

DRAFT REQUEST FOR PROPOSALS (RFP) 0-2160

ON-CALL REAL ESTATE BROKERAGE SERVICES



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

Key RFP Dates

Issue Date:	March 23, 2020
Pre-Proposal Conference Date:	April 1, 2020
Question Submittal Date:	April 3, 2020
Proposal Submittal Date:	April 21, 2020
Interview Date:	May 7, 2020

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NOTICE OF REQUEST FOR PROPOSALS

(RFP): 0-2160: "ON-CALL REAL ESTATE BROKERAGE SERVICES"

TO: ALL OFFERORS

FROM: ORANGE COUNTY TRANSPORTATION AUTHORITY

The Orange County Transportation Authority (Authority) invites proposals from qualified consultants to provide on-call real estate brokerage services for leasing and disposition of the Orange County Transportation Authority owned excess land.

The term of the Agreement will be a three (3) year initial term with one, two (2) year option term.

Proposals must be received in the Authority's office at or before 2:00 p.m. on April 21, 2020.

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, (Lobby Receptionist)
Orange, California 92868
Attention: Megan Bornman, Contract Administrator**

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: Megan Bornman, Contract Administrator**

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

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

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

To receive all further information regarding this RFP 0-2160, firms and subconsultants must be registered on CAMM NET with at least one of the following commodity codes for this solicitation selected as part of the vendor's on-line registration profile:

Category:
Professional Services

Commodity:
Real Estate Services

A pre-proposal conference will be held on April 1, 2020, at 3:30 p.m. at the Authority's Administrative Office, 550 South Main Street, Orange, California, 92868 in Conference Room 08. All prospective Offerors are encouraged to attend the pre-proposal conference.

The Authority has established May 7, 2020, 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 April 1, 2020, at 3:30 p.m. at the Authority's Administrative Office, 550 South Main Street, Orange, California, 92868 in Conference Room 08. 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

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

D. AUTHORITY CONTACT

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

Megan Bornman, Contract Administrator
Contracts Administration and Materials Management Department
600 South Main Street
P.O. Box 14184
Orange, CA 92863-1584
Phone: 714.560. 5064, Fax: 714.560.5792
Email: mbornman@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.
mbornman@octa.net

E. CLARIFICATIONS

1. Examination of Documents

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

2. Submitting Requests

- a. All questions, including questions that could not be specifically answered at the pre-proposal conference must be put in writing and must be received by the Authority no later than 5:00 p.m., on April 3, 2020.
- b. Requests for clarifications, questions and comments must be clearly labeled, "Written Questions". The Authority is not responsible for failure to respond to a request that has not been labeled as such.
- c. Any of the following methods of delivering written questions are acceptable as long as the questions are received no later than the date and time specified above:
 - (1) U.S. Mail: Orange County Transportation Authority, 550 South Main Street, P.O. Box 14184, Orange, California 92863-1584.
 - (2) Personal Delivery: Contracts Administration and Materials Management Department, 600 South Main Street, Lobby Receptionist, Orange, California 92868.
 - (3) Facsimile: (714) 560-5792.
 - (4) Email: mbornman@octa.net

3. Authority Responses

Responses from the Authority will be posted on CAMM NET, no later than April 9, 2020. 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 Megan Bornman, Contract Administrator.

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

Category:
Professional Services

Commodity:
Real Estate Services

Inquiries received after 5:00 p.m. on April 3, 2020 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 April 21, 2020.

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, (Lobby Receptionist)
Orange, California 92868
Attention: Megan Bornman, Contract Administrator**

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: Megan Bornman, Contract Administrator**

3. Identification of Proposals

Offeror shall submit an **original and 6 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, DVD, or flash drive.

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 issue a new RFP for the project.
- d. The Authority reserves the right to postpone proposal openings for its own convenience.
- e. Each proposal will be received with the understanding that acceptance by the Authority of the proposal to provide the services described herein shall constitute a contract between the Offeror and Authority which shall bind the Offeror on its part to furnish and deliver at the fees given and in accordance with conditions of said accepted proposal.
- f. The Authority reserves the right to investigate the qualifications of any Offeror, and/or require additional evidence of qualifications to perform the work.
- g. Submitted proposals are not to be copyrighted.

G. PRE-CONTRACTUAL EXPENSES

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

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

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

H. JOINT OFFERS

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

I. TAXES

Offerors' proposals are subject to State and Local sales taxes. However, the Authority is exempt from the payment of Federal Excise and Transportation Taxes. Offeror is responsible for payment of all taxes for any goods, services, processes and operations incidental to or involved in the contract.

J. PROTEST PROCEDURES

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

K. CONTRACT TYPE

It is anticipated that the Agreement resulting from this solicitation, if awarded, will be based on an agreed upon commission based on the contract price achieved for each separate lease or parcel agreement.

L. CONFLICT OF INTEREST

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

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

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

M. CODE OF CONDUCT

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

SECTION II: PROPOSAL CONTENT

SECTION II. PROPOSAL CONTENT

A. PROPOSAL FORMAT AND CONTENT

1. Format

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

2. Letter of Transmittal

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

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

3. Technical Proposal

- a. Qualifications, Related Experience and References of Offeror

This section of the proposal should establish the ability of Offeror to satisfactorily perform the required work by reasons of: experience in

performing work of a similar nature; demonstrated competence in the services to be provided; strength and stability of the firm; staffing capability; work load; record of meeting schedules on similar projects; and supportive client references.

Offeror to:

- (1) Provide a brief profile of the firm, including the types of services offered; the year founded; form of the organization (corporation, partnership, sole proprietorship); number, size and location of offices; and number of employees.
- (2) Provide a general description of the firm's financial condition and identify any conditions (e.g., bankruptcy, pending litigation, planned office closures, impending merger) that may impede Offeror's ability to complete the project.
- (3) Describe the firm's experience in performing work of a similar nature to that solicited in this RFP, and highlight the participation in such work by the key personnel proposed for assignment to this project.
- (4) Identify subcontractors by company name, address, contact person, telephone number, email, and project function. Describe Offeror's experience working with each subcontractor.
- (5) Identify all firms hired or retained to provide lobbying or advocating services on behalf of the Offeror by company name, address, contact person, telephone number and email address. This information is required to be provided by the Offeror immediately during the evaluation process, if a lobbyist or advocate is hired or retained.
- (6) Provide as a minimum three (3) references for the projects cited as related experience, and furnish the name, title, address, telephone number, and email address of the person(s) at the client organization who is most knowledgeable about the work performed. Offeror may also supply references from other work not cited in this section as related experience.

b. Proposed Staffing and Project Organization

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

Offeror to:

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

c. Work Plan

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

Offeror to:

- (1) Describe the approach to completing the work specified in the Scope of Work. The approach to the work plan shall be of such detail to demonstrate the Offeror's ability to accomplish the project objectives and overall schedule.
- (2) Outline sequentially the activities that would be undertaken in completing the work and specify who would perform them.
- (3) Furnish a project schedule for completing the tasks in terms of elapsed weeks.
- (4) Identify methods that Offeror will use to ensure that the Authority will receive a high return from the sale or lease of its excess land or facilities.

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

d. Exceptions/Deviations

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

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

4. Cost and Price Proposal

As part of the cost and price proposal, the Offeror shall submit proposed fees to provide the services for each work task described in Exhibit A, Scope of Work.

The Offeror shall complete the "Price Summary Sheet" form included with this RFP (Exhibit B), and furnish any narrative required to explain the proposed fees quoted in the schedules.

5. Appendices

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

B. FORMS

1. Campaign Contribution Disclosure Form

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

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

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

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

2. Status of Past and Present Contracts Form

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

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

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

3. Proposal Exceptions and/or Deviations Form

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

SECTION III: EVALUATION AND AWARD

SECTION III. EVALUATION AND AWARD

A. EVALUATION CRITERIA

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

- 1. Qualifications of the Firm 30%**

Technical experience in performing work of a closely similar nature; strength and stability of the firm; strength, stability, experience and technical competence of subcontractors; assessment by client references.
- 2. Staffing and Project Organization 20%**

Qualifications of project staff, particularly key personnel and especially the Project Manager; key personnel's level of involvement in performing related work cited in "Qualifications of the Firm" section; logic of project organization; adequacy of labor commitment; concurrence in the restrictions on changes in key personnel.
- 3. Work Plan 20%**

Depth of Offeror's understanding of Authority's requirements and overall quality of work plan; logic, clarity and specificity of work plan; appropriateness of resource allocation among the tasks; reasonableness of proposed schedule; utility of suggested technical or procedural innovations.
- 4. Cost and Price 30%**

Reasonableness of the proposed fee; competitiveness with other offers received; adequacy of data in support of figures quoted.

B. EVALUATION PROCEDURE

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

During the evaluation period, the Authority may interview some or all of the proposing firms. The Authority has established May 7, 2020, as the date to conduct interviews. All prospective Offerors are asked to keep this date available. No other interview dates will be provided, therefore, if an Offeror is unable to attend the interview on this date, its proposal may be eliminated from further discussion. The interview may consist of a short presentation by the Offeror after which the

evaluation committee will ask questions related to the firm's proposal and qualifications.

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

At the conclusion of the evaluation process, the evaluation committee will recommend to the Finance and Administration Committee, the Offeror with the highest final ranking or a short list of top ranked firms within the competitive range whose proposal(s) is most advantageous to the Authority. The Finance and Administration 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 via CAMM NET of the contract award. Such notification shall be made within three (3) business days of the date the contract is awarded.

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

EXHIBIT A: SCOPE OF WORK

**SCOPE OF WORK
COMMERCIAL REAL ESTATE BROKERAGE SERVICES**

I. BACKGROUND

The Orange County Transportation Authority (OCTA) requires the use of a commercial real estate brokerage consultant to provide real estate brokerage services to lease and dispose of excess land parcels, both current and anticipated parcels in its inventory. OCTA may also require the services to investigate real estate market conditions and acquire properties for OCTA use. Additionally, some excess parcels may require marketing and lease or license agreements to maximize the property values prior to sale.

Future anticipated vacant and improved excess parcels will be primarily from OCTA's freeway widening projects, which include Interstate 405, State Route 73 (SR-73), Interstate 605, State Route 91, State Route 55 and Interstate 5 from SR-73 to El Toro Road. Additionally, OCTA anticipates commercial brokerage services will be required for various transit projects including potential sale of excess land along the Pacific Electric Right of Way. The number of excess parcels is still to be determined. The anticipated improved parcels may include but are not limited to: commercial properties, retail properties, industrial properties and office facilities.

II. TASKS

In accordance to OCTA's Real Property Policies and Procedures and all federal, state and local laws, Consultant shall perform the following services to sell existing OCTA-owned excess land:

- Review OCTA appraisals and market conditions and recommend the likely sale price range for each parcel.
- Develop a marketing plan and implementation schedule and upon OCTA's approval, implement the marketing strategy for sale of property.
- Facilitate negotiations between OCTA and prospective buyers or voluntary sellers.

Consultant shall perform the following services to lease commercial office space at the OCTA-owned property:

- Determine an opinion of value of the lease market price.
- Determine a marketing strategy and upon OCTA's written approval, implement the marketing strategy.

- Facilitate negotiations between OCTA and prospective tenants. Consultant shall draft lease and provide prospective tenant's financial information to OCTA for execution.

In accordance to OCTA's Real Property Policies and Procedures and all federal, state and local laws, Consultant shall perform the following services to lease and/or sell future OCTA-owned improved excess land:

- Analyze the financial aspect and propose the various options available to OCTA to sell or lease-up each parcel.
- Determine a marketing strategy and upon OCTA's written approval, implement the marketing strategy.
- Facilitate negotiations between OCTA and the prospective tenants and/or buyers.

III. TIMELINE

The valuation and marketing services described in Section II above will be completed and a written report thereon shall be delivered to OCTA no later than 14 days from execution of contract.

Within seven days thereafter, Consultant will schedule a meeting with OCTA staff for a follow-up presentation, which will allow an opportunity for questions.

Consultant shall be available for additional conferences as required by OCTA, provide written reports as needed and/or may present to the OCTA Executive Management, Board Committee or Board of Directors.

IV. DELIVERABLES

OCTA shall provide Consultant with the following items:

- Property List
- Property Descriptions
- Property Maps
- OCTA Real Property Policies and Procedures Manual
- Appraisals, as necessary

Consultant shall provide OCTA with the following items:

Market Overview

- Market Trends
- Provide recent sale/leasing comparables, as appropriate

- Market Activity (competitive buildings in the market)

Property Information

- Opinion of value of the market sale price/proposed leasing rate of the subject property as offered.
- Likely Acquisition/Sale price range based on market conditions
- Length of time required to market property
- Opinion of best use for property that would yield the highest price
- Provide opinion of value for a developer sale scenario

Marketing Strategy

- Marketing Plan/Canvassing Program
- Proposed target market for transactions
- Proposed Market Flyer
- Description of other collateral materials
- Implementation Schedule
- Communication (frequency of reporting)
- Approach to obtaining highest value
- Any cost associated with marketing (define)

EXHIBIT B: COST AND PRICE FORMS

PRICE SUMMARY SHEET**REQUEST FOR PROPOSALS (RFP) 0-2160**

Enter below the proposed fee for the work described in the Scope of Work, Exhibit A. Fees shall include direct costs, indirect costs and profits.

State the commission rate for listing and selling of excess land and facilities.	_____ %
State your commission rate for listing and renting of land and facilities.	_____ %
State any other costs anticipated in relation to the real estate services to be provided.	
1.	\$ _____
2.	\$ _____
3.	\$ _____
4.	\$ _____
5.	\$ _____
6.	\$ _____
7.	\$ _____
8.	\$ _____
9.	\$ _____
10.	\$ _____

1. I acknowledge receipt of **RFP 0-2160** and Addenda No.(s)_____.
2. This offer shall remain firm for _____ days from the date of proposal.
(Minimum of 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

1 **PROPOSED AGREEMENT NO. C-0-2160**

2 **BETWEEN**

3 **ORANGE COUNTY TRANSPORTATION AUTHORITY**

4 **AND**

5 _____
6 **THIS AGREEMENT** is effective this ____ day of _____, 2020
7 ("Effective Date"), by and between the Orange County Transportation Authority, 550 South Main Street,
8 P.O. Box 14184, Orange, California 92863-1584, a public corporation of the State of California
9 (hereinafter referred to as "AUTHORITY"), and , , , (hereinafter referred to as "CONSULTANT").

10 **WITNESSETH:**

11 **WHEREAS**, AUTHORITY requires assistance from CONSULTANT to provide on-call real estate
12 brokerage services; and

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

14 **WHEREAS**, CONSULTANT has represented that it has the requisite personnel and experience,
15 and is capable of performing such services; and

16 **WHEREAS**, CONSULTANT wishes to perform these services; and

17 **WHEREAS**, the AUTHORITY's Board of Directors authorized this Agreement on _____;

18 **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CONSULTANT
19 as follows:

20 **ARTICLE 1. COMPLETE AGREEMENT**

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

26 /

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

8 **ARTICLE 2. AUTHORITY DESIGNEE**

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

11 **ARTICLE 3. SCOPE OF WORK**

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

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

18 **Names**

Functions

19
20
21
22
23 C. No person named in paragraph B of this Article, or his/her successor approved by
24 AUTHORITY, shall be removed or replaced by CONSULTANT, nor shall his/her agreed-upon function or
25 level of commitment hereunder be changed, without the prior written consent of AUTHORITY. Should
26 the services of any key person become no longer available to CONSULTANT, the resume and

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

6 **ARTICLE 4. TERM OF AGREEMENT**

7 A. This Agreement shall commence upon execution by both parties, and shall continue in full
8 force and effect for a term of three (3) years through _____, unless earlier terminated or extended
9 as provided in this Agreement.

10 B. AUTHORITY, at its sole discretion, may elect to extend the term of this Agreement up to an
11 additional twenty-four (24) months, commencing on _____ and continuing through _____
12 (option term), and thereupon requires CONSULTANT to continue to provide services, and otherwise
13 perform, in accordance with Exhibit A, entitled "Scope of Work".

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

18 **ARTICLE 5. PAYMENT**

19 A. For CONSULTANT's full and complete performance of its obligations under this Agreement
20 and subject to the maximum cumulative payment obligation provisions set forth in Article 6, AUTHORITY
21 shall pay CONSULTANT based upon the price achieved in each lease and/or sale agreements into by
22 the AUTHORITY and the buyer and/or lessee. CONSULTANT's commission rate shall be _____
23 percent.

24 B. The AUTHORITY may reimburse CONSULTANT for unanticipated expenses incurred in
25 performing the services identified in the Scope of Work, Exhibit A. Such expenses must be approved by
26 /

1 the AUHTORITY prior to being incurred. Expenses incurred in the normal course of performing the work
2 under this Agreement shall not be reimbursed.

3 C. If the AUTHORITY agrees to reimburse CONSULTANT for unanticipated expenses,
4 CONSULTANT shall invoice AUTHORITY. CONSULTANT shall furnish information as may be requested
5 by AUTHORITY to substantiate the validity of an invoice. At its sole discretion, AUTHORITY may decline
6 to make payment for any expense until such time as CONSULTANT has provided documentation to
7 AUTHORITY's satisfaction.

8 D. Invoices shall be submitted by CONSULTANT on a monthly basis and shall be submitted in
9 duplicate to AUTHORITY's Accounts Payable office. CONSULTANT may also submit invoices
10 electronically to AUTHORITY's Accounts Payable Department at vendorinvoices@octa.net. Each invoice
11 shall include the following information:

- 12 1. Agreement No. C-0-2160;
- 13 2. Specify the fee/expense for which payment is being requested;
- 14 3. The time period covered by the invoice;
- 15 4. Total monthly invoice;
- 16 5. Certification signed by the CONSULTANT or his/her designated alternate that a)
17 The invoice is a true, complete and correct statement of reimbursable costs and progress; b) The backup
18 information included with the invoice is true, complete and correct in all material respects; c) All payments
19 due and owing to subcontractors and suppliers have been made; d) Timely payments will be made to
20 subcontractors and suppliers from the proceeds of the payments covered by the certification and; e) The
21 invoice does not include any amount which CONSULTANT intends to withhold or retain from a
22 subcontractor or supplier unless so identified on the invoice.
- 23 6. Any other information as agreed or requested by AUTHORITY to substantiate the
24 validity of an invoice.

25 /

26 /

ARTICLE 6. NOTICES

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

To CONSULTANT:

To AUTHORITY:

Orange County Transportation Authority

550 South Main Street

P.O. Box 14184

Orange, CA 92863-1584

ATTENTION:

ATTENTION: Megan Bornman

Contract Administrator

(714) 560 - 5064

mbornman@octa.net

cc: Joe Gallardo

Department Manager, Real Property

(714) 560 – 5546

jgallardo@octa.net

ARTICLE 7. INDEPENDENT CONTRACTOR

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

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

5 **ARTICLE 8. INSURANCE**

6 A. CONSULTANT shall procure and maintain insurance coverage during the entire term of this
7 Agreement. Coverage shall be full coverage and not subject to self-insurance provisions. CONSULTANT
8 shall provide the following insurance coverage:

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

12 2. Automobile Liability Insurance to include owned, hired and non-owned autos with
13 a combined single limit of \$1,000,000.00 each accident;

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

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

17 5. Professional Liability with minimum limits of \$1,000,000.00 per claim.

18 B. Proof of such coverage, in the form of a certificate of insurance, with the AUTHORITY, its
19 officers, directors, employees and agents, designated as additional insureds as required by contract. In
20 addition, provide an insurance policy blanket additional insured endorsement. Both documents must be
21 received by AUTHORITY prior to commencement of any work. Proof of insurance coverage must be
22 received by AUTHORITY within ten (10) calendar days from the effective date of this Agreement. Such
23 insurance shall be primary and non-contributive to any insurance or self-insurance maintained by the
24 AUTHORITY. Furthermore, AUTHORITY reserves the right to request certified copies of all related
25 insurance policies.

26 /

1 C. CONSULTANT shall include on the face of the certificate of insurance the Agreement Number
2 C-0-2160; and, the Contract Administrator's Name, Megan Bornman.

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

5 E. CONSULTANT shall be required to immediately notify AUTHORITY of any modifications or
6 cancellation of any required insurance policies.

7 **ARTICLE 9. ORDER OF PRECEDENCE**

8 Conflicting provisions hereof, if any, shall prevail in the following descending order of precedence:
9 (1) the provisions of this Agreement, including all exhibits; (2) the provisions of RFP 0-2160; (3)
10 CONSULTANT's proposal dated _____; (4) all other documents, if any, cited herein or incorporated
11 by reference.

12 **ARTICLE 10. CHANGES**

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

21 **ARTICLE 11. DISPUTES**

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

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

7 **ARTICLE 12. TERMINATION**

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

13 B. In the event either Party defaults in the performance of any of their obligations under this
14 Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall have the
15 option to terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Upon
16 receipt of such notice, CONSULTANT shall immediately cease work, unless the notice from AUTHORITY
17 provides otherwise. Upon receipt of the notice from AUTHORITY, CONSULTANT shall submit an invoice
18 for work and/or services performed prior to the date of termination. AUTHORITY shall pay
19 CONSULTANT for work and/or services satisfactorily provided to the date of termination in compliance
20 with this Agreement. Thereafter, CONSULTANT shall have no further claims against AUTHORITY under
21 this Agreement. AUTHORITY shall not be liable for any claim of lost profits or damages for such
22 termination.

23 **ARTICLE 13. INDEMNIFICATION**

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

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

ARTICLE 14. ASSIGNMENTS AND SUBCONTRACTS

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

B. AUTHORITY hereby consents to CONSULTANT's subcontracting portions of the Scope of Work to the parties identified below for the functions described in CONSULTANT's proposal. CONSULTANT shall include in the subcontract agreement the stipulation that CONSULTANT, not AUTHORITY, is solely responsible for payment to the subcontractor for the amounts owing and that the subcontractor shall have no claim, and shall take no action, against AUTHORITY, its officers, directors, employees or sureties for nonpayment by CONSULTANT.

Subcontractor Name/Addresses

Subcontractor Amounts

.00

.00

ARTICLE 15. AUDIT AND INSPECTION OF RECORDS

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

1 years from the date of final payment by AUTHORITY. AUTHORITY's right to audit books and records
2 directly related to this Agreement shall also extend to all first-tier subcontractors identified in Article 14
3 of this Agreement. CONSULTANT shall permit any of the foregoing parties to reproduce documents
4 by any means whatsoever or to copy excerpts and transcriptions as reasonably necessary.

5 **ARTICLE 16. CONFLICT OF INTEREST**

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

14 **ARTICLE 17. CODE OF CONDUCT**

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

18 **ARTICLE 18. PROHIBITION ON PROVIDING ADVOCACY SERVICES**

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

23 **ARTICLE 19. FEDERAL, STATE AND LOCAL LAWS**

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

ARTICLE 20. EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 21. PROHIBITED INTERESTS

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

ARTICLE 22. OWNERSHIP OF REPORTS AND DOCUMENTS

The originals of all letters, documents, reports and other products and data produced under this Agreement shall be delivered to, and become the property of AUTHORITY. Copies may be made for CONSULTANT's records but shall not be furnished to others without written authorization from AUTHORITY. Such deliverables shall be deemed works made for hire and all rights in copyright therein shall be retained by AUTHORITY.

A. All ideas, memoranda, specifications, plans, manufacturing, procedures, drawings, descriptions, and all other written information submitted to CONSULTANT in connection with the performance of this Agreement shall not, without prior written approval of AUTHORITY, be used for any purposes other than the performance under this Agreement, nor be disclosed to an entity not connected with the performance of the project. CONSULTANT shall comply with AUTHORITY's policies regarding such material. Nothing furnished to CONSULTANT, which is otherwise known to CONSULTANT or is or becomes generally known to the related industry shall be deemed confidential. CONSULTANT shall not use AUTHORITY's name, photographs of the project, or any other publicity pertaining to the project in

1 any professional publication, magazine, trade paper, newspaper, seminar or other medium without the
2 express written consent of AUTHORITY.

3 B. No copies, sketches, computer graphics or graphs, including graphic artwork, are to be
4 released by CONSULTANT to any other person or agency except after prior written approval by
5 AUTHORITY, except as necessary for the performance of services under this Agreement. All press
6 releases, including graphic display information to be published in newspapers, magazines, etc., are to be
7 handled only by AUTHORITY unless otherwise agreed to by CONSULTANT and AUTHORITY.

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

9 A. In lieu of any other warranty by AUTHORITY or CONSULTANT against patent or copyright
10 infringement, statutory or otherwise, it is agreed that CONSULTANT shall defend at its expense any claim
11 or suit against AUTHORITY on account of any allegation that any item furnished under this Agreement
12 or the normal use or sale thereof arising out of the performance of this Agreement, infringes upon any
13 presently existing U.S. letters patent or copyright and CONSULTANT shall pay all costs and damages
14 finally awarded in any such suit or claim, provided that CONSULTANT is promptly notified in writing of
15 the suit or claim and given authority, information and assistance at CONSULTANT's expense for the
16 defense of same. However, CONSULTANT will not indemnify AUTHORITY if the suit or claim results
17 from: (1) AUTHORITY's alteration of a deliverable, such that said deliverable in its altered form infringes
18 upon any presently existing U.S. letters patent or copyright; or (2) the use of a deliverable in combination
19 with other material not provided by CONSULTANT when such use in combination infringes upon an
20 existing U.S. letters patent or copyright.

21 B. CONSULTANT shall have sole control of the defense of any such claim or suit and all
22 negotiations for settlement thereof. CONSULTANT shall not be obligated to indemnify AUTHORITY
23 under any settlement made without CONSULTANT's consent or in the event AUTHORITY fails to
24 cooperate fully in the defense of any suit or claim, provided, however, that said defense shall be at
25 CONSULTANT's expense. If the use or sale of said item is enjoined as a result of such suit or claim,
26 CONSULTANT, 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. FINISHED AND PRELIMINARY DATA

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

B. It is expressly understood that any title to preliminary technical data is not passed to AUTHORITY but is retained by CONSULTANT. Preliminary data includes roughs, visualizations, software design documents, layouts and comprehensives prepared by CONSULTANT solely for the purpose of demonstrating an idea or message for AUTHORITY's acceptance before approval is given for preparation of finished artwork. Preliminary data title and right thereto shall be made available to AUTHORITY if CONSULTANT causes AUTHORITY to exercise Article 10, and a price shall be negotiated for all preliminary data.

ARTICLE 25. CONTRACTOR PURCHASED EQUIPMENT

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

/

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

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

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

13 **ARTICLE 26. FORCE MAJEURE**

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

21 **ARTICLE 27. HEALTH AND SAFETY REQUIREMENT**

22 CONSULTANT shall comply with all the requirements set forth in Exhibit __, Level_ Safety
23 Specifications.

24 /

25 /

26 /

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: _____

Date: _____

Date: _____

Date: _____

EXHIBIT D: FORMS

STATUS OF PAST AND PRESENT CONTRACTS FORM

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

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

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

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 affirming that all of the information provided is true and accurate.

Name

Signature

Title

Date

Revised. 03/16/2018

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Information Sheet

ORANGE COUNTY TRANSPORTATION AUTHORITY

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

IMPORTANT NOTICE

Basic Provisions of Government Code Section 84308

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

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

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

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

RFP Number: _____ RFP Title: _____

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

If no, please sign and date below.

If yes, please provide the following information:

Prime Contractor Firm Name: _____

Contributor or Contributor Firm's Name: _____

Contributor or Contributor Firm's Address: _____

Is Contributor:

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

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

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

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Name of Board Member: _____

Name of Contributor: _____

Date(s) of Contribution(s): _____

Amount(s): _____

Date: _____

Signature of Contributor

Print Firm Name

Print Name of Contributor

**ORANGE COUNTY TRANSPORTATION AUTHORITY
AND AFFILIATED AGENCIES**

Board of Directors

Steve Jones, Chairman
Andrew Do, Vice Chairman
Lisa A. Bartlett, Director
Doug Chaffee, Director
Laurie Davies, Director
Barbara Delgleize, Director
Michael Hennessey, Director
Gene Hernandez, Director
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Harry S. Sidhu, Director
Michelle Steel, Director
Donald P. Wagner, Director
Greg Winterbottom, Director

EXHIBIT E: SAFETY 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 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 health, safety and environmental compliance department (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 health, safety, and environmental requirements, and references contained within this scope of work shall not be considered all-inclusive as to the hazards that might be encountered. Safe work practices shall be planned and performed, and safe conditions shall be maintained during 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 applied for the safeguard of public and employees.

1.2 REGULATORY

- A. Injury/Illness Prevention Program
The Contractor shall comply with CCR Title 8, Section with California Code of Regulations (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. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.
- B. Substance Abuse Prevention Program

Contractor shall comply with the Policy or Program of the Company's Substance Abuse Prevention Policy that complies with the most recent Drug Free Workplace Act. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

C. Heat Illness Prevention Program

Contractor shall comply with CCR Title 8, Section, Section 3395, Heat Illness Prevention. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

D. Hazard Communication Program

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 SDS for all applicable chemical products used, if any. The program shall be provided to the Authority's Project Manager, upon request, within 72 hours.

- a. All chemicals including paint, solvents, detergents and similar substances shall comply with South Coast Air Quality Management District (SCAQMD) rules 103, 1113, and 1171.

E. Storm Water Pollution Prevention Plan

The Contractor shall protect property and water resources from fuels and similar products throughout the duration of the contract. Contractor shall comply with Storm Water Pollution Prevention Plan (SWPPP) requirements. The program or plan if required by scope shall be provided to the Authority's Project Manager, upon request, within 72 hours.

1.3 INCIDENT NOTIFICATION AND INVESTIGATION

A. The Authority shall be promptly notified of any of the following types of incidents including but not limited to:

1. Damage incidents of property (incidents involving third party, contractor or Authority property damage);
2. Reportable and/or Recordable injuries (as defined by the U. S. Occupational Safety and Health Administration), a minor injury, and near miss incidents;
3. Incidents impacting the environment, i.e. spills or releases on Authority projects or property.
4. Outside Agency Inspections; agencies such as Cal/OSHA, DTSC, SCAQMD, State Water Resources Control Board, FTA, CPUC, EPA, USACE and similar agencies.

B. Notifications shall be made to Authority representatives, employees and/or agents. This includes incidents occurring to contractors, vendors, visitors, or members of the public that arise from the performance of Authority contract work. An immediate verbal notice followed by an initial written incident investigation report shall be submitted to the 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, Photos of the existing conditions and area of the injury/incident, 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 task planning documentation, copy of the Physician's first report of injury, copy of Cal/OSHA 300 log of work related injuries and illnesses, the Cal/OSHA 301 Injury Illness Incident Report, and corrective actions initiated to prevent recurrence. This information shall be considered the minimum elements required for a comprehensive incident report provided to OCTA.
- D. A Serious Injury, Serious Incident, OSHA Recordable Injury/Illness, or a Significant Near Miss shall require a formal incident review at the discretion of the Authority's Project Manager. The incident review shall be conducted within seven (7) calendar days of the incident. This review shall require a company senior executive, company program or project manager from the Contractors' organization to participate and present the incident review as determined by the OCTA Project Manager. The serious incident presentation shall include action taken for the welfare of the injured, a status report of the injured, causation factors that lead to the incident, a root cause analysis (using 5 whys and fishbone methods), and a detailed recovery plan that identifies corrective actions to prevent a similar incident, and actions to enhance safety awareness.
1. Serious Injury: includes an injury or illness to one or more employees, occurring in a place of employment or in connection with any employment, which requires inpatient hospitalization for a period in excess of twenty-four hours for other than medical observation, or in which an employee suffers the loss of any member of the body, or suffers any serious degree of physical disfigurement. A serious injury also includes a lost workday or reassignment or restricted injury case as determined by the Physician's first report of injury or Cal/OSHA definitions.
 2. Serious Incident: includes but not limited to property damage of \$500.00 or more, an incident requiring emergency services (local fire, paramedics and ambulance response), news media or OCTA media relations response, and/or incidents involving other agencies (Cal/OSHA, EPA, AQMD, DTSC, Metrolink, FTA, FRA etc.) notification or representation.
 3. OSHA Recordable Injury / Illness: includes and injury / illness resulting in medical treatment beyond First Aid, an injury / illness which requires restricted duty, or an injury / illness resulting in days away from work.
 4. Significant Near Miss Incident: includes incidents where no property was damaged and no personal injury sustained, but where, given a slight shift in time or position, damage and/or injury easily could have occurred.

1.4 DESIGNATED HEALTH AND SAFETY REPRESENTATIVE

- A. Upon contract award, the contractor within 10 business days shall designate a health and safety representative and provide a resume and qualifications to the Authority project manager, upon request, within 72 hours.
- B. This person shall be a competent or qualified individual as defined by the Occupational, Safety, and Health Administration (OSHA), familiar with applicable CCR Title 8 Standards (Cal/OSHA) and has the authority to affect changes in work procedures that may have associated cost, schedule and budget impacts.

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 or 3 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. Construction Industry Institute (CII)
- E. OCTA 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:
