by the appropriate governmental authorities; and

WHEREAS, the Parties desire to enter into an Agreement that sets forth the terms and conditions pursuant to which SCE will contribute funds to OCFA for (1) the fixed lease costs relating to helicopter stand-by time, daily stand-by rate for one mobile fire retardant plant, and (2) Air Tactical Group Supervisor (ATGS)/Helicopter Coordinator (HLCO) staffing (“Stand-by Costs”) only while OCFA agrees to fund any and all flight time and operational costs in the Coulson and Perimeter lease agreements.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Funding.

Within seven business days of the Effective Date, SCE will electronically transfer a payment in the amount of seven million seven hundred twenty-five thousand dollars (\$7,725,000) (the “Initial Funding Amount”) to OCFA. OCFA will use this payment exclusively to fund the Stand-by Costs, including but not limited to the stand by portion of the lease agreements with Coulson and Perimeter, which leases must begin on June 15, 2021 and last for 150 days (the “Lease Period”), unless SCE exercises its option to extend the Lease Period to 180 days pursuant to Section 2, or a different lease period is agreed to by the Parties in writing. Under this Agreement, OCFA shall fund the “flight time” and operational portions of the Coulson and Perimeter lease agreements, which include any and all costs required to operate the Fire Suppression Assets. The Parties acknowledge that time is of the essence in performing their obligations under this Agreement. If, for any reason, OCFA does not enter into the leases by June 15, 2021, or such other date agreed to by the Parties in writing, then OCFA shall return the entire payment to SCE. SCE shall not be entitled to any refund of the payment for the Stand-by Costs in the event OCFA receives reimbursement from the State, Federal Government, or any other entity for use of the Fire Suppression Assets. Any remainder of the Initial Funding Amount or the Extension Amount (defined in Section 2) following the expiration of the Lease Period will be applied to any unreimbursed OCFA flight time and will not be returned to SCE.

2. Option to Extend the Lease Period.

SCE shall have the option, in SCE’s sole discretion, to extend the Lease Period by thirty (30) days to a total of 180 days (“Extension Option”) by providing notice to OCFA on or before the one hundred and twentieth (120th) day of the Lease Period indicating that SCE will exercise the Extension Option. Within seven business days of the notice exercising the Extension Option, SCE will electronically transfer a payment in the amount of one million five hundred and forty-five thousand dollars (\$1,545,000) (the “Extension Amount”) to OCFA. OCFA will use the Extension Amount exclusively to fund the Stand-by Costs during the extended Lease Period.

3. Roles and Responsibilities.

SCE will communicate with OCFA concerning fire weather forecasts and share information in SCE’s possession relevant to the prepositioning or tasking of the Fire Suppression Assets; provided, SCE makes no representation or warranty as to the accuracy or completeness of such forecasts and information in connection with this Agreement. SCE understands and acknowledges that OCFA can and does rely on other sources of data, forecasts and information when making decisions concerning prepositioning or tasking of the Fire Suppression Assets, and that such decisions are made in the sole discretion of OCFA. SCE shall provide the Initial Funding Amount, and if applicable the Extension Amount, to defray the Stand-by Costs payable by OCFA to Coulson and Perimeter under the lease agreements, and for Air Tactical Group Supervisor (ATGS)/Helicopter Coordinator (HLCO) staffing.

Notwithstanding the foregoing, SCE shall have no role in directing the operation or use of the helicopters and shall not be a party to the lease agreements with Coulson and Perimeter. As between SCE and OCFA, OCFA is solely responsible for the safe and lawful operation and use of the Fire Suppression Assets, including all decisions regarding deployment, maintenance, basing and positioning, pilot readiness, and ground support, and OCFA shall be solely responsible for compliance with the terms and conditions of the lease and all payments thereunder.

4. Data Collection.

OCFA will provide the data and information that SCE requires to allow SCE to (1) evaluate the effectiveness of the Fire Suppression Assets in suppressing wildfires, protecting lives and property, and increasing firefighter safety, and (2) respond to information requests from, or make regulatory filings and reports to, the California Public Utilities Commission (“CPUC”) and other regulators or governmental departments or agencies. Such data shall include, but not be limited to, the following: (a) aircraft utilization rate (flight time conducting suppression missions vs. standby hours), (b) gallons of water or retardant dropped and number of drops per fire, (c) number and location of wildfires attacked, and (d) whether and to what extent the Fire Suppression Assets are utilized outside of SCE’s service territory. OCFA shall submit the foregoing data in a GIS shapefile to SCE on a monthly basis on the tenth (10th) day of each calendar month beginning on July 10, 2021 through the Lease Period and within five (5) days of SCE’s written request therefore at any other time during the Lease Period.

5. Indemnification.

To the maximum extent permitted by law, OCFA shall indemnify, defend, and hold harmless SCE, and its respective successors, assigns, affiliates, subsidiaries, parent companies, officers, directors, agents, and employees, from and against any and all expenses, claims, losses, damages, liabilities or actions in respect thereof (including reasonable attorneys’ fees and reasonably allocated cost of in-house counsel) to the extent arising from or related to the lease(s), or operation or use of the Fire Suppression Assets.

6. Authority to Contract.

Each Party represents and warrants that it has the authority to contract or otherwise commit to perform the obligations herein.

7. Relationship of the Parties.

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party to be the agent of another Party, nor authorize any Party to make or enter into any commitments for or on behalf of another Party.

8. Public Announcements.

Neither Party may issue any press release regarding the Agreement unless (1) the press release is issued jointly by the Parties, or (2) prior to the release, the Party proposing to make the announcement furnishes the other Parties with a copy of the press release and obtains the other Parties' written approval; provided, however, that if such press release is required to comply with applicable laws, including the California Public Records Act and the Ralph M. Brown Act, legal proceedings, or the rules and regulations of any court or stock exchange having jurisdiction over a Party, then the Parties shall work in good faith to develop a mutually acceptable announcement.

9. Term and Survival.

This Agreement shall be effective as of the Effective Date through the date that all obligations of the Parties hereto with respect to this Agreement have been satisfied (the "Term"), except that the Parties shall continue to be bound by the provisions of this Agreement which by their nature survive such completion or termination, including Section 5 ("Indemnification").

10. Written Notices.

All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (1) when delivered by hand, (2) one day after being given to an express courier with a reliable system for tracking delivery, (3) when sent by confirmed facsimile or electronic mail with a copy sent by another means specified in this Section, or (4) three days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid, and as addressed as specified below:

If to OCFA, addressed to:

Brian Fennessy
Fire Chief
1 Fire Authority Road
Irvine, CA 92602

Fax: (714) 368-8800
Email: brianfennessy@ocfa.org

If to SCE, address to:

Don Daigler
Southern California Edison Company
2244 Walnut Grove Ave.
Rosemead, CA 91770

Email: Donald.Daigler@sce.com

With a Copy to:

David Kendig
c/o Woodruff, Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626

Fax: (714) 415-1183

Email: dkendig@wss-law.com

11. Assignment.

No Party shall assign this Agreement or any part or interest thereof, without the prior written consent of the other Parties, and any assignment without such consent shall be void and of no effect.

12. Governing Law.

This Agreement shall be interpreted, governed, and construed under the laws of the State of California as if executed and to be performed wholly within the State of California.

13. Entire Agreement.

This Agreement contains the entire agreement and understanding between and among the Parties and merges and supersedes all prior agreements, representations and discussions pertaining to the subject matter of this Agreement. This Agreement is intended to be a final expression of the agreement of the Parties and except to the extent expressly referenced herein, is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure (the Parole Evidence Rule). There are no contemporaneous separate written or oral agreements between the Parties in any way related to the subject matter of this Agreement. No subsequent agreement, waiver, modification, representation or promise with respect to the subject matter of the Agreement made by the Parties hereto, or by or to any employee, officer, agent or representative of any Party shall be of any effect unless it is in writing and executed by the Parties hereto.

14. Counterparts and Electronic Signatures.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of the Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

“OCFA”

ORANGE COUNTY FIRE AUTHORITY

Date: _____

By: _____

Brian Fennessy
Fire Chief

APPROVED AS TO FORM.

ATTEST:

By: _____

David E. Kendig
General Counsel

Maria D. Huizar
Clerk of the Authority

Date: _____

“SCE”

**SOUTHERN CALIFORNIA EDISON
COMPANY**

Date: _____

By: _____

Name _____

Title _____

PUBLIC AIRCRAFT LEASE AND SERVICE AGREEMENT

THIS PUBLIC AIRCRAFT LEASE AND SERVICE AGREEMENT (“Public Aircraft Agreement”) is made this 22nd day of April 2021

BETWEEN:

COULSON AVIATION (USA) INC., a limited liability company organized under the laws of the State of Oregon (“CAI”); and

ORANGE COUNTY FIRE AUTHORITY, a joint powers agency created pursuant to the California Joint Exercise of Powers Act (Gov’t Code §§ 6500 *et seq.*) (“OCFA”).

WHEREAS:

- (A) OCFA wishes to lease the Aircraft and obtain services for operation of OCFA’s Governmental Functions, all as described in detail herein;
- (B) CAI wishes to lease and supply such Aircraft and services to OCFA and operate the Aircraft for OCFA in OCFA’s Governmental Functions, all as described in detail herein; and
- (C) The Aircraft shall be considered Public Aircraft when performing any of the operations contemplated by this Public Aircraft Agreement;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, together with other good and valuable consideration, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS.

1.1 In this Lease the following words and expressions have, except where the context otherwise requires, the meanings set forth below:

“The Aircraft” means the aircraft identified in Appendix 3 Compensation in Table 1 Aircraft;

“Aircraft Flight Hour Payment” means the rates per flight hour including fuel as identified in Appendix 3 Compensation.

“Crew” means a night vision goggles certified flight crew, and a full maintenance crew, to operate and maintain Aircraft, and a night vision goggles certified flight crew and a full maintenance crew;

“Commencement Date” means the earlier of the 15th June 2021 and the date upon which the FAA Public Aircraft Declaration is received by CAI and submitted to the FAA;

“Daily Rental” means the rates as identified in Appendix 3 Compensation which shall include in addition to leases of the Aircraft, an 10,000 USG fuel truck, 53 foot spares trailer and driver, and a mobile support base (Prevost Bus);

“Day Operations” means the provision of services from 6am to 6pm on a daily basis;

“Event of Default” shall have the meaning prescribed in clause 11.2;

“FAA” means the United States Federal Aviation Administration;

“FAA Public Aircraft Policy” means the policy of the FAA with regard to defining Public Aircraft contained in the FAA Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations) published on March 23, 2011 in the Federal Register, FAA Advisory Circular No. 00-1B, and such additional or successor documents regarding FAA’s policy regarding Public Aircraft;

“Flight Hour Payment” means Aircraft Flight Hour Payments due.

“Governmental Functions” means as such term is defined in Section 40125 of Title 49 of the United States Code, an activity undertaken by a government, such as intelligence missions, firefighting, or biological or geological resource management;

“Insurance Schedule” means those insurance terms and amounts described in Appendix 1 attached hereto.

“Night Operations” means the provision of services from 6pm to 6am on a daily basis;

“Owner(s)” means the registered and beneficial owner of each Aircraft.

“Public Aircraft” shall have the meaning as such term is defined in Section 40102(a)(41) of Title 49 of the United States Code as aircraft exclusively leased for at least 90 continuous days by the government of a State, the District of Columbia, or a territory or possession of the United States or a political subdivision of one of these governments, except as provided in Section 40125(b) of Title 49 of the United States Code, which excludes aircraft used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

“Public Aircraft Declaration” means a written declaration (from the contracting officer of OCFA or higher-level official) of public aircraft status for all flights of the Aircraft under this Public Aircraft Agreement substantially in the form of Appendix 2 attached hereto;

“Qualified Non-Crewmember” means an individual, other than a member of the crew, aboard an aircraft whose presence is required to perform, or is associated with the performance of, a governmental function as described in Section 40125 of Title 49 of the United States Code.

“Taxes” means any taxes, levies, imposts, duties, charges, fees, deductions, withholdings, restrictions or conditions now or hereafter imposed by any governmental or taxing authority;

“Term” means a period of one hundred fifty (150) calendar days from the Commencement Date, except as may be extended at the sole discretion of OCFA for an additional thirty (30) days (“Extension Option”). To exercise its Extension Option, OCFA must provide written notice to CAI on or before the one hundred and thirty fifth (135th) day of the Term.

“Total Daily Rental Payment” means the total daily standby cost for all Aircraft and equipment as identified in Appendix 3 Compensation, Section 1.2.

2. AGREEMENT TO LEASE

Subject to, and in accordance with, the terms and conditions of this Public Aircraft Agreement, CAI agrees to lease the Aircraft to OCFA and OCFA agrees to take the Aircraft on lease from CAI for the Term.

3. LEASE AND DELIVERY

3.1 Delivery and Acceptance

OCFA has determined that the Aircraft is suitable for OCFA’s intended use, and OCFA has inspected the same and accepts the same for purposes of this Public Aircraft Agreement.

3.2 OCFA SELECTION OF AIRCRAFT

OCFA REPRESENTS AND WARRANTS TO CAI THAT OCFA HAS USED ITS OWN JUDGMENT IN SELECTING THE AIRCRAFT AND HAS DONE SO BASED ON THEIR SIZE, DESIGN, TYPE AND PERFORMANCE AND THAT OCFA HAS NOT RELIED ON ANY ADVICE OF CAI IN MAKING SUCH SELECTION.

3.3 Title

Title to the Aircraft will be and will at all times remain vested and registered in Owners. OCFA will have no right, title or interest in the Aircraft except as provided in this Public Aircraft Agreement. OCFA will not assert any lien or encumbrance against the Aircraft, nor permit any other party, claiming by through, on behalf of, or because of any action of OCFA to do so.

3.3 Term

The Aircraft shall be exclusively leased to OCFA from the execution of this Public Aircraft Agreement to the end of the Term, unless earlier terminated as provided herein.

4. PUBLIC AIRCRAFT

4.1 Status of Operations as Public Aircraft Operations

The Aircraft shall be operated under this Public Aircraft Agreement as Public Aircraft. The Aircraft shall only be used during the Term for Governmental Functions and all persons carried on board the Aircraft shall be either a crewmember or a Qualified Non-Crewmember.

4.2 Public Aircraft Determination

OCFA shall provide CAI with the Public Aircraft Declaration and otherwise cooperate with CAI in providing any additional documentation or declarations as may be requested by the FAA or such other government agency whether Federal or State with jurisdiction over the operations contemplated in this Public Aircraft Agreement. Upon receipt of the Public Aircraft Declaration signed by OCFA, CAI shall, in advance of any operation of any flight under this Public Aircraft Agreement, notify the FAA Flight Standards District Office having oversight of the operations under this Public Aircraft Agreement that it has contracted with OCFA to conduct eligible public aircraft operations, and submit the Public Aircraft Declaration. Notwithstanding any other provision herein, CAI shall not and shall not be required to perform any operations under this Public Aircraft Agreement prior to receipt by CAI of the Public Aircraft Declaration and submission of the same to the FAA.

5. CREW AND PILOT REQUIREMENTS

5.1 Crew Operation

The Aircraft will be exclusively operated and maintained by the Crew arranged and supplied by CAI. OCFA shall provide ground crews for remote operations of the Aircraft.

5.2 Pilot Requirements

CAI shall provide two (2) pilots and one (1) Flight Engineer for operation by the Aircraft during Day Operations, and two (2) pilots and one (1) Flight Engineer for the Aircraft during Night Operations. All pilots for Day Operations shall be United States Forest Service or CAL FIRE carded pilots.

All pilots for Night Operations shall be FAA certified for Night Vision Goggles flying and United States Forest Service or CAL FIRE carded pilots.

5.3 Mechanic Requirements

CAI shall provide four (4) mechanics for operation by the Aircraft during Day Operations and four (4) mechanics for operations of the Aircraft during Night Operations.

5.4 Ground Crew Requirements

CAI shall provide sufficient ground crew to drive and deploy the mobile support base (Prevost Bus). CAI shall provide ground crew to operate the fuel truck and spares trailer for the aircraft during both Day and Night Operations.

6. SCOPE OF WORK AND FLIGHTS

6.1 Flight Missions

Operations of the Aircraft shall be available for both Day and Night Operations. All operations shall be conducted in support of and as part of OCFA's Governmental Functions

related to firefighting, and shall be in accordance with operating rules applicable to all aircraft in the National Airspace System. Notwithstanding any other provision herein, CAI provided pilots shall exercise fully authority as pilot-in-command over each flight and shall have no obligation to perform any mission on behalf of OCFA, which, in the sole discretion of the CAI provided pilots, is beyond the scope of such pilots' abilities, certification, or authorization; or would unreasonably endanger such pilot or the Aircraft; or would be in contravention of any applicable law or any flight operation protocol. No such action of any pilot provided by CAI shall create or support any liability of CAI for loss, injury, damage or delay to OCFA.

6.2 Aircraft Maintenance and Airworthiness

The Aircraft shall be maintained exclusively by the mechanics provided by CAI and shall be maintained in conformance with each Aircraft's FAA approved maintenance manual. OCFA will not make or authorize any improvement, change, addition or alteration to either Aircraft without the express consent and agreement of CAI. All repairs, parts, replacements, mechanisms and devices added to the Aircraft during the Term shall immediately, without further act, become part of the Aircraft and subject to the ownership of Owners free and clear of any lien, encumbrance, or interest of OCFA or any party, claiming by through, on behalf of, or because of any action of OCFA.

6.3 Base of Operations

OCFA will provide storage and other facilities as the base of operation at Los Alamitos Joint Forces Training Base in Orange County, sufficient for purposes of the scope of work contemplated by this Public Aircraft Agreement and shall provide CAI with access and permissions at such base of operation for the performance of the contemplated scope of work.

7. RENTAL PAYMENTS AND EXPENSES

7.1 Rental Payments

CAI shall invoice OCFA for Total Daily Rental Payment on a weekly basis, which shall begin accruing on the Commencement Date and continue through the end of the Term.

OCFA shall pay the invoice (in full and without any deduction or withholding in respect of set-off, counterclaim, duties, taxes or other charges) within fourteen (14) days of receipt of invoice via ACH as follows:

Coulson Aviation (USA) Inc
Wells Fargo Bank, 1900 Southwest 5th Avenue, Portland, Oregon 97201
Routing Number: 123006800
Account Number: 0503999583

7.2 Operating Expenses

CAI shall invoice OCFA for Flight Hour Payments on a weekly basis.

OCFA shall pay the invoice (in full and without any deduction or withholding in respect of set-off, counterclaim, duties, taxes or other charges) within fourteen (14) of receipt of invoice via ACH as follows:

Coulson Aviation (USA) Inc
Wells Fargo Bank, 1900 Southwest 5th Avenue, Portland, Oregon 97201
Routing Number: 123006800
Account Number: 0503999583

7.3 Late Payments

Any late payment shall bear per diem interest from the due date, until the date paid at an annual rate of 10%. Payment of interest shall not excuse or cure any default.

7.4 Taxes

All payments, including specifically the Rental Payments made by OCFA hereunder, shall be made free and clear of, and without deduction for Taxes. OCFA shall be solely responsible for the payment of any Taxes imposed on the lease and services provided under this Public Aircraft Agreement. OCFA shall indemnify and hold harmless CAI from and against all taxes payable by them at any time in respect of this Public Aircraft Agreement in respect of any transaction contemplated by this Public Aircraft Agreement; provided that in no event shall OCFA be responsible for Taxes that are imposed on the net income, profit, gains, capital or net worth of CAI, or Taxes arising out of or solely attributable to the fraud, willful misconduct, or reckless disregard (with knowledge of the probable consequences) of CAI.

8. INSURANCE, INDEMNIFICATION, AND WAIVER

8.1 Insurance

(a) CAI shall maintain at all times, naming OCFA and the Owner(s) as additional insureds, during the Term (i) public liability insurance (including, but not limited to, aviation liability) against liability to third parties, including passengers and crew on the Aircraft, for personal injury and death and damage to property for a minimum amount and terms set out in the Insurance Schedule for each and every occurrence, and (ii) appropriate insurance against loss of, or damage to, the Aircraft hull for an amount reflecting reasonable replacement value of the Aircraft as provided in the Insurance Schedule.

(b) Each party shall be responsible for providing workers' compensation insurance and unemployment insurance for its employees and crew members provided by it for performance of this Public Aircraft Agreement as required by applicable laws

8.2 Indemnification

(a) OCFA agrees to indemnify, protect, save, defend and keep harmless CAI and CAI's directors, shareholders, members, beneficiaries, officers, employees, agents, attorneys-in-fact, lawyers, affiliates, successors and any permitted assigns (collectively, the "indemnified Parties") on, a net after-tax basis, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, demands, costs, expenses and disbursements (including, without limitation, reasonable legal fees and expenses) of any kind and nature whatsoever (collectively, the "Claims"), which may be imposed on, incurred by, or asserted against, any of CAI's Indemnified Parties, whether or not any of CAI's Indemnified Parties shall also be indemnified as to any such matters by any other

person, party or entity of any kind whatsoever, in any way relating to or arising out of any breach, action, inaction, misrepresentation, or direction by OCFA related to the performance or support of the operations contemplated herein that results in any Claim(s) against one of CAI's indemnified Parties; provided that OCFA shall have no obligation to indemnify any of CAI's Indemnified Party in respect of any Claims to the extent that such Claim is suffered or incurred as a direct consequence of the fraud, willful misconduct or reckless disregard of such Indemnified Party. Notwithstanding anything to the contrary contained in the foregoing, any other section of this Public Aircraft Agreement or otherwise, the indemnification agreements, obligations and liabilities of any kind whatsoever of such party set forth or provided in this Section 8.2 Shall survive the expiration or termination of this Public Aircraft Agreement for any reason whatsoever.

(b) CAI agrees to indemnify, protect, save, defend and keep harmless OCFA and OCFA's Indemnified Parties on, a net after-tax basis, from and against any and all Claims, which may be imposed on, incurred by, or asserted against, any of OCFA's Indemnified Parties, whether or not any of OCFA's indemnified Parties shall also be indemnified as to any such matters by any other person, party or entity of any kind whatsoever, in any way relating to or arising out of any breach, action, inaction, misrepresentation, or direction by CAI related to the performance or support of the operations contemplated herein that results in any Claim(s) against one of OCFA's Indemnified Party; provided that CAI shall have no obligation to indemnify any of OCFA's Indemnified Party in respect of any Claims to the extent that such Claim is suffered or incurred as a direct consequence of the fraud, willful misconduct or reckless disregard of such Indemnified Party. Notwithstanding anything to the contrary contained in the foregoing, any other section of this Public Aircraft Agreement or otherwise, the indemnification agreements, obligations and liabilities of any kind whatsoever of such party set forth or provided in this Section 8.2 shall survive the expiration or termination of this Public Aircraft Agreement for any reason whatsoever.

9. MUTUAL REPRESENTATIONS

CAI and OCFA represent to each other:

- (i) The execution, delivery and performance of this Public Aircraft Agreement has been duly authorized by all necessary corporate or government action of such party and do not require the approval or consent of or notice to any trustee or holders of any indebtedness or obligations of such party (except as has already been obtained);
- (ii) This Public Aircraft Agreement has been duly executed and delivered by an officer of such party authorized to execute and deliver such documents on behalf of such party; and
- (iii) This Public Aircraft Agreement and covenants of such party contained herein and therein constitute or will, upon execution, constitute legal, valid and binding obligations of such party, enforceable against such party in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws affecting creditors' rights generally and by the application of equitable principles by courts of competent jurisdiction, sitting at law or in equity.

10. NOTIFICATION

Any notice given by one party to the other in connection with this Agreement shall be in writing and shall be sent by email, telefax, courier, overnight delivery, certified mail, to the addresses listed below or to such other addresses as either party may specify to the other in writing from time to time:

<p>If to OCFA, addressed to:</p> <p>Brian Fennessy Fire Chief 1 Fire Authority Road Irvine, CA 92602</p> <p>Fax: (714) 368-8800 Email: brianfennessy@ocfa.org</p> <p>With a Copy to:</p> <p>David Kendig c/o Woodruff, Spradlin & Smart 555 Anton Boulevard, Suite 1200 Costa Mesa, CA 92626</p> <p>Fax: (714) 415-1183 Email: dkendig@wss-law.com</p>	<p>If to CAI, address to:</p> <p>Wayne Coulson President & CEO 4890 Cherry Creek Road Port Alberni, BC Canada V9Y 8E9</p> <p>Fax: (250) 723-7766 Email: wayne.coulson@coulsongroup.com</p>
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Notices shall be deemed effective when delivered or when proof of delivery is obtained (in the case of email, when the sender receives a read receipt from the addressee), or if earlier and whether or not received, three (3) days after such notice is deposited in the United States mail postage pre-paid as certified mail to the party as set forth above.

11. TERMINATION AND DEFAULT

11.1 Default

The following shall constitute an Event of Default:

- (i) a failure to make any payment when due hereunder within three (3) calendar days of when such payment is due;
- (ii) party's admission in writing of inability to pay its debts generally as they come due or a general assignment for the benefit of its creditors, or admission of insolvency;
- (iii) any declaration, representation, warranty or statement made or deemed to be made by a party in connection with this Public Aircraft Agreement is or proves to have been incorrect when made or becomes incorrect during the Term; or
- (iv) any material breach by a party of its obligations or performance under this Public Aircraft Agreement.

11.2 Remedies

In an Event of Default, the non-defaulting party may immediately terminate this Public Aircraft Agreement upon sending notification to the other party, and/or seek any and all such remedies and rights as may be available to such party at law or equity.

12. MISCELLANEOUS

12.1 Binding Effect

This Public Aircraft Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives and assigns provided that this provision shall not be construed as permitting assignment or substitution except as otherwise provided herein.

12.2 Execution

Delivery of an executed counterpart of a signature page of this Agreement by email or any other digital or electronic means shall be effective as delivery of a manually executed counterpart of this Public Aircraft Agreement.

12.3 Severability

In the event that any condition, covenant or other provision herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Lease and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

12.4 Clauses, Appendices And Schedules

References in this Public Aircraft Agreement to clauses, appendices, or schedules are, unless otherwise specified, references to clauses of and appendices and schedules to this Public Aircraft Agreement and together the clauses, appendices and schedules shall together constitute this Public Aircraft Agreement.

12.5 Assignment

No assignment, transfer or charge may be made by any party of all or any of its rights in respect of this Public Aircraft Agreement without the prior written consent of the other.

12.6 GOVERNING LAW

THIS PUBLIC AIRCRAFT AGREEMENT SHALL, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS ENTERED INTO IN THE STATE OF CALIFORNIA BY RESIDENTS OF SUCH STATE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE. LEGAL ACTIONS CONCERNING ANY DISPUTE, CLAIM OR MATTER ARISING OUT OF OR IN RELATION TO THIS PUBLIC AIRCRAFT AGREEMENT SHALL BE INSTITUTED IN THE SUPERIOR COURT OF THE COUNTY OF ORANGE, STATE OF

CALIFORNIA, OR ANY OTHER APPROPRIATE COURT IN SUCH COUNTY, AND
CAI COVENANTS AND AGREES TO SUBMIT TO THE PERSONAL JURISDICTION
OF SUCH COURT IN THE EVENT OF SUCH ACTION.

IN WITNESS WHEREOF, CAI and OCFA have each caused this Public Aircraft Agreement to
be duly executed and delivered by each of CAI and OCFA on the date first above written.

COULSON AVIATION (USA) INC.



Name: Wayne Coulson
Title: President and CEO

ORANGE COUNTY FIRE AUTHORITY

Name:
Title:

Insurance Schedule

Appendix 1

[on OCFA letterhead]

[insert date]

COULSON AVIATION (USA) INC.

Attn:

Re: Public Aircraft Declaration

Dear Mr. _____:

As you know, the **ORANGE COUNTY FIRE AUTHORITY (OCFA)**, a joint powers agency created pursuant to the California Joint Exercise of Powers Act (Gov't Code §§ 6500 et seq.) and comprised of 24 member agencies, each of which are a political subdivision of the State of California, entered into a contract (Public Aircraft Agreement) dated September 24, 2020 with **COULSON AVIATION (USA) INC. (CAI)** under which CAI will exclusively lease the [*describe aircraft*] to OCFA and provide the exclusive services of such aircraft for a governmental function such as intelligence missions, firefighting, or biological or geological resource management of OCFA during the term of such Public Aircraft Agreement, which is ninety (90) calendar days. We hereby declare that under Title 49 of the United States Code and in accordance with FAA Notice of Policy Regarding Civil Aircraft Operators Providing Contract Support to Government Entities (Public Aircraft Operations) published on March 23, 2011 in the Federal Register, and FAA Advisory Circular No. 00-1B, the governmental functions and the operations contemplated by the Public Aircraft Agreement qualify as Public Aircraft Operations (PAO). As such, we acknowledge that we have to provide this declaration to that effect, which CAI in turn shall provide to the FAA, prior to commencement of operations under the Public Aircraft Agreement. Below is information in support of this declaration, which is intended to apply to all flights operated by CAI pursuant to the Public Aircraft Agreement.

Name of civil operator (the contracted operator): Coulson Aviation (USA) Inc.**Aircraft type(s) to be used for the PAO:** [*describe aircraft*]**Name of aircraft owner(s):** [*reference registered owner of Aircraft*]**Aircraft registration number(s):** [*registration marks*]**Date of contract:****Date of proposed first flight as a PAO:****Date contract terminates:****Name of the government entity declaring public aircraft status (the government entity contracting for aircraft services):** ORANGE COUNTY FIRE AUTHORITY**Name, title, and contact information for the government official making the declaration of PAO status:**

Nature of operations (include enough detail to demonstrate that the flights are for a governmental function under the statute): The Aircraft will be dedicated exclusively during the 90-day term of the Public Aircraft Agreement to providing intelligence missions, firefighting, biological or geological resource management within the boundaries of the Orange County Fire Authority and Southern California Edison service territory.

Should there be any questions or if additional information is needed, please feel free to contact me.

Sincerely,

[insert signatory and title]

Compensation

1. Daily Rental: the following are Aircraft, equipment and associated rates, are provided by CAI to OCFA for the duration of the Public Aircraft Agreement.

- 1.1 Aircraft Daily Rental Rate

- I. One 1) CH-47D Very Large Helitanker (VLHT) & support (fuel truck, bus, etc.)
 - a) Daily standby rate (24-hours): \$32,000 USD
- II. One (1) S76 NVG capable helicopter coordinator platform & support (fuel, etc.)
 - a) Daily standby rate (24-hours): \$10,000 USD

- 1.2 Total Daily Rental Payment: The Totally Daily Rental Payment for the Term of the Public Aircraft Agreement is \$42,000 USD per day. The Total Daily Rental Payment includes all Aircraft Daily Rental Rates as identified in section 1.1.

- 2 Aircraft Flight Hour Payment: the total cost per hour for Aircraft Flight Hour Payment is
 - I. For the CH-47D \$8,000 per hour, (Agency Responsibility). The cost of which includes fuel.
 - II. For the S76 NVG \$3,500 per hour, (Agency Responsibility). The cost of which includes fuel.

Table 1 Aircraft

Aircraft Make & Model	FAA Registration Number	Manufacture Number	Rate with Pilot	Standby Rate
Boeing CH-47D	N42CU	91-00270	\$8,000	\$32,000
Sikorsky S-76	N76CG	760355	\$3,500	\$10,000

OCFA Sole Source Request Form

The Purchasing Ordinance of the Orange County Fire Authority requires competitive bids and proposals for service and commodity contracts. A sole source is defined as a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions. The using department requesting a sole source shall provide written clear and convincing evidence to support a sole source determination, meaning that only one source exists to fulfill the requirements. This form is to be submitted with the purchase requisition to Purchasing with any sole source requests.

SECTION I - INSTRUCTIONS

1. Written justification on this form will be completed by the requesting department and submitted with the purchase requisition.
2. The request must be approved by the section manager and assistant chief prior to submitting the request to the purchasing manager.
3. All sole source forms must be submitted to the Purchasing Manager for approval. Based on the new ordinance the Fire Chief is not required to approve the sole source form. The sole source request may be submitted to Assistant Chief of Business Services by the Purchasing Manager for concurrence as required.
4. All sole source contracts exceeding \$50,000 annually require Executive Committee approval. In this case, the sole source request form must be submitted to the Executive Committee as an attachment to the staff report.
5. The approved sole source justification form will be included in the contract file.

SECTION II – REQUEST INFORMATION

Department/Section: Special Operations	Requested By: Vincent Carpino	Date: 4/7/2021
Recommended Vendor: Coulson Aviation (USA) Inc.	Vendor Contact: Curtis Bruner	Vendor's E-mail Address: curtis.bruner@coulsonaircrane.com
Vendor Address: 610 SW Alder Street, Suite 910, Portland, Oregon 97205		Vendor's Telephone #: (250) 724-7664
Type of Contract: <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Multi-Year <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase	Contract Term (Dates): June 15, 2021 - December 12, 2021	Contract Amount: \$8,710,000
If the contract type is a Renewal, Amendment or Increase, please provide previous contract information with this request (PO, BO, previous approval date, Chief approval or EC approval, and dollar amount).		Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

SECTION III – JUSTIFICATION

1. Provide a detailed description of the product or service requested. Describe what it is. *Attach additional sheet if necessary.*

Coulson Aviation (USA) Inc. (CAI) provides Night Aerial Firefighting Performance-Based services which utilize state-of-the-art technology in multiple types of firefighting aircraft that will be utilized in the multi-county Quick Reaction Force (QRF) program. The program fills the void left when fixed-wing air tankers retire for the night. The QRF aircraft are able to drop water or fire retardant at night.

2. Please state why the recommended vendor is the only one capable of providing the required services and/or commodities. Provide a summary of findings (research and analysis) including any supporting documentation which validates your recommendation (e.g., attach a manufacturer's letter verifying patented design and direct sale with no distributors) and demonstrates the sole source nature of this request. *Attach additional sheet if necessary.*

Coulson is the only commercial NVG Helitanker company with aircraft equipped to hover fill from open water sources and portable dip tanks at night. Coulson also possesses a sufficient number of aircraft and experienced pilots to form the QRF and operate as one cohesive package throughout the counties of Orange, Los Angeles and Ventura. Coulson will

SECTION III – JUSTIFICATION (continued)

provide two CH-47D Very Large Helitankers, one Sikorsky S-61 Helitanker, and one night-vision equipped Sikorsky S-76 Aerial Supervision aircraft for the regional QRF program. One CH-47D and the S-76 will be based in Orange County; all aircraft will respond as one unit when requested. See attached sole source letter.

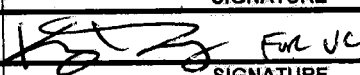

- 3. Pricing - What efforts were made to get the best pricing (e.g., did you simply request a quote, negotiate with the vendor, did the vendor provide a discount)? Please provide the quote with your sole source request.**

The pricing includes 24/7 availability for up to 180 days. This contract is a result of collaboration between Coulson Aviation, SCE, OCFA, Los Angeles and Ventura counties in an effort to bring services and funding together for the benefit of the residents of Orange County and the partner counties to protect in the event of a wildfire during fire season. SCE is providing funding for the daily fixed standby costs.



- 4. Will this purchase obligate the OCFA to future purchases (maintenance, licensing or continuing needs)? (If yes, please explain how and what the future costs will be.)**

The QRF services are intended to have a duration of 150 days, with the option to extend for 30 additional days at the discretion of SCE. The procurement will be reexamined at the conclusion of the 180 day period, should the services continue beyond the initial 180-days.

Sole Source Request Submitted by:

REQUESTORS NAME	SIGNATURE	DATE
Vincent Carpino	 FUL JC	4/7/21
DIVISION CHIEF/SECTION MANAGER NAME	SIGNATURE	DATE
ASSISTANT CHIEF NAME	SIGNATURE	DATE
Brian Fennessy		4/7/21

Purchasing Manager's Comments:

PURCHASING MANAGER'S APPROVAL	DATE
 Sara Kennedy	4/7/21
ASSISTANT CHIEF BUSINESS SERVICES CONCURRENCE	DATE
	4/7/21

Executive Committee Approval Required ☐ Yes ☐ No Sole Source over \$50,000

Executive Committee Approved: ☐ Yes ☐ No Date approved _____

Coulson Aviation (USA) Inc

655 South Rock Blvd,
Reno, Nevada 89502

COULSON AVIATION

April 5, 2021

FOR: Sara Kennedy
Purchasing Manager
Orange County Fire Authority

FROM: Curtis Bruner
Contract Specialist
Coulson Group

SUBJECT: HC-130HRDS Required Design Criteria and Design Load Conditions.

The Quick Reaction Force (QRF) is underpinned by a Sole Source provider of the aerial firefighting capability providing the latest and smartest Helitanker system and Aerial Intelligence technology to provide a single force operating 7/24. Coulson is the only commercial NVG Helitanker company in the world.

The QRF is unique and likewise the capability is a one of a kind being a world first and the only innovation and technology system providing a day and night integrated single force. Coulson is the only commercial aircraft available at night to do hover fill from open water sources and portable dip tanks, additionally Coulson is the only nighttime NVG Helco platform with IR sensors in the world.

Coulson employs expert pilots who are instructors for USFS and NAFA courses who have developed extensive experience operating with local and federal governments and proven history fighting fires at night in California, Chile and Australia.

The individual elements of the QRF have been previously contracted and successfully operated in the LA Basin providing the underpinning knowledge of the capabilities that form the QRF.

Sincere Regards,

Curtis Bruner
Contract Specialist
Coulson Group

**ORANGE COUNTY FIRE AUTHORITY
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this 22nd day of April, 2021 by and between the Orange County Fire Authority, a public agency, hereinafter referred to as "OCFA", and Perimeter Solutions LP, hereinafter referred to as "Firm". OCFA and Firm are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, OCFA requires the services of a qualified firm to provide mobile retardant base services, hereinafter referred to as "Project"; and

WHEREAS, Firm has submitted to OCFA a proposal dated March 11, 2021, incorporated herein by this reference ("Proposal"); and

WHEREAS, based on its experience and reputation, Firm is qualified to provide the necessary services for the Project and desires to provide such services; and

WHEREAS, OCFA desires to retain the services of Firm for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, OCFA agrees to employ and does hereby employ Firm and Firm agrees to provide professional services as follows:

AGREEMENT

1. PROFESSIONAL SERVICES

1.1 Scope of Services

In compliance with all terms and conditions of this Agreement, Firm shall provide those services specified in the Scope of Services, attached hereto as Exhibit "A", which includes by reference and by addendum: (1) Firm's Proposal, and (2) any amendments, addendums, change orders, or modifications mutually agreed upon by the parties hereto ("Services" or "Work"). Firm warrants that all Services shall be performed in a competent, professional and satisfactory manner in accordance with all standards prevalent in the same profession in the State of California. Firm represents and warrants that it and all employees, subconsultants and subcontractors providing any Services pursuant to this Agreement shall have a sufficient skill and experience to perform the Services. All Services shall be completed to the reasonable satisfaction of the OCFA. In the event of any inconsistency between the terms contained in the Scope of Services, and/or the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement and then the Scope of Services shall govern, in that order.

1.2 Compliance with Law

All Services rendered hereunder shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of OCFA and any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses and Permits

Firm shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement.

1.4 Familiarity with Work

By executing this Agreement, Firm warrants that Firm (a) has thoroughly investigated and considered the Work to be performed, (b) has investigated the site of the Work and become fully acquainted with the conditions there existing, (c) has carefully considered how the Work should be performed, and (d) fully understands the facilities, difficulties and restrictions attending performance of the Work under this Agreement. Should the Firm discover any latent or unknown conditions materially differing from those inherent in the Work or as represented by OCFA, Firm shall immediately inform OCFA of such fact and shall not proceed with any Work except at Firm's risk until written instructions are received from the Contract Officer.

1.5 Care of Work

Firm shall adopt and follow reasonable procedures and methods during the term of the Agreement to prevent loss or damage to materials, papers or other components of the work, and shall be responsible for all such damage until acceptance of the work by OCFA, except such loss or damages as may be caused by OCFA's own negligence.

1.6 Additional Services

Firm shall perform services in addition to those specified in the Scope of Services when directed to do so in writing by the OCFA Purchasing Manager, provided that Firm shall not be required to perform any additional services without compensation. Any additional compensation not exceeding one-hundred thousand dollars (\$100,000) annually must be approved in writing by the OCFA Purchasing Manager. Any greater increase must be approved in writing by the Executive Committee of the OCFA Board of Directors.

2. TIME FOR COMPLETION

The time for completion of the Services to be performed by Firm is an essential condition of this Agreement. Firm shall prosecute regularly and diligently the work of this Agreement according to the schedules set forth in Firm's proposal. Firm shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of Firm. Delays shall not entitle Firm to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF FIRM

3.1 Compensation of Firm

For the Services rendered pursuant to this Agreement, Firm shall be compensated and reimbursed in accordance with the pricing set forth in Exhibit "A."

3.2 Method of Payment

In any month in which Firm wishes to receive payment, Firm shall no later than the first working day of such month, submit to OCFA in the form approved by OCFA's Director of Finance, an invoice for Services rendered prior to the date of the invoice. OCFA shall pay Firm for all expenses stated thereon which are approved by OCFA consistent with this Agreement, within thirty (30) days of receipt of Firm's invoice.

3.3 Changes

In the event any change or changes in the work is requested by OCFA, the parties hereto shall execute an addendum to this Agreement, setting forth with particularity all terms of such addendum, including, but not limited to, any additional fees. Addenda may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Firm's profession.

3.4 Appropriations

This Agreement is subject to and contingent upon funds being appropriated therefore by the OCFA Board of Directors for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to OCFA.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence

Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance

All Services rendered pursuant to this Agreement shall be performed within the time periods prescribed in Firm's Proposal, attached hereto as Exhibit "A". The extension of any time period specified in Exhibit "A" must be approved in writing by the Contract Officer.

4.3 Force Majeure

The time for performance of Services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Firm, including, but not restricted to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if the Firm shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the Services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term

This agreement shall continue in full force and effect for three years (initial term) unless earlier terminated in accordance with Sections 8.5 or 8.6 of this Agreement. The contract may be renewed up to two (2) additional one-year terms upon mutual written agreement between OCFA and the Firm.

5. COORDINATION OF WORK

5.1 Representative of Firm

The following principal of the Firm is hereby designated as being the principal and representative of Firm authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith: **Wes Bolsen**

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principal is a substantial inducement for OCFA to enter into this Agreement. Therefore, the foregoing principal shall be responsible during the term of this Agreement for directing all activities of Firm and devoting sufficient time to personally supervise the Services hereunder. The foregoing principal may not be changed by Firm without the express written approval of OCFA.

5.2 Contract Officer

The Contract Officer shall be Vincent Carpino, unless otherwise designated in writing by OCFA. It shall be the Firm's responsibility to keep the Contract Officer fully informed of the progress of the performance of the Services and Firm shall refer any decisions that must be made by OCFA to the Contract Officer. Unless otherwise specified herein, any approval of OCFA required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment

5.3.1 No Subcontracting Without Prior Approval. The experience, knowledge, capability and reputation of Firm, its principals and employees, and the Firm Representative were a substantial inducement for OCFA to enter into this Agreement. Therefore, Firm shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of OCFA.

5.3.2 Provisions in the Event Subcontractor(s) Are Authorized. If Firm is authorized to subcontract any part of the Services as provided in Section 5.3.1, Firm shall be responsible to OCFA for the acts and omissions of its subcontractor(s) and subconsultant(s) in the same manner as it is for persons directly employed. For purposes of this Agreement, all persons engaged in the performance of Services will be considered employees of Firm. OCFA will deal directly with and will make all payments to Firm. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and OCFA. Firm shall ensure that all subcontractor insurance requirements set forth in Section 6 below (including its subsections) are complied with prior to commencement of Services by each subcontractor.

5.3.2.1 Withholding Payment for Non-Authorized Subcontractors. OCFA shall have the right to withhold payment from Firm

for Services performed by any subcontractor or subconsultant performing Services but not authorized in writing by OCFA, or regarding which the insurance or other requirements under this Agreement have not been satisfied.

5.3.3 Assignments. Neither this Agreement nor any interest herein may be assigned, transferred, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of OCFA. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Firm, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release Firm or any surety of Firm from any liability hereunder without the express written consent of OCFA.

5.4 Independent Contractor

5.4.1 The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Contractor, or any of its personnel, an OCFA employee. During the performance of this Agreement, Firm and its officers, employees, and agents shall act in an independent capacity and shall not act as OCFA officers or employees. Firm will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. The personnel performing the Services under this Agreement on behalf of Firm shall at all times be under Firm's exclusive direction and control. Neither OCFA nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Firm or any of its officers, employees, or agents, except as set forth in this Agreement. Firm, its officers, employees or agents, shall not maintain a permanent office or fixed business location at OCFA's offices. OCFA shall have no voice in the selection, discharge, supervision, or control of Firm's officers, employees, representatives or agents or in fixing their number, compensation, or hours of service. Firm shall pay all wages, salaries, and other amounts due its employees in connection with the performance of Services under this Agreement and shall be responsible for all reports and obligations respecting them, including but not limited to social security income tax withholding, unemployment compensation, workers' compensation, and other similar matters. OCFA shall not in any way or for any purpose be deemed to be a partner of Firm in its business or otherwise a joint venturer or a member of any joint enterprise with Firm.

5.4.2 Firm shall not incur or have the power to incur any debt, obligation, or liability against OCFA, or bind OCFA in any manner.

5.4.3 No OCFA benefits shall be available to Firm, its officers, employees, or agents, in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to Firm as provided for in this Agreement, OCFA shall not pay salaries, wages, or other compensation to Firm for the performance of any Work or Services under this Agreement. OCFA shall not be liable for

compensation or indemnification to Firm, its officers, employees, or agents, for injury or sickness arising out of performing any Work or Services hereunder. If for any reason any court or governmental agency determines that the OCFA has financial obligations, other than pursuant to Section 2 herein, of any nature relating to salary, taxes, or benefits of Firm's officers, employees, representatives, agents, or subconsultants or subcontractors, Firm shall defend, indemnify, and hold harmless OCFA from and against all such financial obligations.

5.6 Employee Retirement System Eligibility Indemnification

5.6.1 In the event that Firm or any employee, agent, or subcontractor of Firm providing any Work or Services under this Agreement claims or is determined by a court of competent jurisdiction to be eligible for enrollment in an employee retirement system as an employee of the OCFA, Firm shall indemnify, defend, and hold harmless OCFA against: (1) all such claim(s) and determination(s); (2) for the payment of any employee and/or employer contributions for employee retirement system benefits on behalf of Firm or its employees, agents or subcontractors; and (3) the payment of any penalties and interest on such contributions which would otherwise be the responsibility of the OCFA.

5.6.2 Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing any Work or Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by OCFA, including but not limited to eligibility to enroll in PERS as an employee of OCFA and entitlement to any contribution to be paid by OCFA for employer contribution and/or employee contributions for PERS benefits.

6. INSURANCE AND INDEMNIFICATION

6.1 Compliance with Insurance Requirements. Firm shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its sole cost and expense, and in a form and content satisfactory to OCFA, all insurance required under this section. Firm shall not commence any Services under this Agreement unless and until it has provided evidence satisfactory to OCFA that it has secured all insurance required under this section. If Firm's existing insurance policies do not meet the insurance requirements set forth herein, Firm agrees to amend, supplement or endorse the policies to meet all requirements herein.

6.2 Types of Insurance Required. Without limiting the indemnity provisions set forth in this Agreement, Firm shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

6.2.1 Professional Liability/Technology Errors and Omissions Insurance ("PLI"). Firm shall obtain and maintain PLI insurance applicable to each licensed profession practiced by Firm. Firm shall maintain PLI insurance with per-claim and aggregate limits no lower than one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate. Covered professional services shall specifically include all Services to be performed under the Agreement and the policy shall be endorsed to delete any exclusions that may exclude coverage for claims within the minimum PLI Limits for the Services to be performed under this Agreement.

6.2.1.1 The PLI policy shall be endorsed to delete any Contractual Liability Exclusion. The PLI shall include contractual liability coverage applicable to this Agreement. The policy must "pay on behalf of" the insured, and include a provision establishing the insurer's duty to defend the insured.

6.2.1.2 If the PLI policy of insurance is written on a "claims-made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of all Services provided hereunder (the "PLI Coverage Period"). If any PLI policy is replaced, cancelled, non-renewed, discontinued, or otherwise terminated, or if the limits of a PLI policy are reduced or the available coverage depleted below the required minimum coverage amounts for any reason during the PLI Coverage Period, Firm shall immediately obtain replacement PLI coverage meeting the requirements of this Section 6.2.1. Such replacement coverage shall satisfy all requirements herein, and shall include coverage for the prior acts or omissions of Firm during the time period during which any Services were performed. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the OCFA.

6.2.1.3 If the PLI policy is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the PLI policy during this period, new coverage shall immediately be obtained, and written evidence of the policy shall be immediately provided to OCFA, to ensure PLI coverage during the entire course of performing the Services.

6.2.1.4 Firm shall not perform any Services at any time during which required types or amounts of PLI insurance are not in effect, and OCFA shall have no obligation to pay Firm for Services performed while required PLI insurance is not in effect.

6.2.2 Commercial General Liability Insurance. Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including property damage, bodily injury and personal & advertising injury with limits no less than one million dollars (\$1,000,000.00) per occurrence and two million dollars

(\$2,000,000.00) aggregate. If a general aggregate limit applies, the general aggregate limit shall be no less than two million dollars (\$2,000,000.00). Coverage for products and completed operations is required with limits no less than two million dollars (\$2,000,000.00) aggregate. CGL insurance shall be provided on an occurrence-based coverage form; a "claims made" CGL policy is not acceptable. Firm shall maintain CGL insurance with per-claim, aggregate and products and operations completed limits no lower than the minimum CGL coverage limits set forth above. Defense costs shall be paid in addition to the limits. The policy shall contain no endorsements or provisions limiting coverage for any of the following: (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; or (3) any other exclusion contrary to this Agreement.

6.2.3 Automobile Liability Insurance. Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Automobile liability insurance written on a per occurrence basis with limits of at least one million dollars (\$1,000,000.00) combined limit for each occurrence covering bodily injury, disease and property damage. Defense costs shall be paid in addition to the policy limits. The policy shall specifically include coverage for owned, non-owned, leased, and hired automobiles, and be endorsed to eliminate any exclusion applicable to any of them.

6.2.4 Workers' Compensation Insurance. Firm shall obtain and maintain, in full force and effect throughout the term of this Agreement, a policy of Workers' Compensation Insurance with limits no less than one million dollars (\$1,000,000.00), and in compliance with all other statutory requirements applicable in the State of California. Firm hereby waives on its own behalf, and shall obtain an endorsement from its workers' compensation insurer waiving on the insurance company's behalf, all rights of subrogation against the OCFA, its board members, officials, officers, employees, agents and volunteers.

6.2.4.1 If subconsultants or subcontractors are used, Firm shall require each of its subconsultants and subcontractors, if any, to waive all rights of subrogation, and to obtain endorsements from the subconsultants'/subcontractors' workers' compensation insurers waiving all rights of subrogation, against the OCFA, its board members, officials, officers, employees, agents and volunteers.

6.2.4.2 Firm and each of its subconsultants and subcontractors shall also maintain, in full force and effect throughout the term of this Agreement, Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000.00) per injury or illness.

6.2.5 Pollution Liability. Firm shall provide pollution liability coverage that includes, but is not limited to, the coverage limits and coverage provisions outlined below. Coverage must be included for bodily injury and property damage, including coverage for loss of use and diminution in property value, and for resultant clean-up costs, arising out of the or resulting from: (i) any Services performed under this Agreement, including (ii) any storage or transportation, including the loading or unloading of, hazardous wastes,

hazardous materials, or contaminants. The required coverage limits shall be the greater of the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Named Insured, including applicable Umbrella or Excess Limits, or the following: \$1,000,000 per occurrence or claim, and \$1,000,000 aggregate. Coverage may be written on a claims-made form. If coverage is on a claims-made basis, the coverage must be maintained for at least 3 years after all Services performed under this Agreement are complete, and additional claims-made coverage requirements apply as described below. The policy(ies) shall also contain or be endorsed to contain a provision that coverage shall apply on a primary and noncontributory basis to OCFA before OCFA's own primary insurance or self-insurance shall be called upon to protect it as a Named Insured. A severability of interests provision must apply for all the additional insureds, ensuring that Firm's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability.

6.3 Acceptability of Insurers. Each insurance policy required by this section shall be issued by a licensed company authorized to transact business by the Department of Insurance for the State of California with a current rating of A:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Line Insurers (LASLI)), by the latest edition of A.M. Best's Key Rating Guide, except that the OCFA will accept workers' compensation insurance from the State Compensation Fund. In the event the OCFA determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to the OCFA, the Firm agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the OCFA.

6.3.1 Firm shall immediately replace any insurer whose A.M. Best rating drops below the levels specified herein with an insurer that meets the minimum requirements herein.

6.4 Specific Insurance Provisions and Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval. Required insurance policies shall contain the following provisions, or Firm shall provide endorsements on forms approved by the OCFA to add the following provisions to the insurance policies:

6.4.1 CGL, Auto and Pollution Liability Endorsements. The policy or policies of insurance required by this Agreement for CGL, Automobile and Pollution Liability Insurance shall be endorsed as follows:

6.4.1.1 Additional Insured: The OCFA, its board members, officials, officers, employees, agents and volunteers, shall be additional insureds; and

6.4.1.1.1 Additional Insured Endorsements:

Additional insured endorsements shall not (1) be restricted to “ongoing operations”, (2) exclude “contractual liability”, (3) restrict coverage to “sole” liability of Firm, (4) contain any other exclusions contrary to the Agreement; or (5) contain special limitations on the scope of protection afforded to additional insureds.

6.4.1.2 Primary, Non-Contributing. Each CGL and Auto Liability insurance policy shall be endorsed to be primary and any other insurance, deductible, or self-insurance maintained by the OCFA, its board members, officials, officers, employees, agents or volunteers, shall not contribute with the primary insurance.

6.4.2 Notice of Cancellation: Each policy of any type shall be endorsed to provide that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice has been provided to the OCFA. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Firm’s failure to pay the insurance premium, the notice provided by the insurer to OCFA shall be by not less than ten (10) days prior written notice. (A statement that notice will be provided “in accordance with the policy terms” or words to that effect is inadequate to meet the requirements of this Section).

6.4.2.1 Pre-Payment of Policy Premium. If for any reason an insurer declines to issue an endorsement certifying that it will notify OCFA in accordance with section 6.4.2, Firm shall either obtain insurance from another insurer who will provide the required notice endorsement or shall provide evidence satisfactory to OCFA that the entire policy premium for the full term of that policy has been pre-paid such that the risk of non-payment of premiums during the term of the policy has been eliminated.

6.4.3 ACORD Forms Will Not Be Accepted in Lieu of Endorsements. By executing this Agreement, Firm certifies that it has – prior to execution of this Agreement - confirmed that its insurance company will issue each of the endorsements required by this Agreement. Firm also certifies that it understands that “ACORD” Certificate of Liability Insurance forms will not be accepted in lieu of required endorsements.

6.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the OCFA in advance. The decision whether to approve or withhold approval of a deductible or self-insured retention shall be made by the OCFA in the OCFA’s sole and absolute discretion. (Firm may request pre-approval from OCFA of a deductible or self-insured retention prior to submitting Firm’s Proposal).

6.6 Waiver of Subrogation. All policies of Commercial General Liability and Automobile Liability Insurance shall contain or be endorsed to waive subrogation against the OCFA, its officials, officers, employees, agents and volunteers, or shall

specifically allow Firm or others providing insurance evidence in compliance with the requirements set forth in this section to waive their right to recovery prior to a loss. Firm hereby agrees to waive its own right of subrogation against the OCFA, its officials, officers, employees, agents and volunteers.

6.6.1 Waivers of Subrogation: Subconsultants and Subcontractors. If OCFA approves the use of subconsultants or subcontractors for the performance of any portion of the Services, then Firm shall obtain from each subconsultant and subcontractor, and make available to OCFA upon request, written express waivers by each subconsultant and subcontractor of the right of subrogation against the OCFA, its officials, officers, employees, agents and volunteers, and policy endorsements of each of its subconsultants' and subcontractors' insurance policies waiving any rights of subrogation against the OCFA, its officials, officers, employees, agents and volunteers insurer. All such waivers and endorsements shall be obtained prior to commencement of any Services by each subconsultant or subcontractor.

6.7 Evidence of Coverage. Concurrently with the execution of the Agreement, Firm shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required to be maintained by Firm by this Section 5. Firm shall promptly furnish, at OCFA's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents OCFA requires to verify coverage.

6.7.1 Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval.

6.7.2 Authorized Signatures. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

6.7.3 Renewal/Replacement Policies. At least fifteen (15) days prior to the expiration of any policy required by this Agreement, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the OCFA. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Firm shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the OCFA evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies meeting all requirements of this Agreement.

6.8 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to Firm; or (2) the minimum insurance

coverage requirements and/or limits shown in this Agreement; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits, which are applicable to a given loss, shall be available to the OCFA. No representation is made that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Firm under this Agreement. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for losses of any type or amount.

6.9 Enforcement of Agreement (Non-Estoppel). Firm acknowledges and agrees that actual or alleged failure on the part of the OCFA to inform Firm of any non-compliance with any of the insurance requirements set forth in this Agreement imposes no additional obligation on the OCFA nor does it waive any rights hereunder.

6.10 Insurance for Subconsultants. If OCFA approves the use of subconsultants or subcontractors for the performance of any portion of the Services, then Firm shall be responsible for causing each approved subconsultant and subcontractor to procure and maintain insurance in the same types and amounts required for Firm, and in full compliance with the insurance requirements set forth in this Agreement, except as otherwise authorized in writing by the Contract Manager.

6.10.1 Delivery of Evidence of Subcontractor Insurance. Upon request of OCFA, Firm shall deliver to OCFA all certificates of insurance and endorsements required from subcontractors and subconsultants. (Note: Firm's duty to obtain all required insurance for subcontractors and subconsultants required under this Agreement applies whether or not OCFA requests delivery of evidence of such coverage.)

6.11 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Firm and its subconsultants and subcontractors, if any, pursuant to this Agreement:

6.11.1 Firm shall provide immediate written notice to OCFA if (1) any of the insurance policies required herein are terminated, cancelled, suspended, or non-renewed (2) the limits of any of the insurance coverages required herein are reduced; (3) any required insurance coverage is reduced below the required minimum limits through claims or otherwise, or (4) the deductible or self-insured retention is increased.

6.11.2 All insurance coverage and limits required under this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the OCFA or its operations shall limit the application of such insurance coverage.

6.11.3 None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual

liability or reduction of discovery period), unless the endorsement has first been submitted to the OCFA and approved in writing.

6.11.4 Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay the Project. It is Firm's obligation to ensure timely compliance with all insurance submittal requirements as provided herein and Firm agrees to reimburse OCFA for any losses resulting from its failure, or its subconsultants' or subcontractors' failure, to timely comply with the requirements of this Agreement.

6.11.5 Firm agrees to ensure that subconsultants and subcontractors, if any, and any other parties involved with the Project who are brought onto or involved in the Project by Firm, provide the same minimum insurance coverage required of Firm. Firm agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Firm agrees that upon request, all agreements with, and evidence of insurance from, subconsultants and subcontractors and others engaged in performing any Services will be submitted to the OCFA for review.

6.11.6 Firm agrees to provide immediate written notice to OCFA of any claim, demand or loss arising out of the Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to an amount less than required by this Agreement.

6.12 Indemnification.

To the fullest extent permitted by law, Firm shall defend (at Firm's sole cost and expense with legal counsel reasonably acceptable to OCFA), indemnify and hold the OCFA, its board members, officials, officers, employees, agents and volunteers, free and harmless from any and all claims, demands, orders, causes of action, costs, expenses, liabilities, losses, penalties, judgments, arbitration awards, settlements, damages or injuries of any kind, in law or in equity, including but not limited to property or persons, including wrongful death, (collectively "Claims") in any manner arising out of, pertaining to, related to, or incident to any alleged acts, errors or omissions, or willful misconduct of Firm, its officers, directors, employees, subconsultants, subcontractors, agents or invitees in connection with performance under this Agreement, or in any manner arising out of, pertaining to, related to, or incident to an alleged breach of this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses.

Notwithstanding the foregoing, and only to the extent that the Services performed by Firm are subject to California Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Firm.

Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Firm's indemnification obligation or other liability hereunder. Notwithstanding the foregoing, such obligation to defend, hold harmless and indemnify the OCFA, its board members officials, officers, employees, agents and volunteers, shall not apply to the extent that such Claims are caused by the sole negligence or willful misconduct of that indemnified party.

7. RECORDS AND REPORTS

7.1 Reports

Firm shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require.

7.2 Records

Firm shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Except as provided in Section 7.5, the Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

7.3 Ownership of Documents

Except as provided in Section 7.5, all drawings, specifications, reports, records, documents and other materials prepared by Firm in the performance of this Agreement shall be the property of OCFA and shall be delivered to OCFA upon request of the Contract Officer or upon the termination of this Agreement, and Firm shall have no claim for further employment or additional compensation as a result of the exercise by OCFA of its full rights or ownership of the documents and materials hereunder. Firm may retain copies of such documents for its own use. Firm shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents

All drawings, specifications, reports, records, documents and other materials prepared by Firm in the performance of Services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Confidential Materials

Notwithstanding anything to the contrary in this Agreement, the Firm shall be the sole owner of Firm's work papers and of any other documents, data or information which are required to be maintained confidential from OCFA by one or more rules of

professional conduct governing the Firm's profession(s) (collectively, the "Confidential Materials"). Neither the OCFA nor the Contract Officer shall have access to the Confidential Materials except as may otherwise be required by order issued by a court of competent jurisdiction.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Firm covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of OCFA shall be deemed to waiver or render unnecessary OCFA's consent to or approval of any subsequent act of Firm. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term

OCFA reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Firm, except that where termination is due to the fault of the Firm and constitutes an immediate danger to health, safety and

general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Firm shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Firm shall be entitled to compensation for all Services rendered prior to receipt of the notice of termination and for any Services authorized by the Contract Officer thereafter.

Firm may terminate this Agreement, with or without cause, upon thirty (30) days written notice to OCFA.

8.6 Termination for Default of Firm

If termination is due to the failure of the Firm to fulfill its obligations under this Agreement, OCFA may take over the work and prosecute the same to completion by contract or otherwise, and the Firm shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated, provided that OCFA shall use reasonable efforts to mitigate damages, and OCFA may withhold any payments to the Firm for the purpose of set-off or partial payment of the amounts owed to OCFA.

8.7 Attorneys' Fees

If either party commences an action against the other party arising out of or in connection with this Agreement or its subject matter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

9. OCFA OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of OCFA Officers and Employees

No officer or employee of OCFA shall be personally liable to the Firm, or any successor-in-interest, in the event of any default or breach by OCFA or for any amount which may become due to the Firm or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination

Firm covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry. Firm shall take affirmative action to insure that applicants and employees are treated without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Confidentiality

Information obtained by Firm in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Firm for any purpose other than the performance of this Agreement without the written consent of OCFA.

10.2 Notice

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

Orange County Fire Authority
Attention: Sara Kennedy
1 Fire Authority Road
Irvine, CA 92602

WITH COPY TO:
David E. Kendig, General Counsel
Woodruff, Spradlin & Smart
555 Anton Blvd. Suite 1200
Costa Mesa, CA 92626

To Firm:

Perimeter Solutions LP
Attention: Wes Bolsen
8000 Maryland Avenue, Suite 350
Clavton, MO 63105

10.2 Integrated Agreement

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment

This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences,

clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

“OCFA”

ORANGE COUNTY FIRE AUTHORITY

Date:_____

By:_____

Sara Kennedy, CPPB
Purchasing Manager

“FIRM”

PERIMETER SOLUTIONS LP

Date:_____

By:_____

[Name]
[Title]

Date:_____

By:_____

[Name]
[Title]

EXHIBIT "A"
Scope of Services to be Provided

Orange County Fire Authority OCFA-001: MRB-H Equipment & Product Proposal

**Mobile Retardant Base – Helicopter (MRB-H) Operation
Dispatched within 2-3 hours from initial order, Operational in ~6 hours**

Contract Period: 6/15 – 12/15

Start Date: 6/15/2021, can cancel on 11/15 if given at least 7-day advance notice

Purpose:

Perimeter Solutions to provide the proper equipment, retardant product, and personnel to support mobile night refilling (which may extend into the day) for fixed-tank helicopters with “QPL” approved long-term retardant.

Scope:

Orange County Fire Authority (OCFA) has requested Perimeter Solutions to provide a proposal for equipment and USFS “QPL” (USFS official qualified products list) approved long-term retardant to support 2 CH-46 & 1 S-61 aircraft as needed. Perimeter Solutions will provide all equipment for mixing, and delivery of fire retardant into aircraft for night operations potentially extending into the next day. Exact response times are based on ordering time, location, and fire congested area logistics.

Perimeter Solutions Capabilities:

- Perimeter Solutions is the only company with US Forest Service approved long term fire retardant (Phos-Chek 259-F) for fixed tank helicopter operation (**Ref. Appendix A**)
- Perimeter Solutions is the only company with a Fire Safety office, equipment, personnel, and available long term retardant materials in the Orange County region that can be deployed, within 2-3 hours from initial call.
- Perimeter Solutions will provide dedicated equipment and personnel to this operation for the projected 180-day contract period

Items to be provided by Perimeter Solutions based on response time:

- Mobile Retardant Base for Helicopters (MRB-H) dedicated for designated contract period with capabilities of mixing 18,000 gal per hour or 90,000 per 8-hour operating period
- 259-Fx long term fire retardant; USFS Qualified Product List “QPL” approved for fixed tank helicopter
- Mix Master and 3 crew persons to support full service retardant operation
- All labor, travel, equipment and product freight to meet the above requirements.

Operational Requirements Provided by Orange County Fire Authority:

Solutions That Save.

PERIMETER SOLUTIONS - Fire Safety Group U.S.

10667 Jersey Blvd.
Rancho Cucamonga, CA 91730
Tel: +1 909 581 3400

1520 Brookfield Avenue
Green Bay, WI 54313
Tel: +1 920 593 9445

perimeter-solutions.com



- OCFA must order by Noon for same-day setup (operational by ~6pm) with roughly 1:1 delay for hours after
- OCFA must provide pre-designated area large enough to allow safe accessibility and operations of heavy equipment. (ex. Size of a Football field).
- OCFF to provide water source with a minimum rate of 350+ Gallons per Minute (GPM) to the MRB within 800'. Any distance beyond 800' will be Agency's responsibility to provide hose and added pumps if necessary. This may include providing water from: water tenders, pressurized source or, drafting source (lake,pond,stream etc).
- The MRB designated site must be at least 300 feet from any waterway, including seasonal lakes or streams, if water is present.
- Mixed retardant is deemed "sold" to acting Agency, the Agency will work with Perimeter Solutions for effective use or relocation of mixed product at their expense.

Pricing:

- Nightly Rate \$5,500 per 12hr night shift for the Contract Period, plus actual freight costs per location and return to point of origin.
- \$1500 per hour (overtime) after 12hr shift, up to a maximum of \$11,000/day if extended or if 24hr operations in a location begins. Contract cycle of 6/15 – 12/15 will be charged at the night operating rate plus overtime or full daily rates as utilized.
- *Water Tender Rate: \$1,800 per 12hr shift (As requested) by ordering Agency.
- Product Cost: based on 2021 U.S.F.S. FOB Origin Price List

Thank you for allowing us to submit this proposal. We look forward to executing an agreement and working with you throughout the 2021 wildfire season.

Wesley J. Bolsen

Wes Bolsen
 Director, Wildfire Prevention and Protection
 Perimeter Solutions
 March 10, 2021
Wes.Bolsen@perimeter-solutions.com

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phos-chek.com

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APPENDIX A



US Forest Service

Washington Office

Fire & Aviation Management

November 5th, 2020

Long-Term Retardant for Wildland Fire Management

Qualified by US Forest Service in Accordance with Forest Service Specification 5100-304d

These products are evaluated, qualified, and approved for use only at the specified mix ratio with the indicated application equipment.

Consult individual agencies for specific policies relating to long-term retardant use.

Definition: Retardants contain salts that decrease fire intensity and slow advance of the fire, even after the water they contain evaporates.

Chemical	Mix Ratio (Pounds concentrate per gallon water)	Qualified Applications ¹				Ground Applied
		Fixed-Wing		Helicopter		
		Multi Engine	SEATS	Fixed-Tank	Bucket	
Dry Concentrate - Gum-thickened; Permanent or Temporary Base						
Phos-Chek MVP-Fx	0.96 lb/gal	●	●	-	●	●
Phos-Chek MVP-F	0.95 lb/gal	●	●	-	●	●
Fortress FR-100	1.68 lb/gal	Δ	Δ	-	Δ	Δ
Dry Concentrate - Gum-thickened; Temporary Base						
Phos-Chek 259-Fx	1.01 lb/gal	●	●	●	●	●
Wet Concentrate - Gum-thickened; Permanent or Temporary Base						
Phos-Chek LC-95A-R	5.5:1	●	●	-	●	●
Phos-Chek LC-95A-Fx	5.5:1	●	●	-	●	●
Phos-Chek LC-95A-F	5.5:1	●	●	-	●	●
Phos-Chek LCE20-Fx	5.2:1	●	●	-	●	●
Wet Concentrate - Gum-thickened; Temporary Base						
Phos-Chek LC-95-W	5.5:1	●	●	-	●	●
Pretreatment, Non Storable ²						
Phos-Chek LC-95-W	5.5:1	-	-	-	●	●
Phos-Chek LC-95A-Fx	5.5:1	-	-	-	●	●
1 – Qualification Notes						
● Fully Qualified – Product complies with all requirements of a formal specification.						
○ Conditionally Qualified – Product complies with all requirements in the specification for laboratory evaluation; a field evaluation is required for full qualification.						
Δ Interim Qualified – Product complies with all interim requirements in Appendix A of the specification; final results and a field evaluation is required for full qualification.						
- Not qualified for this application.						
2 – Pretreatment category has not been evaluated for durability and weathering.						

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OCFA Sole Source Request Form

The Purchasing Ordinance of the Orange County Fire Authority requires competitive bids and proposals for service and commodity contracts. A sole source is defined as a product or service that is available from only one known supplier as a result of unique performance capabilities, manufacturing processes, compatibility requirements or market conditions. The using department requesting a sole source shall provide written clear and convincing evidence to support a sole source determination, meaning that only one source exists to fulfill the requirements. This form is to be submitted with the purchase requisition to Purchasing with any sole source requests.

SECTION I - INSTRUCTIONS

1. Written justification on this form will be completed by the requesting department and submitted with the purchase requisition.
2. The request must be approved by the section manager and assistant chief prior to submitting the request to the purchasing manager.
3. All sole source forms must be submitted to the Purchasing Manager for approval. Based on the new ordinance the Fire Chief is not required to approve the sole source form. The sole source request may be submitted to Assistant Chief of Business Services by the Purchasing Manager for concurrence as required.
4. All sole source contracts exceeding \$50,000 annually require Executive Committee approval. In this case, the sole source request form must be submitted to the Executive Committee as an attachment to the staff report.
5. The approved sole source justification form will be included in the contract file.

SECTION II – REQUEST INFORMATION

Department/Section: Special Operations	Requested By: Vincent Carpino	Date: 4/7/2021
Recommended Vendor: Perimeter Solutions LP	Vendor Contact: Wes Bolsen	Vendor's E-mail Address: wes.bolsen@perimeter-solutions.com
Vendor Address: 8000 Maryland Ave, Ste. 350, Clavton, MO 63105		Vendor's Telephone #: (650) 387-9962
Type of Contract: <input checked="" type="checkbox"/> One-time <input type="checkbox"/> Multi-Year <input type="checkbox"/> Renewal <input type="checkbox"/> Amendment <input type="checkbox"/> Increase	Contract Term (Dates): June 15, 2021 - December 12, 2021	
Contract Amount: \$1,490,000		Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
If the contract type is a Renewal, Amendment or Increase, please provide previous contract information with this request (PO, BO, previous approval date, Chief approval or EC approval, and dollar amount).		

SECTION III – JUSTIFICATION

1. Provide a detailed description of the product or service requested. Describe what it is. *Attach additional sheet if necessary.*

Perimeter Solutions provides long-term fire retardant and a mobile retardant mixing plant that will be available to respond with the Quick Reaction Force (QRF) program. The retardant will be mobilized with the aircraft as requested and will enable the helitanker and very large helitankers to hover-fill retardant for night drops.

2. Please state why the recommended vendor is the only one capable of providing the required services and/or commodities. Provide a summary of findings (research and analysis) including any supporting documentation which validates your recommendation (e.g., attach a manufacturer's letter verifying patented design and direct sale with no distributors) and demonstrates the sole source nature of this request. *Attach additional sheet if necessary.*

Perimeter Solutions is the manufacturer and sole distributor for Phos-Chek 259. This product is the only retardant that is approved by the United States Forest Service to be dropped by fixed-tank aircraft such as those used for the QRF pilot. Cal FIRE also relies on the Federal list for the Federal Environmental Impact Statements and state CEQA environmental approvals for the application of long-

SECTION III – JUSTIFICATION (continued)

term retardants. Perimeter Solutions is the only company with the mobile equipment and knowledge required to safely mix the retardant for use on the incident. Cal FIRE and the USFS also utilize these services, realizing a great benefit from having the dip site closer to the incident than the air base is typically situated. See attached sole source letter.


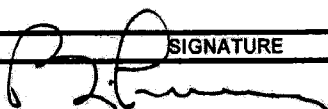
3. **Pricing - What efforts were made to get the best pricing (e.g., did you simply request a quote, negotiate with the vendor, did the vendor provide a discount)? Please provide the quote with your sole source request.**

Pricing for the retardant is based on the USFS contract and is set at a fixed rate per gallon. Reimbursement will be requested from incidents for actual gallons of retardant used. The fixed cost to have the equipment and personnel standing by to respond are included in the funding provided by SCE. Any additional costs will be reimbursed by the incident.


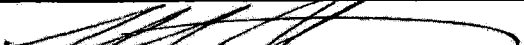
4. **Will this purchase obligate the OCFA to future purchases (maintenance, licensing or continuing needs)? (If yes, please explain how and what the future costs will be.)**

The products and services provided by Perimeter Solutions are a part of the QRF program, which is intended to have a duration of 150 days, with the option to extend for 30 additional days at the discretion of SCE. The procurement will be reexamined at the conclusion of the 180-day period should the services continue beyond the initial 180 days.

Sole Source Request Submitted by:

REQUESTORS NAME	SIGNATURE	DATE
Vincent Carpino	 For VC	4/7/21
DIVISION CHIEF/SECTION MANAGER NAME	SIGNATURE	DATE
ASSISTANT CHIEF NAME	SIGNATURE	DATE
Brian Fennessy		7/7/21

Purchasing Manager's Comments:

PURCHASING MANAGER'S APPROVAL	DATE
	4/7/21
ASSISTANT CHIEF BUSINESS SERVICES CONCURRENCE	DATE
	4/7/21

Executive Committee Approval Required ☐ Yes ☐ No Sole Source over \$50,000

Executive Committee Approved: ☐ Yes ☐ No Date approved _____



Confirmation Letter on Perimeter Solutions, LP as only seller of:
Phos Chek 259-Fx for Fixed-Tank Helicopter Application

March 31, 2021

This letter is to confirm that Perimeter Solutions LP is the sole manufacturer of the Phos Chek 259-Fx product and can only be purchased from our company.

In addition, the United States Forest Service has only qualified a single product that can be applied from fixed tank helicopters in the United States on federal lands. This list is known as the Qualified Products List (QPL). "The QPL" is what CAL FIRE also utilizes in their reliance on the Federal EIS and state CEQA environmental approvals for the application of Long-Term Retardants.

The QPL Process is detailed in "Forest Service Specification FS 5100-304d" and provides the specific requirements for qualifying long-term retardants.

In Figure A below, it shows the sole listing of Phos Chek 259-Fx for fixed helicopter application of long-term retardant. This figure can be found on the United States Forest Service website at: https://www.fs.fed.us/rm/fire/wfcs/documents/2020-1105_qpl_ret.pdf

If you have further questions about this sole-source long-term retardant product for fixed-tank helicopter application, we would be happy to answer them.

Sincerely,

Wesley J. Bolsen

Wes Bolsen
Director, Wildfire Prevention and Protection
Perimeter Solutions
Cell: 650-387-9962
Wes.Bolsen@perimeter-solutions.com

Solutions That Save.

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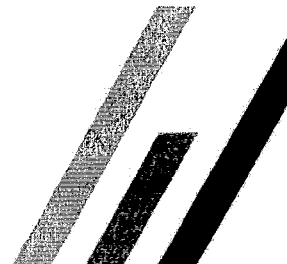


Figure A: USFS Qualified Products List (QPL) for application on federal lands

US Forest Service

Washington Office

Fire & Aviation Management

November 5th, 2020

Long-Term Retardant for Wildland Fire Management

Qualified by US Forest Service in Accordance with Forest Service Specification 5100-304d

These products are evaluated, qualified, and approved for use only at the specified mix ratio with the indicated application equipment.

Consult individual agencies for specific policies relating to long-term retardant use.

Definition: Retardants contain salts that decrease fire intensity and slow advance of the fire, even after the water they contain evaporates.

Chemical	Mix Ratio	Qualified Applications ¹				Ground Applied
		Fixed-Wing		Helicopter	Bucket	
	(Pounds concentrate per gallon water)	Multi Engine	SEATS	Fixed-Tank		
Dry Concentrate - Gum-thickened; Permanent or Temporary Base						
Phos-Chek MVP-Fx	0.96 lb/gal	•	•	-	•	•
Phos-Chek MVP-F	0.96 lb/gal	•	•	-	•	•
Fortress FR-100	1.68 lb/gal	Δ	Δ	-	Δ	Δ
Dry Concentrate - Gum-thickened; Temporary Base						
Phos-Chek 258-Fx	1.01 lb/gal	•	•	•	•	•
Wet Concentrate - Gum-thickened; Permanent or Temporary Base						
Phos-Chek LC-95A-R	5.5:1	•	•	-	•	•
Phos-Chek LC-95A-Fx	5.5:1	•	•	-	•	•
Phos-Chek LC-95A-F	5.5:1	•	•	-	•	•
Phos-Chek LCE20-Fx	5.2:1	•	•	-	•	•
Wet Concentrate - Gum-thickened; Temporary Base						
Phos-Chek LC-95-W	5.5:1	•	•	-	•	•
Pretreatment, Non Storable²						
Phos-Chek LC-95-W	5.5:1	-	-	-	•	•
Phos-Chek LC-95A-Fx	5.5:1	-	-	-	•	•

1 - Qualification Notes

- Fully Qualified - Product complies with all requirements of a formal specification.
- Conditionally Qualified - Product complies with all requirements in the specification for laboratory evaluation; a field evaluation is required for full qualification.
- Δ Interim Qualified - Product complies with all interim requirements in Appendix A of the specification; final results and a field evaluation is required for full qualification.
- Not qualified for this application.

2 - Pretreatment category has not been evaluated for durability and weathering.

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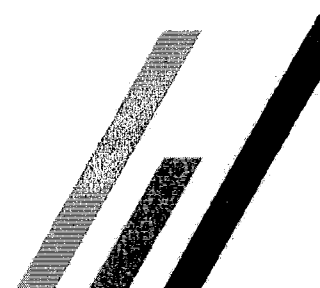
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**ORANGE COUNTY FIRE AUTHORITY
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this ____ day of _____, 20__ by and between the Orange County Fire Authority, a joint powers agency created pursuant to the California Joint Exercise of Powers Act (Gov't Code §§ 6500 *et seq.*) ("OCFA"), and _____, an individual ("Contractor"). OCFA and Contractor are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, OCFA requires the services of a qualified Contractor to provide Air Tactical Group Supervisor services in support of incident goals and objectives, hereinafter referred to as "Project"; and

WHEREAS, Contractor is fully qualified and certified to provide the necessary services for the Project and desires to provide such services; and

WHEREAS, OCFA desires to retain the services of Contractor for the Project.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, OCFA agrees to employ and does hereby retain Contractor and Contractor agrees to provide professional services as follows:

AGREEMENT

1. PROFESSIONAL SERVICES

1.1 Scope of Services

In compliance with all terms and conditions of this Agreement, Contractor shall provide those services specified in the Scope of Services, attached hereto as Exhibit "A", which includes by reference and by addendum any amendments, addendums, change orders, or modifications mutually agreed upon by the parties hereto ("Services" or "Work"). Contractor warrants that all Services shall be performed in a competent, professional and satisfactory manner in accordance with all standards prevalent in the same profession in the State of California. Contractor represents and warrants that he/she possesses a sufficient skill and experience to perform the Services. All Services shall be completed to the reasonable satisfaction of the OCFA. In the event of any inconsistency between the terms contained in the Scope of Services, and/or the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement and then the Scope of Services shall govern, in that order.

1.2 Compliance with Law

All Services rendered hereunder shall be provided in accordance with all laws, ordinances, resolutions, statutes, rules, and regulations of OCFA and any federal, state or local governmental agency of competent jurisdiction.

1.3 Licenses and Permits

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the Services required by this Agreement.

1.4 Familiarity with Work

By executing this Agreement, Contractor warrants that he/she (a) has thoroughly investigated and considered the Work to be performed, (b) has carefully considered how the Work should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the Work under this Agreement.

1.5 Care of Work

Contractor shall adopt and follow reasonable procedures and methods during the term of the Agreement to prevent loss or damage to materials, papers or other components of the Work, and shall be responsible for all such damage until acceptance of the work by OCFA, except such loss or damages as may be caused by OCFA's own negligence.

1.6 Additional Services

Contractor shall perform services in addition to those specified in the Scope of Services when directed to do so in writing by the OCFA Purchasing Manager, provided that Contractor shall not be required to perform any additional services without compensation. Any additional compensation not exceeding fifteen percent (15%) of the agreement amount must be approved in writing by the OCFA Purchasing Manager. Any greater increase must be approved in writing by the Executive Committee of the OCFA Board of Directors.

2. TIME FOR COMPLETION

The time for completion of the Services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the Work of this Agreement according to the schedules set forth in the Scope of Services. Contractor shall not be accountable for delays in the progress of its Work caused by any condition beyond its control and without the fault or negligence of Contractor. Delays shall not entitle Contractor to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF CONTRACTOR

3.1 Compensation of Contractor

For the Services rendered pursuant to this Agreement, Contractor shall be compensated and reimbursed, in accordance with the pricing set forth in the Scope of Services (Exhibit "A") in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000).

3.2 Method of Payment

The Contractor shall invoice OCFA twice a month, the 1st and 16th, for the previous 15 day period. The Contractor shall submit to OCFA in the form approved by OCFA's Finance Manager, an invoice for Services rendered prior to the date of the invoice. OCFA shall pay Contractor for all expenses stated thereon which are approved by OCFA consistent with this Agreement, within fifteen (15) days of receipt of Contractor's invoice.

3.3 Changes

In the event any change or changes in the work is requested by OCFA, the parties hereto shall execute an addendum to this Agreement, setting forth with particularity all terms of such addendum, including, but not limited to, any additional fees. Addenda may be entered into:

A. To provide for revisions or modifications to documents or other work product or work when documents or other work product or work is required by the enactment or revision of law subsequent to the preparation of any documents, other work product or work;

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Contractor's profession.

3.4 Appropriations

This Agreement is subject to and contingent upon funds being appropriated therefore by the OCFA Board of Directors for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to OCFA.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence

Time is of the essence in the performance of this Agreement.

4.2 Schedule of Performance

All Services rendered pursuant to this Agreement shall be performed within the time periods prescribed in the Scope of Services (Exhibit "A"). The extension of any time period specified in Exhibit "A" must be approved in writing by the Contract Officer.

4.3 Force Majeure

The time for performance of Services to be rendered pursuant to this Agreement may be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of a public enemy, acts of the government, fires, earthquakes, floods, epidemic, quarantine restrictions, riots, strikes, freight embargoes, and unusually severe weather if the Contractor shall within ten (10) days of the commencement of such condition notify the Contract Officer who shall thereupon ascertain the facts and the extent of any necessary delay, and extend the time for performing the Services for the period of the enforced delay when and if in the Contract Officer's judgment such delay is justified, and the Contract Officer's determination shall be final and conclusive upon the parties to this Agreement.

4.4 Term

This Agreement shall continue in full force and effect for one year (initial term) unless earlier terminated in accordance with Sections 8.5 or 8.6 of this Agreement. The contract may be renewed up to two (2) additional one-year terms upon mutual written agreement between OCFA and the Contractor.

5. COORDINATION OF WORK

5.1 [Reserved]

5.2 Contract Officer

The Primary Contract Officer shall be _____, Division Chief – _____, and the Secondary Contract Officer shall be Brian Fennessy, Fire Chief, unless otherwise designated in writing by OCFA. It shall be the Contractor's responsibility to keep the Contract Officer fully informed of the progress of the performance of the Services and Contractor shall refer any decisions that must be made by OCFA to the Contract Officer. Unless otherwise specified herein, any approval of OCFA required hereunder shall mean the approval of the Contract Officer.

5.3 Prohibition Against Subcontracting or Assignment

5.3.1 No Subcontracting Without Prior Approval. The experience, knowledge, capability and reputation of the Contractor were a substantial

inducement for OCFA to enter into this Agreement. Therefore, Contractor shall not contract with any other individual or entity to perform in whole or in part the Services required hereunder.

5.4 Independent Contractor

5.4.1 The legal relationship between the Parties is that of an independent contractor, and nothing herein shall be deemed to make Contractor, an OCFA employee. During the performance of this Agreement, Contractor shall act in an independent capacity and shall not act as an OCFA officer or employee. Contractor will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. Neither OCFA nor any of its officials, officers, employees, agents or volunteers shall have control over the conduct of Contractor, except as set forth in this Agreement. Contractor, shall not maintain a permanent office or fixed business location at OCFA's offices. OCFA shall not in any way or for any purpose be deemed to be a partner of Contractor in its business or otherwise a joint venturer or a member of any joint enterprise with Contractor.

5.4.2 Contractor shall not incur or have the power to incur any debt, obligation, or liability against OCFA, or bind OCFA in any manner.

5.4.3 No OCFA benefits shall be available to Contractor in connection with the performance of any Work or Services under this Agreement. Except for professional fees paid to Contractor as provided for in this Agreement, OCFA shall not pay salaries, wages, or other compensation to Contractor for the performance of any Work or Services under this Agreement. OCFA shall not be liable for compensation or indemnification to Contractor for injury or sickness arising out of performing any Work or Services hereunder.

5.6 Employee Retirement System Eligibility Indemnification

5.6.1 [Reserved]

5.6.2 Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by OCFA, including but not limited to eligibility to enroll in any employee retirement system as an employee of OCFA and entitlement to any contribution to be paid by OCFA for employer contribution and/or employee contributions for employee retirement system benefits.

6. INSURANCE AND INDEMNIFICATION

6.1 Compliance with Insurance Requirements. Contractor shall obtain, maintain, and keep in full force and effect during the term of this Agreement, at its

sole cost and expense, and in a form and content satisfactory to OCFA, all insurance required under this section. Contractor shall not commence any Services under this Agreement unless and until it has provided evidence satisfactory to OCFA that it has secured all insurance required under this section. If Contractor's existing insurance policies do not meet the insurance requirements set forth herein, Contractor agrees to amend, supplement or endorse the policies to meet all requirements herein.

6.2 Types of Insurance Required. Without limiting the indemnity provisions set forth in this Agreement, Contractor shall obtain and maintain in full force and effect during the term of this Agreement, including any extension thereof, the following policies of insurance:

6.2.1 Professional Liability/Technology Errors and Omissions Insurance ("PLI"). Contractor shall obtain and maintain PLI insurance applicable to each licensed profession practiced by Contractor. Contractor shall maintain PLI insurance with per-claim and aggregate limits no lower than one million dollars (\$1,000,000.00) each occurrence and two million dollars (\$2,000,000.00) aggregate. Covered professional services shall specifically include all Services to be performed under the Agreement and the policy shall be endorsed to delete any exclusions that may exclude coverage for claims within the minimum PLI Limits for the Services to be performed under this Agreement.

6.2.1.1 The PLI policy shall be endorsed to delete any Contractual Liability Exclusion. The PLI shall include contractual liability coverage applicable to this Agreement. The policy must "pay on behalf of" the insured, and include a provision establishing the insurer's duty to defend the insured.

6.2.1.2 If the PLI policy of insurance is written on a "claims-made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of all Services provided hereunder (the "PLI Coverage Period"). If any PLI policy is replaced, cancelled, non-renewed, discontinued, or otherwise terminated, or if the limits of a PLI policy are reduced or the available coverage depleted below the required minimum coverage amounts for any reason during the PLI Coverage Period, ATGS shall immediately obtain replacement PLI coverage meeting the requirements of this Section 6.2.1. Such replacement coverage shall satisfy all requirements herein, and shall include coverage for the prior acts or omissions of ATGS during the time period during which any Services were performed. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier or other insurance arrangements providing for complete coverage, either of which shall be subject to the written approval by the OCFA.

6.2.1.3 If the PLI policy is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the PLI policy during this period, new coverage shall immediately

be obtained, and written evidence of the policy shall be immediately provided to OCFA, to ensure PLI coverage during the entire course of performing the Services.

6.2.1.4 Contractor shall not perform any Services at any time during which required types or amounts of PLI insurance are not in effect, and OCFA shall have no obligation to pay Contractor for Services performed while required PLI insurance is not in effect.

6.2.2 Automobile Liability Insurance. Contractor shall maintain, in full force and effect throughout the term of this Agreement, a policy of personal Automobile liability insurance in compliance with all statutory requirements applicable in the State of California.

6.3 Acceptability of Insurers. Each insurance policy required by this section shall be issued by a licensed company authorized to transact business by the Department of Insurance for the State of California with a current rating of A-:VII or better (if an admitted carrier), or a current rating of A:X or better (if offered by a non-admitted insurer listed on the State of California List of Approved Surplus Line Insurers (LASLI)), by the latest edition of A.M. Best's Key Rating Guide, except that the OCFA will accept workers' compensation insurance from the State Compensation Fund. In the event the OCFA determines that the Services to be performed under this Agreement creates an increased or decreased risk of loss to the OCFA, the Contractor agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the OCFA.

6.3.1 Contractor shall immediately replace any insurer whose A.M. Best rating drops below the levels specified herein with an insurer that meets the minimum requirements herein.

6.4 Specific Insurance Provisions and Endorsements. Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval. Required insurance policies shall contain the following provisions, or Contractor shall provide endorsements on forms approved by the Contractor to add the following provisions to the insurance policies:

6.4.1 [Reserved]

6.4.2 Notice of Cancellation: Each policy of any type shall be endorsed to provide that coverage shall not be suspended, voided, cancelled, or modified, or reduced in coverage or in limits, except after thirty (30) days prior written notice has been provided to the OCFA. Notwithstanding the foregoing, if coverage is to be suspended, voided, or cancelled because of Contractor's failure to pay the insurance premium, the notice provided by the insurer to OCFA shall be by not less than ten (10) days prior written notice. (A statement that notice will be provided "in accordance with the policy terms" or words to that effect is inadequate to meet the requirements of this Section).

6.4.2.1 Pre-Payment of Policy Premium. If for any reason an insurer declines to issue an endorsement certifying that it will notify OCFA in accordance with section 6.4.2, Contractor shall either obtain insurance from another insurer who will provide the required notice endorsement or shall provide evidence satisfactory to OCFA that the entire policy premium for the full term of that policy has been pre-paid such that the risk of non-payment of premiums during the term of the policy has been eliminated.

6.4.3 ACORD Forms Will Not Be Accepted in Lieu of Endorsements. By executing this Agreement, Contractor certifies that it has – prior to execution of this Agreement - confirmed that its insurance company will issue each of the endorsements required by this Agreement. Contractor also certifies that it understands that "ACORD" Certificate of Liability Insurance forms will not be accepted in lieu of required endorsements.

6.5 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be approved in writing by the OCFA in advance. The decision whether to approve or withhold approval of a deductible or self-insured retention shall be made by the OCFA in the OCFA's sole and absolute discretion.

6.6 [Reserved]

6.7 Evidence of Coverage. Concurrently with the execution of the Agreement, Contractor shall deliver certificates of insurance together with original endorsements affecting each of the insurance policies required to be maintained by Contractor by this Section 6. Contractor shall promptly furnish, at OCFA's request, copies of actual policies including all declaration pages, endorsements, exclusions and any other policy documents OCFA requires to verify coverage.

6.7.1 Required insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the OCFA for written approval.

6.7.2 Authorized Signatures. The certificates of insurance and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf.

6.7.3 Renewal/Replacement Policies. At least fifteen (15) days prior to the expiration of any policy required by this Agreement, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the OCFA. If such coverage is cancelled or reduced and not replaced immediately so as to avoid a lapse in the required coverage, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the OCFA evidence of insurance showing that the required insurance has been reinstated or has

been provided through another insurance company or companies meeting all requirements of this Agreement.

6.8 Requirements Not Limiting. Requirement of specific coverage or minimum limits contained in this section are not intended as a limitation on coverage, limits, or other requirements, or a waiver of any coverage normally provided by any insurance. Nothing in this section shall be construed as limiting in any way the indemnification provision contained in this Agreement, or the extent to which Contractor may be held responsible for losses of any type or amount.

6.9 Enforcement of Agreement (Non-Estoppel). Contractor acknowledges and agrees that actual or alleged failure on the part of the OCFA to inform Contractor of any non-compliance with any of the insurance requirements set forth in this Agreement imposes no additional obligation on the OCFA nor does it waive any rights hereunder.

6.10 [Reserved]

6.11 Other Insurance Requirements. The following terms and conditions shall apply to the insurance policies required of Contractor pursuant to this Agreement:

6.11.1 Contractor shall provide immediate written notice to OCFA if (1) any of the insurance policies required herein are terminated, cancelled, suspended, or non-renewed (2) the limits of any of the insurance coverages required herein are reduced; (3) any required insurance coverage is reduced below the required minimum limits through claims or otherwise, or (4) the deductible or self-insured retention is increased.

6.11.2 All insurance coverage and limits required under this Agreement are intended to apply to each insured, including additional insureds, against whom a claim is made or suit is brought to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the OCFA or its operations shall limit the application of such insurance coverage.

6.11.3 None of the insurance coverages required herein will be in compliance with the requirements of this section if they include any limiting endorsement which substantially impairs the coverages set forth herein (e.g., elimination of contractual liability or reduction of discovery period), unless the endorsement has first been submitted to the OCFA and approved in writing.

6.11.4 Certificates of insurance will not be accepted in lieu of required endorsements, and submittal of certificates without required endorsements may delay the Project. It is Contractor's obligation to ensure timely compliance with all insurance submittal requirements as provided herein and Contractor agrees to reimburse

OCFA for any losses resulting from its failure to timely comply with the requirements of this Agreement.

6.11.5 [Reserved]

6.11.6 Contractor agrees to provide immediate written notice to OCFA of any claim, demand or loss arising out of the Services performed under this Agreement and for any other claim, demand or loss which may reduce the insurance available to an amount less than required by this Agreement.

7. RECORDS AND REPORTS

7.1 Reports

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the Services required by this Agreement as the Contract Officer shall require.

7.2 Records

Contractor shall keep such books and records as shall be necessary to properly perform the Services required by this Agreement and enable the Contract Officer to evaluate the performance of such Services. Except as provided in Section 7.5, the Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit and make records and transcripts from such records.

7.3 Ownership of Documents

Except as provided in Section 7.5, all drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of this Agreement shall be the property of OCFA and shall be delivered to OCFA upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by OCFA of its full rights or ownership of the documents and materials hereunder. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein.

7.4 Release of Documents

All drawings, specifications, reports, records, documents and other materials prepared by Contractor in the performance of Services under this Agreement shall not be released publicly without the prior written approval of the Contract Officer.

7.5 Confidential Materials

Notwithstanding anything to the contrary in this Agreement, the Contractor shall be the sole owner of Contractor's work papers and of any other documents, data or information which are required to be maintained confidential from OCFA by one or more rules of professional conduct governing the Contractor's profession(s) (collectively, the "Confidential Materials"). Neither the OCFA nor the Contract Officer shall have access to the Confidential Materials except as may otherwise be required by order issued by a court of competent jurisdiction.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law

This Agreement shall be construed and interpreted both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of OCFA shall be deemed to waiver or render unnecessary OCFA's consent to or approval of any subsequent act of Contractor. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term

OCFA reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days written notice to Contractor, except that where termination is due to the fault of the Contractor and constitutes an immediate danger to health, safety and general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Contractor shall immediately cease all Services hereunder except such as may be specifically approved by the Contract Officer. Contractor shall be entitled to compensation for all Services rendered prior to receipt of the notice of termination and for any Services authorized by the Contract Officer thereafter.

Contractor may terminate this Agreement, with or without cause, upon thirty (30) days written notice to OCFA.

8.6 Termination for Default of Contractor

[Reserved]

8.7 Attorneys' Fees

[Reserved]

9. OCFA OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of OCFA Officers and Employees

No officer or employee of OCFA shall be personally liable to the Contractor, or any successor-in-interest, in the event of any default or breach by OCFA or for any amount which may become due to the Contractor or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry.

10. MISCELLANEOUS PROVISIONS

10.1 Confidentiality

Information obtained by Contractor in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Contractor for any purpose other than the performance of this Agreement without the written consent of OCFA.

10.2 Notice

Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated forty-eight (48) hours from the time of mailing if mailed as provided in this Section.

Orange County Fire Authority
Attention: Sara Kennedy
1 Fire Authority Road
Irvine, CA 92602

WITH COPY TO:
David E. Kendig, General Counsel
Woodruff, Spradlin & Smart
555 Anton Blvd. Suite 1200
Costa Mesa, CA 92626

To Contractor:

Name
Address

10.2 Integrated Agreement

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.

10.3 Amendment

This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

10.4 Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.5 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

“OCFA”

ORANGE COUNTY FIRE AUTHORITY

Date:_____

By:_____
Sara Kennedy, CPPB
Purchasing Manager

“CONTRACTOR”

CONTRACTOR NAME

Date:_____

By:_____
Name
Title

EXHIBIT "A"

Scope of Services

A1. Air Tactical Group Supervisor (ATGS) Position

A1.1 Position Overview

A1.1.1 As described in the "Standards for Aerial Supervision", as published by the National Wildfire Coordinating Group, "The ATGS coordinates incident airspace and manages incident air traffic. The ATGS is an airborne firefighter who coordinates, assigns, and evaluates the use of aerial resources in support of incident objectives. The ATGS is the link between ground personnel and incident aircraft. The ATGS must collaborate with ground personnel to develop and implement tactical and logistical missions on an incident. The ATGS must be proactive in communicating current and expected fire and weather conditions. The ATGS must provide candid feedback regarding the effectiveness of aviation operations and overall progress toward meeting incident objectives. The ATGS must also work with dispatch staff to coordinate the ordering, assignment, and release of incident aircraft in accordance with the needs of fire management and incident command personnel.

A1.1.2 On Initial Attack (IA) incidents (Type 4 and 5), the ATGS will size up, prioritize, and coordinate the response of aerial and ground resources until a qualified Incident Commander (IC) arrives. On complex incidents (Type 1, 2, or 3), the ATGS will coordinate and prioritize the use of aircraft between several divisions or groups while maintaining communications with operations personnel and aircraft bases (fixed- or rotor-wing).

A1.1.3 In the Incident Command System (ICS), the ATGS works for the IC on initial attack and the Operations Section Chief (OSC), Air Operations Branch Director, or operational designee on extended attack. The ATGS supervises the Leadplane Pilot (LPIL), Aerial Supervision Module (ASM), and the Helicopter Coordinator (HLCO) positions when activated. The ATGS may operate from an airplane or helicopter.

In the event the ATGS is utilized in an Aerial Supervision position subordinate to the ATGS position, HLCO (Helicopter Coordinator) or AITS (ASM Air Tactical Supervisor) the ATGS will perform those job duties as described in the current NWCG "SAS" (National Wildfire Coordinating Group "Standards for Aerial Supervision".

A1.2 Position Requirements

At a minimum, ATGS must possess previously held fire chief officer status and possess and maintain wildland Incident Qualifications and Certification System (IQCS) qualifications for the position of Division Supervisor and/or Air Tactical Group Supervisor.

A.2 ATGS Responsibilities

A2.1 Incident Response

A2.1.1 The ATGS will respond as part of the aircrew with the aircraft to wildland and all-hazards incidents. The ATGS will perform the duties described above and contained within the “Standards for Aerial Supervision”, as published by the National Wildfire Coordinating Group, in coordination with the Primary or Secondary Contract Officer and/or third parties providing air operations services, as directed by OCFA. The ATGS must be available at the site of the aircraft.

A2.1.2 The ATGS will provide wildland fire subject matter expertise for pre-attack, initial attack, and extended attack functions. Pre-attack services include evaluation of staffing, familiarization with maps, identification of potential cooperators, and other readiness activities.

A2.1.3 As delegated by OCFA, the ATGS will ensure day to day contract compliance on assigned aircraft and is responsible for communicating any discrepancies or recommendations to the Primary and/or Secondary Contract Officer.

A2.2 Communications

A2.2.1 As required by OCFA, the ATGS may serve as the primary point-of-contract (POC) with the OCFA Emergency Command Center for daily status and dispatching to initial attack response.

A2.2.2 The ATGS is responsible for developing and delivering pre and post incident briefings and After Action Reviews (AAR) for the air crews. Pre-incident briefings may include weather updates, incident status, pending orders, and other information as may be necessary to ensure all crew members required to deploy are able to.

A2.2.3 The ATGS is responsible for inter cockpit Crew Resource Management (CRM) with OCFA and third party provider crews, as applicable, for the purpose of fostering cohesive team function during the execution of incident objectives.

A2.3 Deliverables for IAA Aircraft

The ATSG will assist with the development of Incident Awareness and Assessment (IAA) deliverables for fire incidents. Deliverables may include maps, files for the Geographic Information Systems section, and infrared video, which will be provided to the incident. The ATSG will ensure the deliverables meet the specifications of what is required by the incident.

A2.4 Training

As requested by OCFA, provide informal and formal National Wildfire Coordinating Group (NWCG) wildland fire instruction. Informal training will be delivered during the course of the daily shift. Formal, classroom-style training will be scheduled and delivered outside the standard shift schedule.

A2.5 Schedules

A2.5.1 Daily Shift. The daily shift is twelve (12) hours, and will be coordinated through the Primary or Secondary Contract Officer.

A2.5.2 Aerial Firefighting Programs. Contractor services will be utilized in various aerial firefighting programs, which may operate from multiple locations including, but not limited to, the Joint Forces Training Base in Los Alamitos, California, and/or other locations throughout California. Program operations may include a requirement for twelve (12) or twenty-four (24) hour availability. Multiple programs may be in place simultaneously. The ATGS must be available on site at the designated base of operations, or other location as directed, for the duration of the daily shift.

A2.5.3 Staffing Coordination. The ATGS is responsible for coordinating all contract aircrew availability to ensure staffing is sufficient to meet the respective daily twelve (12) hour or twenty-four (24) hour availability requirements. The ATGS must communicate schedules and proposed changes to schedules to the Primary or Secondary Contract Officer.

A3. Compensation

A3.1 Daily Rate

A3.1.1 Standard Shift. The daily rate for the standard twelve (12) hour shift is \$2,000 and includes, but is not limited to, all staffing coordination activities, ATGS duties, informal training provided during the shift, formal training, and full day support for additional services as requested by OCFA. Contractor is responsible for travel to and from the work location, food, and lodging. Hours worked totaling less than the daily rate will be compensated at one twelfth (1/12) the daily rate at one hundred sixty-six dollars (\$166) per hour.

A3.1.2 Holdover (Extended Staffing). In the event that holdover beyond the standard shift is required due to incident activity, services provided in excess of twelve (12) hours will be charged at one hundred sixty-six dollars (\$166) per hour.

Southern California Edison Service Territory Map



ORANGE COUNTY FIRE AUTHORITY
COST REIMBURSEMENT RATES
EQUIPMENT
EFFECTIVE June 15, 2021

DRAFT

DESCRIPTION	2020/21 RATE	SOURCE	Hourly / Daily
HELITANKER CH-47	\$8,000.00	OCFA CONTRACTOR	Hourly
HELICOPTER SIKORSKY S-76	\$3,500.00	OCFA CONTRACTOR	Hourly
MOBILE RETARDANT PLANT - OT*	\$1,500.00*	OCFA CONTRACTOR	Hourly*
WATER TENDER (Perimeter Solutions)	\$1,800.00	OCFA CONTRACTOR	12-Hour Shift
MOBILE FIRE RETARDANT - PRODUCT**	Actual Cost**	OCFA CONTRACTOR	**
FREIGHT (Perimeter Solutions)***	Actual Cost***	OCFA CONTRACTOR	***

* \$1,500 per hour (overtime) after 12hr shift, up to maximum of \$11,000/day if extended or if 24hr operations in a location begins. Contract cycle of 6/15-12/15 will be charged at the night operating rate plus overtime or full day rates as utilized.

** Based on 2021 U.S.F.S. FOB Origin Price List.

*** Based on location and return to point of origin.



Orange County Fire Authority
AGENDA STAFF REPORT

Budget and Finance Committee Meeting
April 14, 2021

Agenda Item No. 3E
Discussion Calendar

Fiscal Year 2019/20 Backfill/Overtime and Calendar Year 2020 Total
Earnings/Compensation Analysis

Contact(s) for Further Information

Robert C. Cortez, Assistant Chief	robertcortez@ocfa.org	714.573.6012
Business Services Department		

Julie Nemes, Finance Manager/Auditor	julienemes@ocfa.org	714.573.6304
Business Services Department		

Summary

This annual agenda item is submitted to provide an overview and analysis of the Fiscal Year 2019/20 backfill and overtime earnings along with employee total compensation for Calendar Year 2020, and to reaffirm current direction regarding filling permanent and temporary vacancies.

Prior Board/Committee Action

Not Applicable.

RECOMMENDED ACTION(S)

Review the proposed agenda item and direct staff to place the item on the agenda for the Board of Directors meeting of April 22, 2021, with the Budget and Finance Committee's recommendation that the Board of Directors take the following actions:

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies as quickly as possible after the positions become vacant.
2. Authorize staff to temporarily exceed the number of authorized firefighter positions on the Master Position Control to maximize the number of firefighters hired into each academy, pending attrition/promotions that occur during and following academy graduations.
3. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.

Impact to Cities/County

Not Applicable.

Fiscal Impact

Backfill/overtime costs are included in the annual budget.

Background

See extended background.

Attachment(s)

1. 2020 Average Overtime Shifts Compared to 2019 (Safety/Firefighter Ranks)
2. 2020 Average Overtime Shifts Compared to 2019 (Non-Safety/Dispatchers)
3. Frequently Asked Questions & Responses
4. Fiscal Year 2019/20 Backfill/Overtime & Calendar Year 2020 Total Earnings/Compensation Analysis (PowerPoint Slides)

Background

The OCFA's General Fund budget (excluding Fund 12110 – CIP) consists primarily of labor costs, with approximately 87.9% of final Fiscal Year (FY) 2019/20 expenditures allocated to salaries and employee benefits. For FY 2019/20, final backfill/overtime expenditures were \$66,919,982 or 17.0% of total salary and employee benefit costs (compared to a very similar level of 17.5% in FY 2018/19). The primary factors driving OCFA's backfill/overtime costs are:

- OCFA's Constant Staffing Policy - \$52.4M
- Major Emergency Incident Response - \$7.0M
- Training Requirements - \$3.9M
- Discretionary - \$3.6M

Backfill and overtime costs can either be non-discretionary or discretionary, as explained in the following paragraphs.

Constant Staffing Backfill/Overtime (Non-Discretionary)

The OCFA maintains constant staffing levels, which means that every day, all authorized Operations post-positions are staffed. Constant staffing enables delivery of emergency services 24-hours per day, 7-days per week. A post-position is a seat on a fire or Emergency Medical Services (EMS) response unit (including engines, trucks, and paramedic vehicles) that must be filled to meet the staffing requirements of that unit.

- Backfill occurs when there is a vacancy in a position that requires constant staffing and another employee works overtime to fill the vacancy. Examples include:
 - Positions temporarily vacant, due to personnel on leave (sick, vacation, jury duty, military leave, bereavement, workers' compensation, etc.)
 - Positions temporarily vacant due to COVID-19 protocols (sick, exposure, etc.)
 - Positions vacant as a result of retirements, promotions, or the addition of new positions to staff a new station or convert Basic Life Support engines to Advance Life Support engines, pending recruitments to fill the positions
 - Positions temporarily vacant, due to personnel responding to major in/out-of-county emergency incidents
- Overtime is used for work performed above and beyond the constant staffing requirements. Examples include strike teams, overhead assignments, or emergency incidents, either in- or out-of-county, and mandatory training classes that occur on a day other than the employee's regularly assigned shift.

Major Emergency Incident Response (Non-Discretionary)

Another form of non-discretionary overtime incurred by OCFA is for major emergency incident response. OCFA responds to emergency incidents at the request of surrounding fire agencies (Mutual Aid), California Department of Forestry (CAL FIRE), Cleveland National Forest Service (CNF), and the California Office of Emergency Services (Cal OES). Backfill/overtime costs for responding to major emergency incidents in FY 2019/20 totaled \$7.0 million and represented approximately 10.5% of total backfill/overtime expenditures. Approximately 75-100% of these emergency related incident response costs are reimbursable.

Starting in March 2020, OCFA was impacted by the COVID-19 Pandemic and incurred significant non-discretionary overtime for the COVID-19 response, which is included in the major emergency incident response figure referenced above. For FY 2019/20, OCFA submitted an overtime

reimbursement claim of \$3.6 million to the Federal Emergency Management Agency (FEMA) for the COVID-19 incident response. This claim is currently under review by FEMA.

Backfill/Overtime costs for constant staffing and major emergency incident response are considered non-discretionary and represent 88.9% of FY 2019/20 Backfill/Overtime costs.

Training Requirements (Discretionary & Non-Discretionary)

OCFA incurs additional backfill/overtime costs related to various training requirements for suppression personnel. Examples include mandatory training requirements for federal, state, and local programs including Urban Search and Rescue (US&R), Airport Rescue Firefighting (ARFF), Weapons of Mass Destruction (WMD), and Incident Command (IC). Additionally, the OCFA historically incurs overtime and backfill costs to provide training academies for new and/or promoted dispatchers, firefighters, engineers, captains, battalion chiefs, and reserve firefighters. Backfill/overtime costs as a result of training activities in FY 2019/20 totaled \$3.9 million and represented 5.8% of the total backfill/overtime expenditures.

Backfill/Overtime/Discretionary

For FY 2019/20, total discretionary backfill/overtime was \$3.6 million or 5.3% and is attributable to the following:

- Employees staffing special events, participating on project teams, and Fire Explorer Program activities
- Information systems including the Geographic Information System (GIS), automotive, communications services, and fire prevention personnel requested to work outside their normal work schedule

Regular vs. Overtime Analysis

Similar to prior years, backfill/overtime continues to be approximately 27% more cost effective than hiring a full-time benefited employee for filling temporary vacancies such as those that occur when employees are off on sick-leave or when employees are responding to out-of-county incidents. That said, it is **not** OCFA's intent to use overtime as a cost-savings measure when positions are vacant due to retirements/promotions. Instead, OCFA seeks to fill those vacant positions as quickly as possible through new recruit academies and promotional academies. For CY 2020, the estimated cost savings to OCFA by using overtime rather than full-time employees to fill vacancies was \$23 million.

Filling Vacant Positions

To help reduce the number of vacancies that are open pending hiring and promotions, OCFA has conducted, and plans to conduct, the following academies:

Academies in FY 2020/21

2 Firefighter Academies
1 Fire Apparatus Engineer Academy
1 Fire Captain Academy
2 Battalion Chief Academies

Academies planned for FY 2021/22

2 Firefighter Academies
1 Fire Apparatus Engineer Academy
1 Fire Captain Academy
1 Battalion Chief Academy

We have reached nearly full staffing at the firefighter rank immediately following Firefighter Academy 50 and 51's graduations. Currently, we are conducting Firefighter Academy 52 and Firefighter Academy 53 will begin in August 2021. Firefighter vacancies have continued to accumulate quickly as we promote firefighters into the engineer and captain ranks, and also

experience retirement activity among all ranks. As a result, staff is seeking continued Board authorization for the hiring of approximately 50 firefighters per academy for all academies during the next two fiscal years (FY 2020/21 and 21/22), due to attrition/promotions that will occur during and following academy graduations. This may result in total firefighter positions temporarily exceeding total permanent authorized firefighter positions pending promotions and retirements/other separations.

Backfill/Overtime Monitoring & Analysis

OCFA finance staff prepares monthly reports to track and monitor backfill/overtime activity. Reports are provided internally to management to show expenditures by section and by cause (reason) so that Operations and support departments can monitor and, if required, adjust activities as needed in their respective areas.

The OCFA also has policies, procedures, and systems in place that monitor and report overtime usage. Due to the long fire season and the COVID-19 Pandemic, combined with open positions, vacancies, promotions, and retirements during CY 2020, the OCFA was required to utilize backfill and overtime to fulfill these needs. Although backfill and overtime usage was still required, the need to **force-hire** employees to work extended hours beyond what they voluntarily desired to work was significantly reduced compared to CY 2019 (Attachments 1 and 2). As stated earlier, the OCFA has aggressively been conducting various academies to help reduce the distribution of overtime and impact on employees. OCFA staff has also been working with the Orange County Professional Firefighters Association, Local 3631, to enhance existing policies and make modifications to the Staffing System to reduce the amount of forced overtime. These combined efforts have resulted in an overall reduction in forced overtime prior to the COVID-19 Pandemic.

As discussed in this report, the majority of backfill/overtime incurred by OCFA is non-discretionary and emergency response activity is generally 75-100% reimbursable. The small portion of overtime considered discretionary (5.4% of total backfill/overtime expenditures) is carefully managed and closely monitored.

Total Employee Compensation Reporting

Effective in CY 2018, employers were required to only report the normal employer paid retirement costs and not report the Unfunded Actuarial Accrued Liability (UAAL) as part of an individual employee's compensation. Currently, the UAAL comprises 47-61% of the employer retirement costs, which is an elevated level beyond what is required due to OCFA's accelerated pension paydown plan.

Compensation Cost Transparency

Annual employee compensation costs are posted and readily available on the OCFA website dating back to CY 2009. Since 2012, the format of the report includes all earnings segregated by base salary, overtime, unused leave payouts, and other/special pay. Employer paid retirement and benefits are also included in the employee compensation report. This year's report will be posted to the OCFA website and submitted to the State Controller on or before April 30, 2021, in compliance with the due date.

OVERTIME QUARTERLY UPDATE

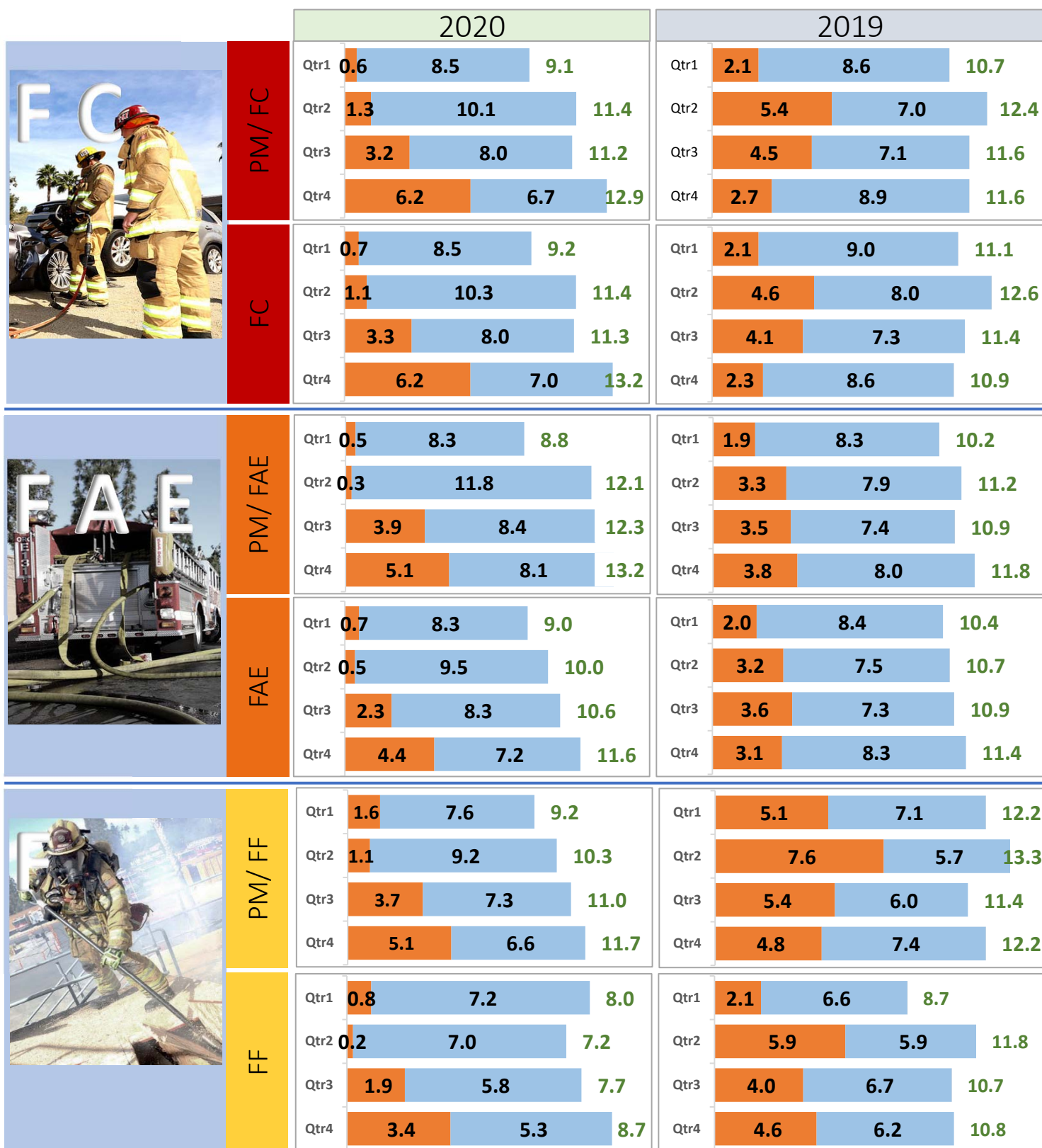
Dec 2020

AVERAGE OVERTIME SHIFTS

Forced Overtime

Voluntary Overtime

Total Overtime



Forced and Voluntary Overtime include shifts of 14+ hours worked only.

Averages are calculated using number of Overtime shifts (14+ hours) divided by the number of employees working 9+ shifts for the quarter.

Rank indicates the individual working the overtime; does not indicate the position worked.

In work-down situations, the OT is counted to the individual in rank.

Beginning April 2020, the reporting period is realigned to cover actual days of the month (previously based on rolling 29 day periods).

EMERGENCY COMMAND CENTER

OVERTIME UPDATE

Dec 2020

AVERAGE
OVERTIME SHIFTS

Fire Communications Dispatcher

MONTHLY

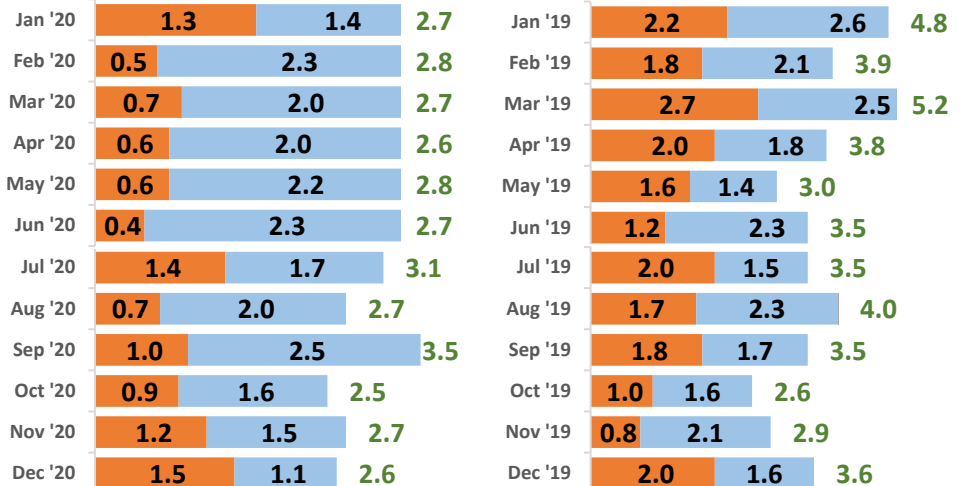
Forced Overtime

Voluntary Overtime

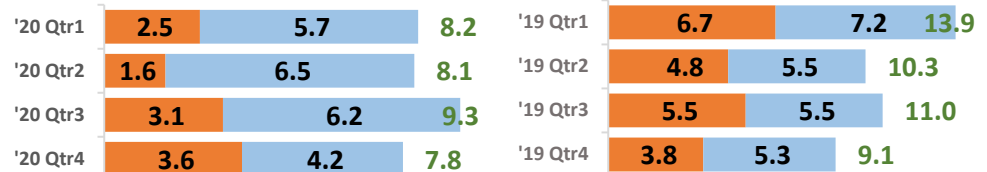
Total Overtime

2020

2019

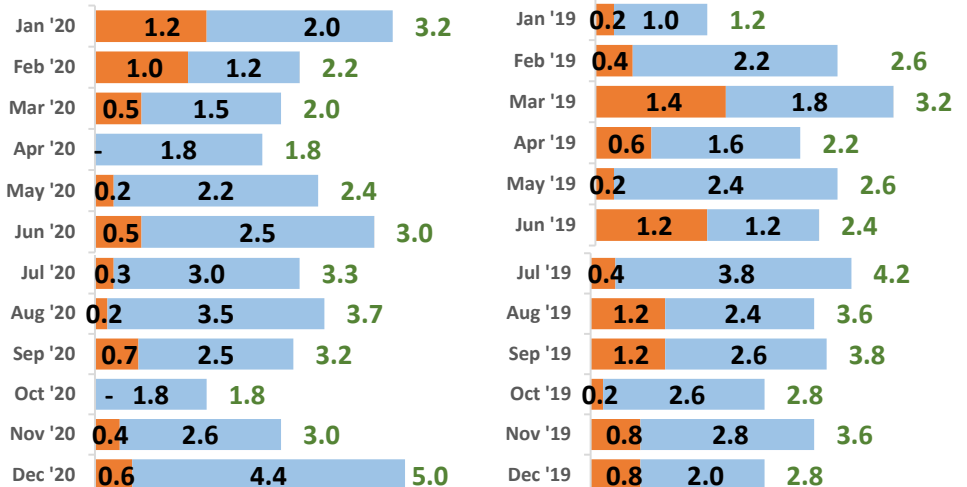


QUARTERLY



Fire Communications Supervisor

MONTHLY



QUARTERLY



Beginning April 2020, the reporting period is realigned to cover actual days of the month (prev. based on rolling 29 day periods).

FY 2019/20 BACKFILL/OVERTIME ANALYSIS FREQUENTLY ASKED QUESTIONS

1. What is a firefighter's standard work schedule?

Firefighters assigned to suppression positions work 24-hour shifts which equate to a 56-hour average work week or 2,912 hours per year. When firefighters are assigned to staff positions on a 40-hour work week, they average 2,080 regular hours per year.

2. What does "maintaining constant staffing levels" mean? What is the difference between backfill and overtime?

This means that every day, all authorized Operations post-positions are staffed. A post-position is a seat on a fire or Emergency Medical System (EMS) response unit (including engines, trucks and paramedic vans) that must be filled to meet the staffing requirement of that unit. Backfill occurs when there is a vacancy in a position that requires constant staffing and an employee either volunteers or is forced to work to fill the vacancy. Overtime is also used for hours worked above and beyond the constant staffing requirements. Examples of overtime include strike teams, overhead assignments to emergency incidents, either in- or out-of-county, and mandatory training classes that occur on days other than the employee's regularly assigned shift.

3. Because OCFA's backfill/overtime budget is significant, does that mean we are understaffed?

OCFA's backfill/overtime budget is significant, due to the reasons outlined in #2 above. Due to retirements and promotions, there are positions that remain temporarily unfilled, pending graduation of new recruits from Firefighter Academies, and pending completion of promotional academies. For FY 2019/20, vacant positions across all ranks reached a high of 155 which required constant staffing on an overtime/backfill basis. Recent and planned academies along with promotional exams are expected to continue reducing the number of vacancies and open positions.

4. How many continuous hours may a firefighter work?

Currently, the maximum number of continuous hours (regular and backfill/overtime) an employee may work is 120. The Assistant Chief of Operations may suspend the 120-hour rule to ensure sufficient incident response capability and adequate station coverage. Employees enter their availability to work into the OCFA's Staffing System. The system hires employees based upon the premise of an equal distribution of overtime and agreed upon hiring list procedures. Personnel assigned to out-of-county strike teams or to overhead positions are often deployed for periods of 14-21 days. When assigned to these extended incidents, employees work within established work/rest cycles.

5. Is the OCFA concerned about employee fatigue as the result of the continuous work hour rules?

The OCFA recognizes employee fatigue is a factor that impacts employee performance. Severe fatigue may increase the dangers inherent in the performance of emergency operations. The OCFA takes steps to protect employees from these dangers and ensures that firefighters are trained, equipped and supervised to work as safely as possible. There is an additional emphasis on employee health and wellness provided through the WEFIT (Wellness) Program. Supervisors have the means by which to ensure employees are either adequately rested or relieved of duty where appropriate. Firefighters on extended incidents adhere to specified work/rest cycles.

Fiscal Year 2019/20 Backfill/Overtime & Calendar Year 2020 Total Earnings/Compensation Analysis

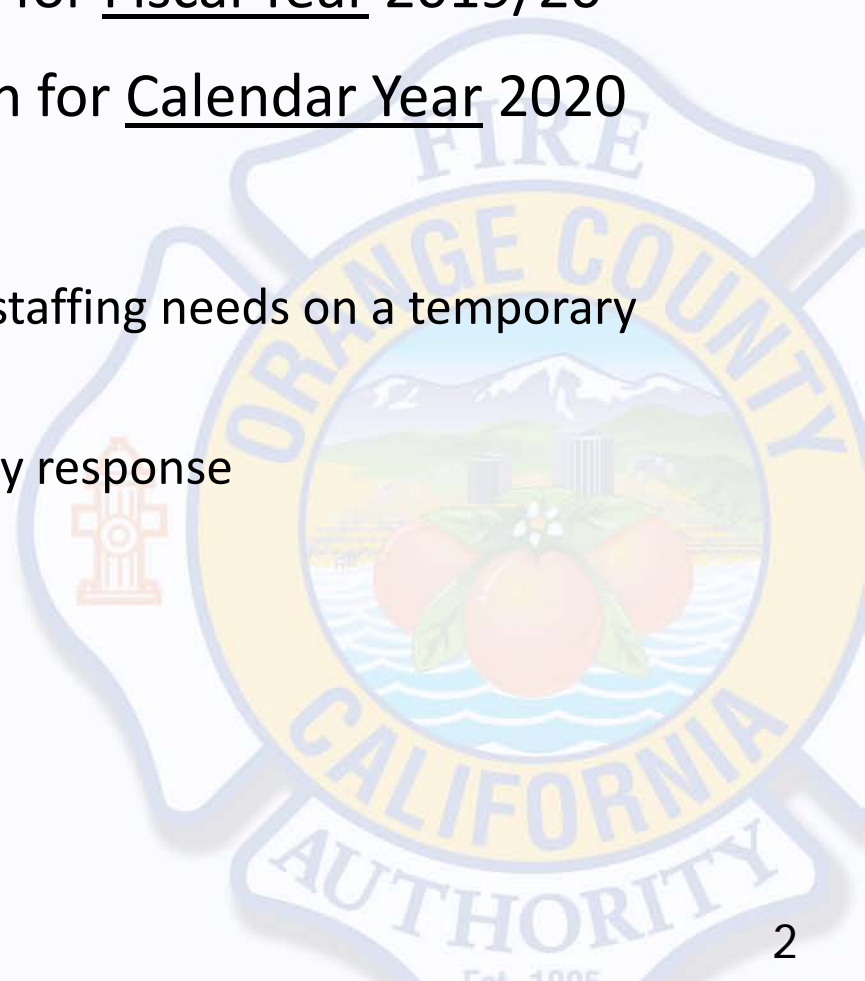
Budget and Finance Committee Meeting

April 14, 2021



Agenda

- Backfill and overtime earnings for Fiscal Year 2019/20
- Detail employee compensation for Calendar Year 2020
- Backfill/overtime:
 - Cost effective option to meeting staffing needs on a temporary basis
 - Provides for consistent emergency response
- Recommendations



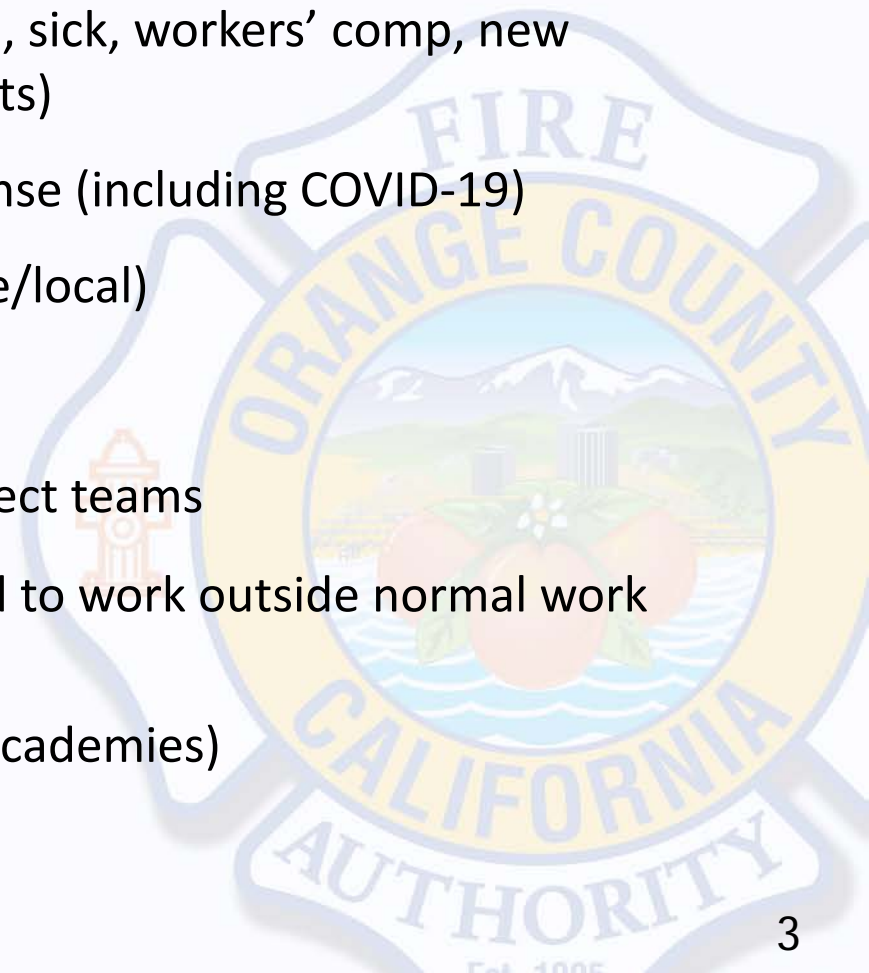
Fiscal Year 2019/20 Backfill/Overtime Categories

- Non-Discretionary Categories:

- Constant Staffing Policy (vacation, sick, workers' comp, new positions, promotions, retirements)
- Major emergency incident response (including COVID-19)
- Training (mandatory federal/state/local)

- Discretionary Categories:

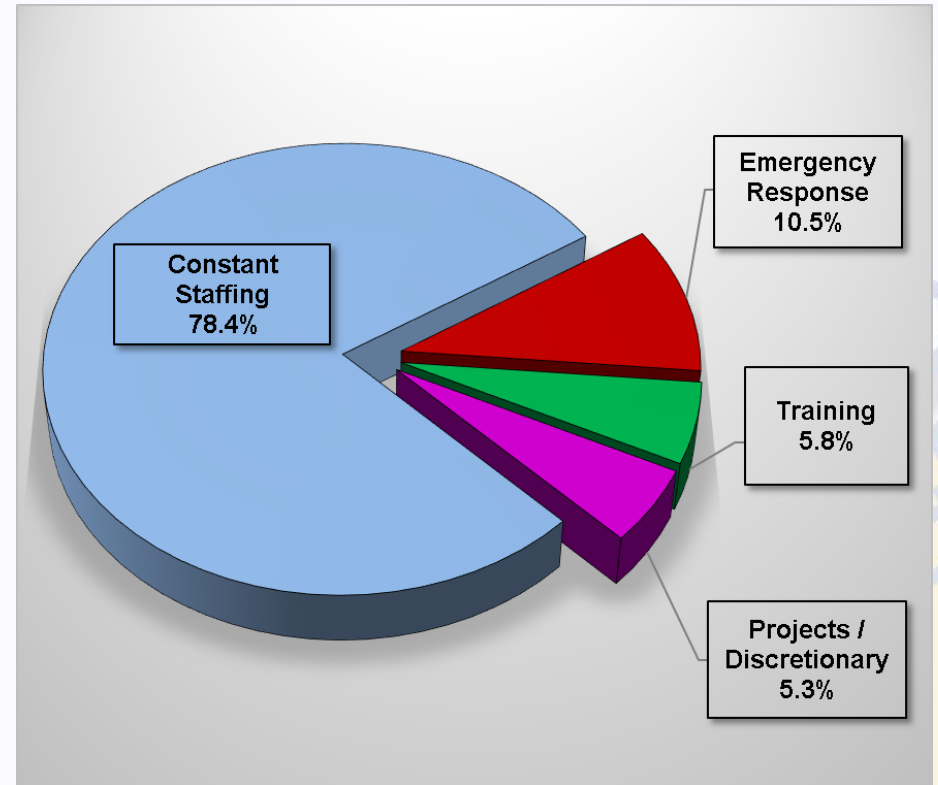
- Special events/assignments, project teams
- Department personnel requested to work outside normal work schedules
- Training (new hire/promotional academies)



Fiscal Year 2019/20 Backfill/Overtime by Category

Categories of Backfill/OT	FY 2019/20 (in millions)
Constant Staffing (ND)	\$52.4
Emergency Response* (ND) - includes \$3.6M COVID-19 FEMA Claim	\$7.0
Training (Discretionary & Non-Discretionary)	\$3.9
Projects/Discretionary	\$3.6
FY 2019/20 Total	\$66.9

ND: Non-Discretionary



* Emergency response overtime is generally 75-100% reimbursable

Overtime Cost Effectiveness

Firefighter Position Example

Hourly Rate Regular Full-Time	Top Step Regular Rate	Top Step OT Rate	Mid Step Regular Rate	Mid Step OT Rate
<u>Salaries:</u>				
Base Hourly Rate	\$32.97	\$49.46	\$28.74	\$43.12
Other Pays (Holiday, Educ. Inc., EMT)	\$8.35		\$8.35	
Total Salaries	\$41.32	\$49.46	\$37.09	\$43.12
<u>Benefits:</u>				
Retirement	\$20.99		\$18.85	
Workers' Compensation/Medicare	\$1.75	\$2.05	\$1.69	\$1.96
Health Insurance	\$8.66		\$8.66	
Total Benefits	\$31.40	\$2.05	\$29.20	\$1.96
Total Hourly Salaries & Benefits	\$72.72	\$51.51	\$66.29	\$45.08

\$ Difference	\$21.21	\$21.21
% Difference	29.17%	32.00%

For a firefighter position, it is approximately 30% more cost effective to use overtime to backfill temporary firefighter vacancies compared to hiring a regular full-time firefighter to fill floating temporary vacancies

Calendar Year 2019/20 Regular vs. Overtime Analysis

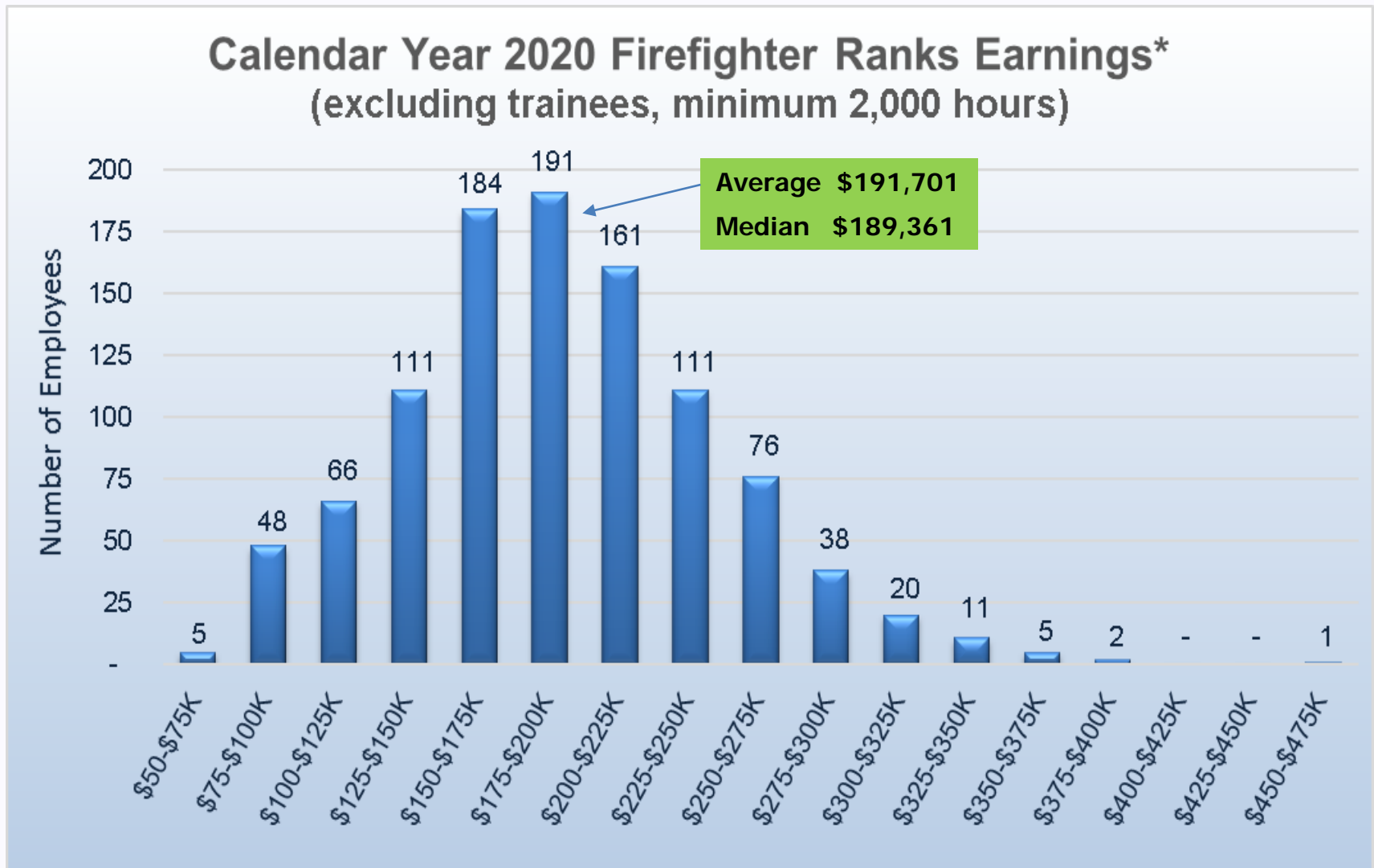
Firefighter Ranks Estimated Cost Savings

	Actual Overtime Hours Worked	FTE Equivalent	Estimated * FTE Cost	Estimated * Overtime Cost	Estimated * Cost Savings by Utilizing Backfill/Overtime
Fire Captain	325,282	111.7	\$30,089,701	\$22,042,039	\$8,047,662
Engineer	265,668	91.2	\$20,742,088	\$15,490,199	\$5,251,889
Firefighter	445,162	152.9	\$32,255,408	\$22,892,585	\$9,362,823
		355.8	\$83,087,197	\$60,424,823	\$22,662,374

The estimated \$22.7 million savings is a direct result of utilizing overtime/backfill rather than full-time employees at a blended savings of 27%

***** *Utilizes estimated hourly rates for top step within a classification (blended savings of 30% at mid step hourly rates).*

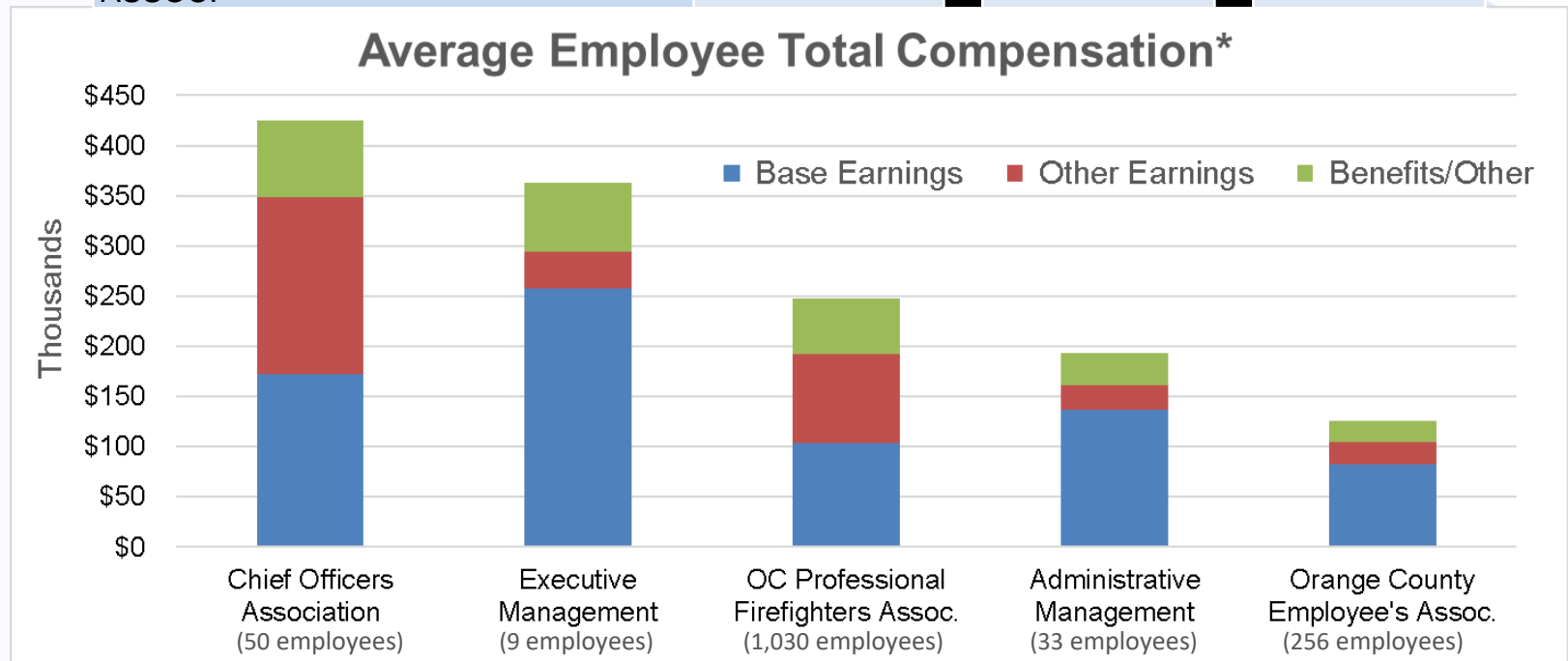
Firefighter Ranks Earnings Analysis



* Excludes benefits

Calendar Year 2020 Total Employee Compensation

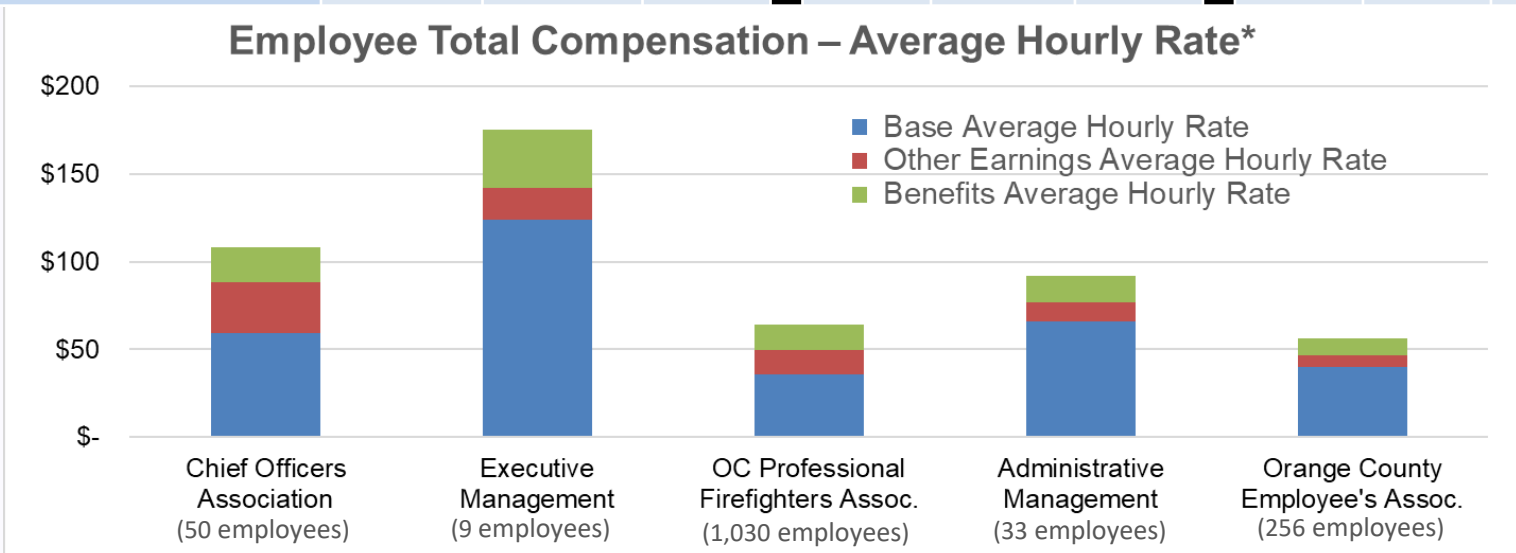
Bargaining Group	Average Base Earnings	Average Total Earnings	Average Total Compensation
CHIEF OFFICERS ASSOCIATION	\$171,688	\$348,769	\$425,385
EXECUTIVE MANAGEMENT	\$257,328	\$294,534	\$363,363
OC PROFESSIONAL FIREFIGHTERS ASSOCIATION	\$103,846	\$191,701	\$247,001
ADMINISTRATIVE MANAGEMENT	\$136,647	\$161,158	\$193,485
ORANGE COUNTY EMPLOYEE'S ASSOC.	\$82,709	\$104,007	\$126,078



* Employees working a minimum of 2,000 hours for safety and 1,430 for non-safety (approx. 70% of regularly scheduled hours)

Calendar Year 2020 Total Compensation – Average Hourly Rate

Bargaining Group	BASE EARNINGS			TOTAL EARNINGS			TOTAL COMPENSATION		
	Average Base Earnings	Regularly Scheduled Hours	Average Hourly Rate	Average Total Earnings	Average Hours Worked	Average Hourly Rate	Average Total Compensation	Average Hours Worked	Average Hourly Rate
CHIEF OFFICERS ASSOCIATION	\$171,688	2,912	\$58.96	\$348,769	3,938	\$88.57	\$425,385	3,938	\$108.02
EXECUTIVE MANAGEMENT	\$257,328	2,080	\$123.72	\$294,534	2,080	\$141.60	\$363,363	2,080	\$174.69
OC PROFESSIONAL FIREFIGHTERS ASSOCIATION	\$103,846	2,912	\$35.66	\$191,701	3,855	\$49.73	\$247,001	3,855	\$64.07
ADMINISTRATIVE MANAGEMENT	\$136,647	2,080	\$65.70	\$161,158	2,106	\$76.52	\$193,485	2,106	\$91.87
ORANGE COUNTY EMPLOYEE'S ASSOC.	\$82,709	2,080	\$39.76	\$104,007	2,241	\$46.41	\$126,078	2,241	\$56.26



* Employees working a minimum of 2,000 hours for safety and 1,430 for non-safety (approx. 70% of regularly scheduled hours)

Calendar Year 2020 Top 10 Employees: Compensation Pensionable vs. Non-Pensionable Costs

		=	+			
	Title/Assignment	Total Compensation	Compensation Pensionable	Compensation Non-Pensionable*	Employer Paid Pension (Non-Pensionable)	Employer Paid Health (Non-Pensionable)
1	Fire Division Chief	\$593,254	\$236,935	\$356,319	\$67,084	\$22,942
2	Fire Battalion Chief	\$561,279	\$203,499	\$357,780	\$57,820	\$22,529
3	Fire Battalion Chief	\$557,681	\$203,954	\$353,727	\$57,095	\$22,696
4	Fire Battalion Chief	\$547,133	\$205,615	\$341,518	\$58,637	\$22,577
5	Fire Division Chief	\$536,015	\$219,951	\$316,064	\$63,523	\$22,655
6	Fire Captain	\$530,555	\$170,030	\$360,525	\$45,973	\$25,242
7	Fire Battalion Chief	\$529,958	\$212,558	\$317,400	\$59,909	\$20,700
8	Fire Division Chief	\$529,115	\$230,054	\$299,061	\$65,518	\$17,560
9	Fire Battalion Chief	\$506,252	\$182,086	\$324,166	\$53,550	\$15,087
10	Fire Division Chief	\$502,926	\$232,154	\$270,772	\$65,842	\$22,949

*

Compensation Non-Pensionable includes overtime, non-pensionable specialty pays, employer paid pension, and employer paid health.

Calendar Year 2020 Top 10 Employees: Compensation Average Hourly Rate

	Title/Assignment	Total Compensation*	Base Hours	Backfill/ Overtime Hours	Total Hours	Average Hourly Fully Burdened Rate
1	Fire Division Chief	\$593,254	2,080	1,697	3,777	\$157.09
2	Fire Battalion Chief	\$561,279	2,912	2,664	5,576	\$100.66
3	Fire Battalion Chief	\$557,681	2,080	2,037	4,117	\$135.46
4	Fire Battalion Chief	\$547,133	2,272	2,064	4,336	\$126.18
5	Fire Division Chief	\$536,015	2,368	1,691	4,059	\$132.06
6	Fire Captain	\$530,555	2,880	3,994	6,874	\$77.18
7	Fire Battalion Chief	\$529,958	2,112	1,758	3,870	\$136.93
8	Fire Division Chief	\$529,115	2,080	1,358	3,438	\$153.90
9	Fire Battalion Chief	\$506,252	2,912	2,551	5,463	\$92.67
10	Fire Division Chief	\$502,926	2,080	1,114	3,194	\$157.46

* Includes all employer paid benefits

Calendar Year 2020 Top 10 Employees: Hours by Backfill/Overtime*

	Title/ Assignment	Base Hours Worked	Backfill for Constant Staffing	Overtime for Emergency Incidents (1)	Overtime to Attend Training	Other (2)	Total Hours
1	Fire Division Chief	2,080	-	1,544	-	153	3,777
2	Fire Battalion Chief	2,912	1,799	373	231	261	5,576
3	Fire Battalion Chief	2,080	172	1,811	54	-	4,117
4	Fire Battalion Chief	2,272	958	971	135	-	4,336
5	Fire Division Chief	2,368	193	1,413	-	85	4,059
6	Fire Captain	2,880	1,894	1,714	279	107	6,874
7	Fire Battalion Chief	2,112	956	485	107	210	3,870
8	Fire Division Chief	2,080	-	1,319	-	39	3,438
9	Fire Battalion Chief	2,912	2,034	242	224	51	5,463
10	Fire Division Chief	2,080	-	1,089	-	25	3,194

* Per Cause Code

(1) Reimbursable

(2) Special Activities, Other Discretionary/Non-Discretionary, Administrative

Summary

- Approximately 89% of the backfill/overtime costs are non-discretionary (78% constant staffing and 11% emergency activity)
- OCFA staff has conducted and anticipates the following academies over the next two fiscal years:

<u>FY 2020/21</u>	<u>FY 2021/22</u>
2 Firefighter Academies	2 Firefighter Academies
1 Fire Apparatus Engineer Academy	1 Fire Apparatus Engineer Academy
1 Fire Captain Academy	1 Fire Captain Academy
2 Battalion Chief Academies	1 Battalion Chief Academy

- When backfill/overtime is required, it is approximately 30% more cost effective than hiring a full-time benefited firefighter employee for filling temporary vacancies

Recommended Action

Review the proposed agenda item and:

1. Direct staff to continue pursuing reductions in overtime by filling permanent vacancies as quickly as possible after the positions become vacant.
2. Authorize staff to temporarily exceed the number of authorized firefighter positions on the Master Position Control to maximize the number of firefighters hired into each academy, pending attrition/promotions that occur following academy graduations.
3. Direct staff to continue using overtime to fill temporary vacancies rather than hiring additional personnel, recognizing this as a cost-effective practice for temporary needs.

Questions/Comments?

