

REQUEST FOR PROPOSALS (RFP) 6-1091

**ENVIRONMENTAL MITIGATION PROGRAM ENDOWMENT
FUND MANAGER**



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

Key RFP Dates

Issue Date:	May 9, 2016
Pre-Proposal Conference Date:	May 17, 2016
Question Submittal Date:	May 24, 2016
Proposal Submittal Date:	June 13, 2016
Interview Date:	June 30, 2016

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NOTICE OF REQUEST FOR PROPOSALS

**(RFP): 6- 1091: “ENVIRONMENTAL MITIGATION PROGRAM
ENDOWMENT FUND MANAGER”**

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified endowment fund managers to establish an endowment fund to be used to preserve and manage the Authority’s acquired conservation properties and habitats.

Proposals must be received in the Authority’s office at or before 2:00 p.m. on June 13, 2016.

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

**Orange County Transportation Authority
Contracts Administration and Materials Management
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Virginia Abadessa, Director**

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

**Orange County Transportation Authority
Contracts Administration and Materials Management
P.O. Box 14184
Orange, California 92863-1584
Attention: Virginia Abadessa, Director**

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

Organizations interested in obtaining a copy of this Request For Proposals (RFP) may do so by contacting Virginia Abadessa at (714) 560-5623 or vabadessa@octa.net.

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

To receive all further information regarding this RFP 6-1091, organizations and subconsultants must be registered on CAMM NET with the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

<u>Category:</u>	<u>Commodity:</u>
Professional Services	Financial- Endowment Fund Management

A pre-proposal conference will be held on May 17, 2016 , at 10:00 am, at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 103/104. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established June 30, 2016, as the date to conduct interviews. All prospective Offerors will be asked to keep this date available.

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

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

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

SECTION I: INSTRUCTIONS TO OFFERORS

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

A pre-proposal conference will be held on May 17, 2016, at 10:00 am, at the Authority's Administrative Office, 600 South Main Street, Orange, California, in Conference Room 103/104. All prospective Offerors are encouraged to attend the pre-proposal conference.

B. EXAMINATION OF PROPOSAL DOCUMENTS

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

C. ADDENDA

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

D. AUTHORITY CONTACT

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

Virginia Abadessa, Director
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560.5623, Fax: 714.560.5792
Email: vabadessa@octa.net

Commencing on the date of the issuance of this RFP and continuing until award of the contract or cancellation of this RFP, no proposer, subcontractor, lobbyist or agent hired by the proposer shall have any contact or communications regarding this RFP with any Authority's staff; member of the evaluation committee for this RFP; or any contractor or consultant involved with the procurement, other than the Contract Administrator named above or unless expressly permitted by this RFP. Contact includes face-to-face, telephone, electronic mail (e-mail) or formal written communication. Any proposer, subcontractor, lobbyist or agent hired by the

proposer that engages in such prohibited communications may result in disqualification of the proposer at the sole discretion of the Authority.

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on May 24, 2016.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, 4th Floor, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: vabadessa@octa.net

3. Authority Responses

Responses from the Authority will be sent no later than June 1, 2016. Offerors may download responses from CAMM NET at <https://cammmnet.octa.net>, or request responses be sent via U.S. Mail by emailing or faxing the request to vabadessa@octa.net.

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

<u>Category:</u>	<u>Commodity:</u>		
Professional Services	Financial- Management	Endowment	Fund

Inquiries received after 5:00 p.m. on May 24, 2016 will not be responded to.

F. SUBMISSION OF PROPOSALS

1. Date and Time

Proposals must be received in the Authority's office at or before 2:00 p.m. on June 13, 2016.

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

2. Address

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

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
600 South Main Street, 4th Floor
Orange, California 92868
Attention: Virginia Abadessa, Director**

Or proposals delivered using the U.S. Postal Services shall be addressed as follows:

**Orange County Transportation Authority
Contracts Administration and Materials Management (CAMM)
P.O. Box 14184
Orange, California 92863-1584
Attention: Virginia Abadessa, Director**

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

3. Identification of Proposals

Offeror shall submit an **original and 7 copies** of its proposal in a sealed package, addressed as shown above in F.2. The outer envelope must show the Offeror's name and address and clearly marked with RFP number. In addition to the above, Proposers shall also include one (1) electronic copy of their entire RFP submittal package in "PDF" format, on a CD or DVD.

4. Acceptance of Proposals

- a. The Authority reserves the right to accept or reject any and all proposals, or any item or part thereof, or to waive any informalities or irregularities in proposals.
- b. The Authority reserves the right to withdraw or cancel this RFP at any time without prior notice and the Authority makes no representations that any contract will be awarded to any Offeror responding to this RFP.
- c. The Authority reserves the right to postpone proposal openings for its own convenience.
- d. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

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

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be for a firm-fixed fee, based upon the value of the portfolio as specified in the Scope of Work, included in this RFP as Exhibit A.

L. CONFLICT OF INTEREST

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

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

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

M. CODE OF CONDUCT

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

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT**A. PROPOSAL FORMAT AND CONTENT****1. Format**

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

2. Letter of Transmittal

The Letter of Transmittal shall be addressed to and must, at a minimum, contain the following:

- a. Identification of Offeror that will have contractual responsibility with the Authority. Identification shall include legal name of company, corporate address, telephone and fax number, and email address. Include name, title, address, email address, and telephone number of the contact person identified during period of proposal evaluation.
- b. Identification of all proposed subcontractors including legal name of company, whether the organization is a Disadvantaged Business Enterprise (DBE), contact person's name and address, phone number and fax number, and email address; relationship between Offeror and subcontractors, if applicable.
- c. Acknowledgement of receipt of all RFP addenda, if any.
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 120 days from the date of submittal.
- e. Signature of a person authorized to bind Offeror to the terms of the proposal.
- f. Signed statement attesting that all information submitted with the proposal is true and correct.

3. Technical Proposal

a. Qualifications of the Endowment

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the organization; staffing capability; work load; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the organization, including the types of services offered; the year founded; legal structure in which the organization operates (corporation, nonprofit corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the organization's financial status and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project. Identify the organization's major funding sources.
- (3) Provide a statement/certification that the organization meets the requirements of California State Government Code § 65965(b), or §65965(g) or § 65965(h); and certify further that it meets the requirements of §65968 (e) for a manager of an endowment for mitigation purposes. It is anticipated that an organization qualified to hold and manage the endowment under California Government Code §65965 through §65968 will be selected through this RFP.
- (4) Describe the organization's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project. Provide the organization's history and experience with respect to management of endowment funds for environmental mitigation and with federal or state agencies with authority to approve endowment management and operation.

- (5) Identify key personnel proposed to perform the work in the specified tasks and include major areas of subcontract work. Include the person's name, current location, proposed position for this project, current assignment, level of commitment to that assignment, availability for this assignment and how long each person has been with the organization.
- (6) Identify subcontractors and sub-advisories by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (7) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (8) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.
- (9) Furnish brief resumes (not more than two [2] pages each) for the proposed Endowment Manager and other key personnel that includes education, experience, and applicable professional credentials.
- (10) Include a project organization chart, which clearly delineates communication/reporting relationships among the project staff.
- (11) Include a statement that key personnel will be available to the extent proposed for the duration of the project acknowledging that no person designated as "key" to the project shall be removed or replaced without the prior written concurrence of the Authority.

b. Strategies for Managing the Endowment

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

Offeror to:

- (1) Describe the approach to completing the work plan providing sufficient detail to demonstrate the Offeror's ability to accomplish the project objectives and overall timeframe.
- (2) Describe the approach/strategy for preserving the purchasing power of the endowment returns, such as annual adjustment for inflation.
- (3) Describe the investment management and decision-making process, including investment goals, and individuals or parties (external or in-house and their backgrounds and qualifications) responsible for those decisions. Identify any sub-advisory relationships that will participate on the management of the Measure M2 Endowment Mitigation funds. Also clarify any in-house staff that will be available to provide day to day updates as necessary or if this would be handled by external staff.
- (4) Provide, at minimum, a ten (10) year full history of consolidated endowment performance. If the endowment has been in existence for fewer than ten (10) years, include the full history for the period of time that the endowment has been in existence. Include in the history, the average annual investment rates of return, adjustment (if any) for changes in purchasing power due to inflation, and fund management or other fees. If available, provide a comparison of your organization's past projections and actuals.
- (5) For information provided in (4) above, detail how the rate of return is calculated. Is the return set and approved by the endowment's governing body, such as a Board of Directors, or tied directly to investment performance?
- (6) Provide copies of investment policy statements, sample funds or endowment agreements, and any other document(s) governing investment decisions and client organization's access to the endowment.
- (7) Identify restrictions on and procedures for making early withdrawals from endowment fund, either partial or in whole, for

transfer to permanent endowment(s), which may or may not be managed by the Offeror.

- (8) Indicate if there is a desire to be the long term endowment manager. If so, identify what the differences may be between the establishment phase compared to the long term management phase.

c. Exceptions/Deviations

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

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

4. Proposed Investment Management Fee

As part of the proposed investment management fee, the Offeror shall submit proposed pricing to provide the services described in Exhibit A, Scope of Work. Please keep in mind that no disbursements for habitat

management or monitoring activities will be made from the endowment during the funding phase.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the prices quoted in the schedules. It is anticipated that the Agreement resulting from this solicitation, if awarded, will be for a firm-fixed fee, based upon the value of the portfolio.

5. Appendices

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

B. FORMS

1. Campaign Contribution Disclosure Form

In conformance with the statutory requirements of the State of California Government Code Section 84308, part of the Political Reform Act and Title 2, California Code of Regulations 18438 through 18438.8, regarding campaign contributions to members of appointed Boards of Directors, Offeror is required to complete and sign the Campaign Contribution Disclosure Form provided in this RFP and submit as part of the proposal. Offeror is required to submit only one copy of the completed form(s) as part of its proposal and it should be included in only the original proposal. The prime consultant, subcontractors, lobbyists and agents are required to report all campaign contributions from the proposal submittal date up and until the Board of Directors makes a selection, which is currently scheduled for August 8, 2016.

2. Status of Past and Present Contracts Form

Offeror shall complete and sign the form entitled "Status of Past and Present Contracts" provided in this RFP and submit as part of its proposal. Offeror shall identify the status of past and present contracts where the organization has either provided services as a prime vendor or a subcontractor during the past five (5) years in which the contract has been the subject of or may be involved in litigation with the contracting authority. This includes, but is not limited to, claims, settlement agreements, arbitrations, administrative proceedings, and investigations arising out of the contract. Offeror shall have an ongoing obligation to update the Authority with any changes to the identified contracts and any new litigation, claims, settlement agreements,

arbitrations, administrative proceedings, or investigations that arise subsequent to the submission of Offeror's proposal.

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

3. Proposal Exceptions and/or Deviations Form

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

SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

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

1. Qualifications of the Endowment 40%

Organizational history and experience in performing work of a closely similar nature; organization qualified to hold and manage the endowment under California Government Codes §65965 through §65968; and strength and stability of the organization; assessment by client references.

2. Strategies for Managing the Endowment 40%

Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation; reasonableness of investment management and decision-making process; and strategies for preserving the investment returns.

3. Proposed Investment Management Fee 20%

Reasonableness of the management fees; reasonableness of other direct costs; competitiveness with other offers received; and adequacy of data in support of the fees quoted.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing organizations. The Authority has established June 30, 2016, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror

after which the evaluation committee will ask questions related to the organization's proposal and qualifications.

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

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

C. AWARD

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

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

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

D. NOTIFICATION OF AWARD AND DEBRIEFING

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

Offerors who were not awarded the contract may obtain a debriefing concerning the strengths and weaknesses of their proposal. Unsuccessful Offerors, who wish to be debriefed, must request the debriefing in writing or electronic mail and the Authority must receive it within three (3) business days of notification of the contract award.

EXHIBIT A: SCOPE OF WORK

**Orange County Transportation Authority
Measure M (M2) Freeway Environmental Mitigation Program**

Management of Endowment Funding Phase for Habitat Preserves

Scope of Work

Background

The Orange County Transportation Authority (OCTA) Measure M2 (M2) Environmental Mitigation Program (EMP) provides comprehensive mitigation to offset the environmental impacts of OCTA's 13 M2 freeway improvement projects. This is achieved through funding habitat restoration activities on existing conservation lands, as well as OCTA acquiring vacant lands (Preserves) in Orange County (County). These Preserves are integrated into the OCTA Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and will be protected in perpetuity. The NCCP/HCP has been prepared to enable OCTA to obtain permits from the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) (collectively referred to as wildlife agencies) related to biological impacts of M2 freeway improvements. The draft NCCP/HCP and Draft Environmental Impact Report/Statement (EIR/EIS) are available: <http://www.octa.net/Measure-M/Environmental/Freeway-Mitigation/Conservation-Plan/>.

These documents contain additional information on the Preserves and provides a framework for Preserve management activities. It is anticipated that these documents will be finalized sometime in 2016. The NCCP/HCP will require establishment of one or more permanent endowments to fund the long-term management and monitoring of the OCTA Preserves in perpetuity. To date, OCTA has acquired seven Preserves, totaling approximately 1,300 acres in various parts of Orange County. The OCTA Board of Directors adopted the environmental mitigation program endowment recommendations to fund the Preserves on October 13, 2014. (Attachment 1). It is anticipated that an organization qualified to hold and manage the endowment under California Government Code §65965-§65968 will be selected through this RFP process.

The Preserves in need of long term maintenance will include but are not limited to the following:

1. O'Neill Oaks consists of 119 acres of chaparral, coastal sage scrub (CSS), riparian, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County
2. Hafen consists of 48 acres of chaparral, CSS, riparian, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County
3. Saddle Creek South consists of 84 acres of chaparral, CSS, grassland, and oak woodland habitat and is located on Live Oak in Foothill-Trabuco Canyon, unincorporated Orange County

Exhibit A

4. Ferber Ranch consists of 399 acres of CSS, riparian, oak woodland, and grassland habitat and is located on Trabuco Oaks Drive/Rose Canyon Road in Foothill-Trabuco Canyon, unincorporated Orange County
5. MacPherson consists of 204 acres of chaparral, grassland, CSS, and riparian including oak woodland habitat and is located on Silverado Canyon in Silverado-Modjeska, unincorporated Orange County
6. Aliso Canyon consists of 151 acres of chaparral, grassland, and CSS and is located adjacent to Moulton Meadows Park in Laguna Beach
7. Hayashi consists of 296 acres of chaparral, grassland, riparian, and woodland vegetation, including coast live oak woodland and California walnut woodland and is located southeast of Carbon Canyon Road (SR - 142) just northwest of the Chino Hills State Park, in the City of Brea.

A preliminary estimate of endowment value for all preserve sites (7 Preserves) is approximately \$46.2 million, to be achieved over an establishment period of 10 to 12 years with an estimated \$34.5 million, \$3.0 million each year, in deposits from the M2 EMP fund and \$11.7 million in investment returns, net of all management fees.

Endowment Funding Objectives

The endowment funding phase, that is, endowment as it is being established through annual deposits and investment returns, will be managed under the following conditions:

- Deposits to the endowment will be made as expenditures by M2 EMP, and the endowment manager will hold the funds in trust for the benefit of M2 EMP preserve lands.
- The endowment is intended to achieve a target value at the end of an establishment period or funding phase, estimated to be 10 to 12 years, where the final endowment target value will be determined during the approximate first seven years, based on final estimates of annual management and monitoring costs for all preserve sites and on planned effective spending rate(s) for permanent endowment(s), both of which would be agreed to by OCTA, CDFW, and USFWS. OCTA reserves the right to terminate the Agreement any time during this establishment period either for its convenience or due to the organization's default.
- No disbursements for habitat management or monitoring activities will be made from the endowment during the funding phase. These activities will be funded separately by M2 EMP during the establishment period.
- Upon achieving the target endowment value or targeted funding date, permanent endowment(s) will be established and managed by one or more organizations. The organization selected for the management of the endowment during the funding phase (endowment funding manager) may also become a permanent endowment manager through a separate selection process.

- Within 45 days of award of contract, the organization selected to be the endowment funding manager will prepare for review and approval by OCTA a financing plan including an annual schedule of deposits by M2 EMP, projected investment returns, asset allocation targets, projected rates of price inflation, management fee(s), and current and target endowment values. The financing plan will be updated annually and reviewed and approved by OCTA.
- The endowment funding manager will provide quarterly reports on the endowment's current market value, deposits to date, realized and unrealized gains and losses, asset allocation, management fees charged, and performance relative to the current financing plan. In addition, the endowment funding manager will provide annual reports pursuant to Government Code §65966(e).
- The endowment funding manager will be expected to provide periodic status updates to the Environmental Oversight Committee (EOC), sub-committees of the OCTA Board of Directors (Board), and Board. This may be on a quarterly basis or on an as-needed basis.
- Proposed fee for the management during the funding phase of the endowment will remain fixed for the duration of the establishment period. This is subject to negotiation given the endowment manager will not be disbursing funds.

EXHIBIT A: SCOPE OF WORK
ATTACHMENT 1



ORANGE COUNTY TRANSPORTATION AUTHORITY

**Environmental Mitigation Program Endowment
Recommendations to Fund Preserved Lands**

Staff Report



October 8, 2014

To: Finance and Administration Committee
From: Darrell Johnson, Chief Executive Officer
Subject: Environmental Mitigation Program Endowment Recommendations to Fund Preserved Lands

Overview

Measure M2 provides funding for programmatic mitigation to off-set impacts of Measure M2 freeway projects. The Natural Community Conservation Plan/Habitat Conservation Plan, along with a draft environmental impact report/environmental impact statement, demonstrates that sufficient conservation is being provided to address biological mitigation needs related to the Measure M2 freeway projects. In addition, an endowment is necessary to fund long-term land management activities for the acquired properties.

Recommendations

- A. Approve a non-wasting endowment target of approximately \$34.5 million in accordance with the July 2, 2014 Environmental Oversight Committee recommendations on endowment funding. This will demonstrate commitment to managing the Orange County Transportation Authority Natural Community Conservation Plan/Habitat Conservation Plan Preserves.
- B. Direct staff to develop appropriate investment parameters, reporting, and accounting standards through the Environmental Oversight Committee, the Finance and Administration Committee, and the Board of Directors.
- C. Direct staff to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies.

Background

The Orange County Transportation Authority's (OCTA) Environmental Mitigation Program (Mitigation Program) allocates a portion of the Measure M2 (M2)

Freeway Program budget for comprehensive environmental mitigation to off-set impacts from the freeway improvements. The Mitigation Program is intended to minimize biological regulatory permitting delays in the implementation of the M2 freeway projects. In November 2006, the Mitigation Program was approved by Orange County voters under the M2 half-cent sales tax for transportation improvements.

Pursuant to the M2 Ordinance, the Mitigation Program was implemented under the master and planning agreements between OCTA, the California Department of Transportation, as well as the state and federal resource agencies. These agreements established the roles, responsibilities, and commitments for the preparation of a Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and a draft environmental impact report/environmental impact statement (DEIR/EIS). The NCCP/HCP planning process began in mid-2010 and is expected to conclude in 2015. This process provides programmatic mitigation to streamline the biological permitting process and reduces freeway project delays.

OCTA has acquired approximately 1,150 acres of open space lands and has funded approximately 400 acres of habitat restoration projects. The acquired lands (Preserves) and restoration projects are integrated into the NCCP/HCP as part of OCTA's mitigation commitment. This commitment also sets aside funds to pay for the long-term management and maintenance costs of the Preserves. These Preserves will complement other existing preserved lands within Orange County.

As part of the final approval of the NCCP/HCP, OCTA and the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service, collectively referred to as Resource Agencies, will enter into an implementing agreement (IA) that encapsulates the obligations and commitments of each party. This IA, in conjunction with the resource management plans for each preserve, will define specific long-term management and maintenance obligations for OCTA.

Discussion

Over the last six months, the Environmental Oversight Committee (EOC) Ad Hoc Working Group has examined the legal, financial, and policy elements related to the establishment of endowments to support the long-term management and protection of the Preserves. The purpose of this exercise was not meant to determine who will be the appropriate endowment holder, nor establish the terms of the investment(s). Rather, it is to establish the framework for the endowment, which is the beginning of a series of decisions that will be

vetted with the EOC, the appropriate Board of Directors (Board) committees, and ultimately decided by the Board.

The EOC Ad Hoc Working Group, in conjunction with staff, researched a variety of issues to better understand the risks and best course of action for establishing endowments. This analysis included:

- OCTA's investment policy and whether it is best suited to satisfy the commitments identified in the NCCP/HCP (i.e., a mechanism by which non-wasting endowment can be optimally established)
- Current and anticipated Mitigation Program expenditures and revenues
- Management costs for other non-OCTA Preserves, as well as more accurate per-acre estimates for OCTA
- Legislative constraints if OCTA holds the endowment, as well as potential eligible entities/constraints
- External agencies' investment policies and land management costs
- Available cash-flow under different recommended investment scenarios
- Draft investment parameters/policies for either an OCTA or third-party endowment
- Draft audit/oversight/reporting requirements for OCTA or third-party endowment holder
- Various schedules for funding an endowment

At this stage in the development of the NCCP/HCP, it is not possible to have accurate estimates of costs, interest, or inflation rates. Likewise, important details that will affect the actual costs of preserve management will be developed subsequent to the release of the draft NCCP/HCP and thereafter. However, OCTA must demonstrate to the Resource Agencies the financial and management capacity to ensure that the Preserves can be properly managed in perpetuity through an enduring endowment.

The endowment will be created over an extended time period (greater than ten years). Since more precise information will become available during this period, it is prudent to establish general guidance and parameters at this point. This approach allows OCTA to make adjustments as more information becomes available. As a consequence, these recommendations anticipate ongoing refinements to the financial and cost estimates and, ultimately, the amount of the endowment.

Finally, this is the first step as part of a larger effort to develop recommendations on a long-term funding plan for the Mitigation Program. Recommendations from

the EOC on how to prioritize and allocate future M2 revenues for this program will be forthcoming.

Attachment A contains the framework and recommendations related to the establishment of an endowment. Various endowment deposit schedule scenarios were considered. These scenarios took into account the available revenues along with the effective spending rate that would yield sufficient funds to adequately manage the Preserves.

Attachment B outlines the current and anticipated expenditures based on commitments made through the NCCP/HCP planning process. These expenditures include:

- The acquisition of the Preserves and restoration projects
- Long-term management (endowment) of the Preserves
- Early Action Plan borrowing cost for the Mitigation Program
- Development of the NCCP/HCP
- Forecasted expenditures for the remaining obligations to fulfill NCCP/HCP requirements

The information was shared with the EOC on July 2, 2014, and a non-wasting endowment target of \$34.5 million (with annual deposits of \$2.875 over 12 years starting in 2016) was recommended. This assumption was based on a balanced approach to allow for the Mitigation Program to meet current and future obligations and meet the requirements of the resources agencies. The EOC endorsed this recommendation for committee and Board consideration. This topic was presented to the Finance and Administration Committee (F&A Committee) as a discussion item on August 13 and September 24, 2014. The F&A Committee generally agreed:

- with the basis for cost assumptions for the Mitigation Program;
- with the endowment concept for meeting the long-term management responsibilities of the Mitigation Program;
- with the preliminary financial assumptions, but acknowledging that these assumptions will change over time; and
- that land management and management of the associated endowment(s) are not part of OCTA's core business and should be transferred to appropriate and qualified third parties to reduce OCTA's financial risk.

The F&A Committee underscored the importance of protecting OCTA from risks regarding unexpected expenditures, lower than expected earnings, and

potential unknown legislative changes. Some of these issues can be addressed by a thorough and comprehensive third-party investment policy, as well as regular reporting and audits. The F&A Committee also discussed how risk transfer can be addressed with future agreements executed prior to the start of a 12-year endowment deposit period and “lessons learned” from other agencies. Legislative risk could be reduced by including appropriate provisions in third-party agreements.

Lastly, the F&A Committee directed staff to work with other Orange County entities with mitigation lands to develop and recommend comprehensive land management strategies that would seek economies of scale, efficiencies, and consistency as appropriate among the many public and private mitigation land managers.

With Board approval, staff will begin development of appropriate investment parameters, reporting, and accounting standards, and work through the EOC and the F&A Committee process. Staff will also begin to work with other entities with mitigation lands to identify and recommend comprehensive land management strategies. Implementation of actual annual deposits to a third-party endowment(s) would not begin until agreements are negotiated and executed that address the issues discussed above, expected to be completed in the next 12 months.

Summary

M2 provides funding for programmatic mitigation to offset impacts of M2 freeway projects. The NCCP/HCP and DEIR/EIS demonstrate that sufficient conservation is being provided to address the biological mitigations related to M2 freeway projects. In addition, an endowment is necessary to fund long-term land management activities for the acquired properties. The report recommends a target endowment of \$34.5 million and directs staff to develop the relevant safeguards and Preserve management approach.

Attachments

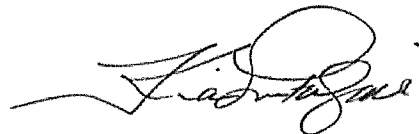
- A. July 2, 2014 Environmental Oversight Committee Recommendations on Endowment Funding
- B. Environmental Mitigation Program Current and Anticipated Expenditures

Prepared by:



Dan Phu
Section Manager, Project Development
(714) 560-5907

Approved by:



Kia Mortazavi
Executive Director, Development
(714) 560-5741

EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET**REQUEST FOR PROPOSALS (RFP)**

Enter below the proposed fees for performing the services described in the Scope of Work, Exhibit A. Offerors must provide their fees for both methods shown below. Fees shall include direct costs, indirect costs, and profits, unless stated separately.

1. Firm-Fixed Fee based on
Value of the Portfolio: _____ %(percent)
2. Proposed Fee-Based Structure:
 - a) Up to \$_____, the following fee applies _____ %(percent)
 - b) From \$_____, to \$_____, the following fee applies _____ %(percent)
 - c) From \$_____, to \$_____, the following fee applies _____ %(percent)
 - d) From \$_____, to \$_____, the following fee applies _____ %(percent)
3. Total other direct costs: \$_____ (attach separate sheet detailing other direct costs).
4. Indicate if your organization will deduct the fees cited above from the endowment earnings or through a quarterly invoice sent to the Authority.

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

COMPANY NAME _____

ADDRESS _____

TELEPHONE _____

FACSIMILE # _____

EMAIL ADDRESS _____

SIGNATURE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

NAME AND TITLE OF PERSON
AUTHORIZED TO BIND OFFEROR _____

DATE SIGNED _____

EXHIBIT C: PROPOSED AGREEMENT

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1 anticipated to be a period of ten (10) to twelve (12) years which will establish the endowment and a
2 management phase in which the endowment may be managed by a single or multiple entities;

3 **WHEREAS**, ENTITY has the necessary skills, experience, and certifications to perform these
4 services; and

5 **WHEREAS**, said endowment fund management activities cannot be performed by the regular
6 employees of AUTHORITY; and

7 **WHEREAS**, the AUTHORITY's Board of Directors approved this Agreement at their meeting of
8 _____.

9 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and ENTITY as
10 follows:

11 **ARTICLE 1. COMPLETE AGREEMENT**

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

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

24 **ARTICLE 2. AUTHORITY DESIGNEE**

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

ARTICLE 3. SCOPE OF WORK

A. ENTITY shall perform the work necessary to complete in a manner satisfactory to AUTHORITY the Endowment Funding Objectives set forth in Exhibit A, entitled "Scope of Work", attached to and, by this reference, incorporated in and made a part of this Agreement.

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

Names

Functions

C. No person named in paragraph B of this Article, or his/her successor approved by AUTHORITY, shall be removed or replaced by ENTITY, nor shall his/her agreed-upon function or level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should the services of any key person become no longer available to ENTITY, the resume and qualifications of the proposed replacement shall be submitted to AUTHORITY for approval as soon as possible, but in no event later than seven (7) calendar days prior to the departure of the incumbent key person, unless ENTITY is not provided with such notice by the departing employee. AUTHORITY shall respond to ENTITY within seven (7) calendar days following receipt of these qualifications concerning acceptance of the candidate for replacement.

ARTICLE 4. TERM OF AGREEMENT

A. This Agreement shall commence upon the effective date of this Agreement, and shall continue in full force and effect through December 31, 2028, unless earlier terminated as provided hereunder.

B. AUTHORITY, at its sole discretion, may elect to extend the term of the Agreement up to an additional twenty-four (24) months, commencing on January 1, 2029, and continuing through December 31, 2030 ("Option Term"), and there upon require ENTITY to continue to provide the services, and otherwise perform, in accordance with Exhibit A, entitled "Scope of Work and at the fees set forth in Article 5. "Payment".

C. AUTHORITY's election to extend the Agreement beyond the Initial Term shall not diminish its right to terminate the Agreement for AUTHORITY's convenience or ENTITY's default as provided elsewhere in this Agreement. The "maximum term" of this Agreement shall be the period commencing on _____ through December 31, 2030, which shall encompass the Initial Term and Option Term.

ARTICLE 5. PAYMENT

A. For ENTITY's full and complete performance of its obligations under this Agreement and subject to the maximum cumulative payment obligation provision set forth in Article 6, AUTHORITY shall pay ENTITY on a firm fixed percentage of _____ percent based on the value of the portfolio equal to _____.

B. ENTITY shall invoice AUTHORITY at a minimum of at least once per quarter for payments corresponding to the work actually completed by ENTITY. Percentage of work completed shall be documented in a progress report prepared by ENTITY, which shall accompany each invoice submitted by ENTITY. ENTITY shall also furnish such other information as may be requested by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline to make full payment for any work listed in the Scope of Work until such time as ENTITY has documented to AUTHORITY's satisfaction, that ENTITY has fully completed all work required. AUTHORITY's payment in full for any work completed shall not constitute AUTHORITY's final acceptance of ENTITY's work under this Agreement.

C. Each invoice shall be accompanied by the quarterly progress report specified in paragraph "B" of this Article. AUTHORITY shall remit payment within thirty (30) calendar days of the receipt and approval of each invoice. Each invoice shall include the following information:

1. Agreement No. C-6-1091;
2. The time period covered by the invoice;
3. Total invoice (including project-to-date cumulative invoice amount); and retention;
4. Progress Report;

5. Certificate signed by the ENTITY or his/her designated alternate that a) The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup information included with the invoice is true, complete and correct in all material respects; c) All payments due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The invoice does not include any amount which ENTITY intends to withhold or retain from a subcontractor or supplier unless so identified on the invoice;

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

ARTICLE 6. MAXIMUM OBLIGATION

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

ARTICLE 7. NOTICES

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

To ENTITY:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Virginia Abadessa

Director

Phone: (714) 560-5623

Email: vabadessa@octa.net

ARTICLE 8. INDEPENDENT CONTRACTOR

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

ARTICLE 9. INSURANCE

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

1. Commercial General Liability, to include Products/Completed Operations, Independent ENTITYs' Contractual Liability, and Personal Injury with a minimum limit of \$1,000,000.00 per occurrence and \$2,000,000.00 general aggregate.

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

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

B. Proof of such coverage, in the form of an insurance company issued policy endorsement and

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

7 C. ENTITY shall include on the face of the certificate of Insurance the Agreement Number; C-6-
8 1091 and, the Contract Administrator's Name, Virginia Abadessa.

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

11 **ARTICLE 10. ORDER OF PRECEDENCE**

12 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
13 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 6-1091; (3) ENTITY's
14 proposal dated, (4) all other documents, if any, cited herein or incorporated by reference.

15 **ARTICLE 11. CHANGES**

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

23 **ARTICLE 12. DISPUTES**

24 A. Except as otherwise provided in this Agreement, any dispute concerning a question of fact
25 arising under this Agreement which is not disposed of by supplemental agreement shall be decided by
26 AUTHORITY's Director, Contracts Administration and Materials Management (Camm), who shall reduce

1 the decision to writing and mail or otherwise furnish a copy thereof to ENTITY. The decision of the
2 Director, CAMM, shall be the final and conclusive administrative decision of the AUTHORITY.

3 B. Pending final decision of a dispute hereunder, ENTITY shall proceed diligently with the
4 performance of this Agreement and in accordance with the decision of AUTHORITY's Director, CAMM.
5 This "Disputes" clause does not preclude consideration of questions of law in connection with decisions
6 provided for above. Nothing in this Agreement, however, shall be construed as making final the decision
7 of any AUTHORITY official or representative on a question of law, which questions shall be settled in
8 accordance with the laws of the state of California.

9 **ARTICLE 13. TERMINATION**

10 A. AUTHORITY may terminate this Agreement for its convenience any time, in whole or part, by
11 giving ENTITY written notice thereof. Upon said notice, AUTHORITY shall pay ENTITY its allowable
12 costs incurred to date of termination and those allowable costs determined by AUTHORITY to be
13 reasonably necessary to effect such termination. Thereafter, ENTITY shall have no further claims against
14 AUTHORITY under this Agreement.

15 B. AUTHORITY may terminate this Agreement for ENTITY's default if a federal or state
16 proceeding for the relief of debtors is undertaken by or against ENTITY, or if ENTITY makes an
17 assignment for the benefit of creditors, or for cause if ENTITY fails to perform in accordance with the
18 Scope of Work or breaches any terms or violates any provisions of this Agreement and does not cure
19 such breach or violation within ten (10) calendar days after written notice thereof by AUTHORITY.

20 **ARTICLE 14. INDEMNIFICATION**

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

ARTICLE 15. AUDIT AND INSPECTION OF RECORDS

ENTITY shall provide AUTHORITY, or other agents of AUTHORITY, such access to ENTITY's accounting books, records, work data, documents and facilities, as AUTHORITY deems necessary. ENTITY shall maintain such books, records, data and documents in accordance with generally accepted accounting principles and shall clearly identify and make such items readily accessible to such parties during ENTITY's performance hereunder and for a period of four (4) years from the date of final payment by AUTHORITY.

ARTICLE 16. CONFLICT OF INTEREST

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

ARTICLE 17. CODE OF CONDUCT

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

ARTICLE 18. PROHIBITION ON PROVIDING ADVOCACY SERVICES

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

/

ARTICLE 19. FEDERAL, STATE AND LOCAL LAWS

ENTITY warrants that in the performance of this Agreement, it shall comply with all applicable federal, state and local laws, statutes and ordinances and all lawful orders, rules and regulations promulgated thereunder.

ARTICLE 20. EQUAL EMPLOYMENT OPPORTUNITY

In connection with its performance under this Agreement, ENTITY shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin. ENTITY shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, age or national origin. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

ARTICLE 21. PROHIBITED INTERESTS

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

ARTICLE 22. OWNERSHIP OF REPORTS AND DOCUMENTS

A. The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for ENTITY's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY. AUTHORITY hereby grants exclusive use of deliverables by ENTITY for the purpose of publication in peer-reviewed scientific journals and other research publications. ENTITY shall acknowledge AUTHORITY in all such publications.

B. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to ENTITY in connection with the performance of

1 this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other
2 than the performance for this project or publication in scientific and research journals or reports with
3 appropriate acknowledgement in accordance with paragraph A above, nor be disclosed to an entity not
4 connected with the performance of the project. ENTITY shall comply with AUTHORITY's policies
5 regarding such material. Nothing furnished to ENTITY, which is otherwise known to ENTITY or becomes
6 generally known to the related industry shall be deemed confidential. ENTITY shall not use
7 AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in any
8 magazine, trade paper, newspaper, seminar or other medium without the express written consent of
9 AUTHORITY, with the exception of scientific and research reports and journals in accordance with
10 paragraph A above.

11 C. No copies, sketches, computer graphics or graphs, including graphic art work, are to be
12 released by ENTITY to any other person or agency except after prior written approval by AUTHORITY,
13 except as necessary for the performance of services under this Agreement. All press releases, including
14 graphic display information to be published in newspapers, magazines, etc., are to be handled only by
15 AUTHORITY unless otherwise agreed to by ENTITY and AUTHORITY. ENTITY may discuss and/or
16 display images of, and general (non-technical and non-confidential) information about, the PROJECT on
17 its websites after consultation with and approval by AUTHORITY, which shall not be unreasonably
18 withheld.

19 **ARTICLE 23. PATENT AND COPYRIGHT INFRINGEMENT**

20 A. In lieu of any other warranty by AUTHORITY or ENTITY against patent or copyright
21 infringement, statutory or otherwise, it is agreed that ENTITY shall defend at its expense any claim or suit
22 against AUTHORITY on account of any allegation that any item furnished under this Agreement or the
23 normal use or sale thereof arising out of the performance of this Agreement, infringes upon any presently
24 existing U. S. letters patent or copyright and ENTITY shall pay all costs and damages finally awarded in
25 any such suit or claim, provided that ENTITY is promptly notified in writing of the suit or claim and given
26 authority, information and assistance at ENTITY's expense for the defense of same. However, ENTITY

will not indemnify AUTHORITY if the suit or claim results from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination with other material not provided by ENTITY when such use in combination infringes upon an existing U.S. letters patent or copyright.

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

ARTICLE 24. HEALTH AND SAFETY REQUIREMENTS

ENTITY shall comply with all of the requirements set forth in Exhibit C, LEVEL 1 SAFETY SPECIFICATIONS . As used therein, "ENTITY" shall mean "Consultant."

ARTICLE 25. FORCE MAJEURE

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

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-6-1091 to be executed on the date first above written.

ENTITY

ORANGE COUNTY TRANSPORTATION AUTHORITY

By _____

By _____

Darrell Johnson
Chief Executive Officer

APPROVED AS TO FORM:

By _____

James Donich
General Counsel

APPROVED:

By _____

Andrew Oftelie
Executive Director, Finance and Administration

Date _____

EXHIBIT D: FORMS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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

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

Name

Date

Title

Last Rev. 08/26/2015

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

ORANGE COUNTY TRANSPORTATION AUTHORITY
CAMPAIGN CONTRIBUTION DISCLOSURE FORM

RFP Number: _____ RFP Title: _____

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

Prime Contractor Organization Name: _____

Contributor or Contributor Organization's Name: _____

Contributor or Contributor Organization's Address: _____

Is Contributor:

- | | | |
|---|---------|---------|
| <input type="radio"/> the Prime Contractor | Yes____ | No ____ |
| <input type="radio"/> Subcontractor | Yes____ | No ____ |
| <input type="radio"/> Agent/Lobbyist hired by Prime
to represent the Prime in this RFP | Yes____ | No ____ |

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

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

Name of Board Member: _____

Name of Contributor: _____

Date(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Lori Donchak, Chair

Michael Hennessey, Vice Chair

Lisa Bartlett, Director

Andrew Do, Director

Steve Jones, Director

Jim Katapodis, Director

Jeff Lalloway, Director

Gary Miller, Director

Al Murray, Director

Shawn Nelson, Director

Miguel Pulido, Director

Tim Shaw, Director

Todd Spitzer, Director

Michelle Steel, Director

Tom Tait, Director

Frank Ury, Director

Greg Winterbottom, Director

EXHIBIT E: SAFETY SPECIFICATIONS

LEVEL 1 HEALTH, SAFETY AND ENVIRONMENTAL SPECIFICATIONS

PART I – GENERAL

1.1 GENERAL HEALTH, SAFETY & ENVIRONMENTAL REQUIREMENTS

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

1.2 INJURY AND ILLNESS PREVENTION PLAN

- A. The Contractor shall submit to the Authority, a copy of their company Injury and Illness Prevention Plan (IIPP) in accordance with CCR Title 8, Section 3203. The intent and elements of the IIPP shall be implemented and enforced by the Contractor and its sub-tier contractors, suppliers, and vendors.

- B. Contractor shall provide a copy of the Policy or Program of Company's Substance Abuse Prevention Policy that complies with the 1988 Drug Free Workplace Act.

1.3 HAZARD COMMUNICATION

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

1.4 INCIDENT NOTIFICATION AND INVESTIGATION

- A. The Authority shall be promptly notified of any of the following types of incidents:
 - 1. Damage to Authority property (or incidents involving third party property damage);
 - 2. Reportable and/or Recordable injuries (as defined by the U.S. Occupational Safety and Health Administration);
 - 3. Incidents impacting the environment, i.e. spills or releases on Authority property.
- B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the general public that arise from the performance of Authority contract work. An immediate verbal notice followed by a written incident investigation report shall be submitted to Authority's Project Manager within 24 hours of the incident.
- C. A final written incident investigative report shall be submitted within seven (7) calendar days, and include the following information. The current status of anyone injured, photos of the incident area, detailed description of what happened, the contributing factors that lead to the incident occurrence, a copy of the company policy or procedure associated with the incident and evaluation of effectiveness, copy of the task planning documentation, and the corrective action initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report acceptable to Authority.

1.5 PERSONAL PROTECTIVE EQUIPMENT

- A. The Contractor, its subcontractors, suppliers, and employees are required to comply with applicable personal protective equipment (PPE) requirements while performing work at any Authority project or property. Generally minimum PPE requirements include eye protection; hearing protection, head protection, class 2 safety reflective vests, and appropriate footwear.

- B. The Contractor, its subcontractors, suppliers, and employees are required to provide their own PPE, including eye, head, foot, and hand protection, safety vests, or other PPE required to perform their work safely on Authority projects or property. The Authority requires eye protection on construction projects and work areas that meet ANSI Z-87.1 Standards.

1.6 REFERENCES

- A. CCR Title 8 Standards (Cal/OSHA)
- B. FCR Including 1910 and 1926 Standards
- C. NFPA, NEC, ANSI, NIOSH Standards
- D. Authority Construction Management Procedures Manual
- E. Authority Yard Safety Rules

END OF SECTION

EXHIBIT F: PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

PROPOSAL EXCEPTIONS AND/OR DEVIATIONS

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

Offeror: _____

RFP No.: _____ RFP Title: _____

Deviation or Exception No. : _____

Check one:

- Scope of Work (Technical) _____
- Proposed Agreement (Contractual) _____

Reference Section/Exhibit: _____ Page/Article No. _____

Complete Description of Deviation or Exception:

Rationale for Requesting Deviation or Exception:

Area Below Reserved for Authority Use Only:
