



**March 4, 2024**

**To:** Executive Committee  
**From:** Darrell E. Johnson, Chief Executive Officer  
**Subject:** Amendment to Agreement for General Counsel Legal Services

**Overview**

The Orange County Transportation Authority uses an external law firm to provide general counsel and liability defense services. Woodruff and Smart has provided these services since 1991 and was re-selected through a competitive process in 1994 and 2014. The current contract expires December 31, 2024. Staff is recommending an extension of this contract for an additional five years.

**Recommendation**

Authorize the Chief Executive Officer to negotiate and execute Amendment No. 13 to Agreement No. C-4-1816 between the Orange County Transportation Authority and Woodruff and Smart to extend the agreement for five years to provide general counsel legal services for the Orange County Transportation Authority.

**Discussion**

The Orange County Transportation Authority (OCTA) has contracted with an external law firm to provide general counsel and liability defense services since its formation. When OCTA was formed in 1991, OCTA utilized the services of Rourke, Woodruff & Spradlin to provide general counsel and legal defense services. Rourke, Woodruff & Spradlin has had a handful of name changes since that time and is currently named Woodruff & Smart (Woodruff). In 1994, OCTA competitively bid these services and awarded a contract to Woodruff that had no expiration date.

In 2014, General Counsel, Mr. Kennard Smart, who had served in this capacity for 22 years, announced his retirement from Woodruff. At that time, the Board of Directors (Board) chose to issue a request for proposals (RFP) for general counsel and legal defense services.

In November 2014, Woodruff was selected by the Board to continue to provide these services for an initial term of five years with one five-year option term. Mr. James Donich, Mr. David DeBerry, and Mrs. Cassie Trapesonian are named as key personnel on the contract and Mr. Donich has served as General Counsel since that time. The Board exercised the option term with Woodruff in June 2019. The current contract expires on December 31, 2024.

Woodruff has performed well as OCTA's general counsel. Over the last ten years, Woodruff has provided counsel for all Board and committee meetings, supported labor negotiations, supported and reviewed countless contracts and other documents, negotiated numerous property transactions, settlement agreements, negotiated global settlement agreements for projects and provided general counsel on countless issues. OCTA is currently engaged in numerous activities that would make transitioning to a different external law firm less than optimal and could potentially hurt OCTA. These activities include claims made by the construction contractor for the OC Streetcar Project, closeout of the Interstate 405 Improvement Project, issues related to a new rail maintenance facility in the City of Irvine, issues related to a new commuter rail station in the City of Placentia, ongoing issues related to interpretations of the Measure M2 Ordinance, master agreements and negotiations with other stakeholders related to a connector of the 241 to the 91 Express Lanes, and multiple coastal rail issues.

In order to ensure continuity of counsel and maintain the best interest of OCTA, staff is recommending a five-year extension to the current agreement, with all terms and conditions remaining in effect for the extension of this agreement. All three named key personnel are still with the firm and planned to remain for the duration. The price for services is clearly outlined in the contract and adjusts on an annual basis based on changes in the Consumer Price Index. Additionally, OCTA can terminate this agreement at any time at its sole discretion.

If the Board chooses not to extend this agreement, a new RFP would need to be issued. In that scenario, staff would bring the RFP release to the Board for approval on March 25, 2024 with an anticipated approval by the Board at its July 8, 2024 meeting. This would allow for sufficient time to transition these services if a new firm was selected.

### ***Procurement Approach***

This procurement was originally handled in accordance with OCTA's Board-approved procedures for professional and technical services. On November 24, 2014, the Board approved the award of the agreement with Woodruff to provide general counsel legal services. The original agreement was

awarded on a competitive basis and includes a five-year initial term, with one, five-year option term. The option term expires on December 31, 2024. The agreement has been previously amended as shown in Attachment A.

The proposed Amendment No. 13 is to extend the agreement for a five-year period, effective January 1, 2025 through December 31, 2029. An annual rate adjustment equal to the Consumer Price Index for the U.S. Department of Labor Consumer Price Index – all Urban Consumers for Los Angeles – Riverside – Orange County was negotiated in the original contract and will continue to apply through the extended term as originally negotiated. Approval of an extension will allow Woodruff to continue providing general counsel legal services through December 31, 2029.

#### Fiscal Impact

The project was approved in OCTA's Fiscal Year 2023-24 Budget, Finance and Administration, Account No. 1210-7511-A5200-DN6 and is funded through local funds.

#### **Summary**

Based on the information provided, staff recommends the Board of Directors authorize the Chief Executive Officer to negotiate and execute Amendment No. 13 to Agreement No. C-4-1816 between the Orange County Transportation Authority and Woodruff and Smart to extend the agreement for five years to provide general counsel legal services for the Orange County Transportation Authority.

**Attachment**

- A. Woodruff and Smart Agreement No. C-4-1816 Fact Sheet

**Approved by:**



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