

**COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF ORANGE AND
RMV COMMUNITY DEVELOPMENT, LLC
FOR THE PROJECT APPROVAL AND ENVIRONMENTAL DOCUMENT FOR
LOS PATRONES PARKWAY EXTENSION**

This Cooperative Agreement No. MA-080-22011919 (“**Agreement**”) is made and entered into this 29th day of November, 2022 (“**Effective Date**”) by and between the County of Orange, a political subdivision of the State of California (“**County**”), and RMV Community Development, LLC, a California limited liability company (“**RMV**”). This Agreement concerns the proposed southerly extension of Los Patrones Parkway to Avenida La Pata, specifically addressing: (i) coordination of work related to project approval and environmental documentation (referred to as “**PA&ED**”) for Los Patrones Parkway Extension and (ii) allocation of cost responsibility and the provision of funding for the PA&ED (including the distribution of Orange County Transportation Authority Measure M2 Grant Funds). County and RMV are sometimes hereafter collectively referred to as the “**Parties**” and individually as a “**Party**.”

RECITALS

A. On November 8, 2004, the Orange County Board of Supervisors approved a General Plan Amendment (Resolution No. 04-291), Zone Change (Resolution No. 04-292/Ordinance No. 04-014) and Development Agreement (Resolution No. 04-293/Ordinance No. 04-015) establishing a comprehensive land development and conservation plan for the remaining 22,815 acres of the historic Rancho Mission Viejo. The collective elements of the development and conservation plan are commonly known as the “**Ranch Plan**.”

B. County is the owner of that public right-of-way known as “**Los Patrones Parkway**” – an arterial highway that runs north-south through a portion of the Ranch Plan project area between Oso Parkway and Cow Camp Road.

C. In March 2020, the Foothill/Eastern Transportation Corridor Agency (“**F/ETCA**”) issued a recommendation to support a non-tolled extension of Los Patrones Parkway as a County arterial from its current southerly terminus at Cow Camp Road to Avenida La Pata in the City of San Clemente (“**Los Patrones Parkway Extension**” or “**LPPE**”).

D. In April 2020, the Board of Directors of the Orange County Transportation Authority (“**OCTA**”) directed OCTA staff to work with F/ETCA, County and other stakeholders (e.g., RMV) to develop a plan for a non-tolled LPPE.

E. Subsequent to F/ETCA’s recommendation and the directive issued by the OCTA Board of Directors, RMV prepared and submitted applications requesting an amendment to County’s General Plan (Transportation Element) and an amendment to the Orange County Master Plan of Arterial Highways (“**MPAH**”) reflecting identification of LPPE as an arterial extending from Cow Camp Road to Avenida La Pata.

F. On January 12, 2021, the Orange County Board of Supervisors amended County’s General Plan (Transportation Element) to add LPPE as a non-tolled County arterial.

Thereafter, on March 16, 2021, the OCTA Board of Directors approved an amendment to the MPAH which identified LPPE as a public arterial.

G. The alignment identified for LPPE in each of County's General Plan (Transportation Element) and the MPAH reflects a location that traverses lands that are located within the bounds of the Ranch Plan project area (the "**RMV Segment**") as well lands located within the Prima Deshecha Landfill (the "**County Segment**"). By approximation, 71.1% of the LPPE would be developed within the RMV Segment and the remaining 28.9% of the LPPE would be developed within the County Segment, said approximation based upon the LPPE centerline length of road for the PA&ED phase only as shown in Exhibit B.

H. Development of the LPPE would address regional traffic circulation issues and provide a supplemental access route for the Ranch Plan project area. Accordingly, County and RMV are desirous of working cooperatively in implementing the LPPE. In connection therewith, the Parties intend to coordinate the preparation of all environmental documentation required in relation to the LPPE, including identification of the scope and form of all documents required pursuant to the California Environmental Quality Act ("**CEQA**"). The Parties acknowledge that County will serve as the lead agency for CEQA purposes in relation to the LPPE. Moreover, RMV agrees that it shall adhere to all County standards for the PA&ED, as well as the subsequent preparation of design reports, plans, specifications, estimates, *etc.* for LPPE ("**Design Work**").

I. The Parties wish to establish a coordinated program and protocol concerning the identification and retention of a qualified professional ("**Qualified Professional**") to assist in the provision of project approval and the preparation of environmental documentation in relation to the LPPE ("**PA&ED Work**"). The Qualified Professional would also be competent / qualified to provide services in relation to the Design Work. The Parties expect that the Selected Qualified Professional (*i.e.*, the highest-ranked Qualified Professional [*see* Section 2.B, below]) will have the ability to self-perform at least fifty-one percent (51%) of the PA&ED Work and the Design Work. The services and deliverables comprising the PA&ED Work are more particularly described in the attached Exhibit A. The services and deliverables relative to the Design Work may be identified by the Parties at a later date.

J. The Parties anticipate the preparation of separate contracts for the PA&ED Work – *i.e.*, RMV shall enter into a contract with the Selected Qualified Professional to perform the PA&ED Work in relation to the RMV Segment, and County shall enter into a contract with the same Selected Qualified Professional to perform the PA&ED Work for the County Segment.

K. The Parties have established a not-to-exceed cost of \$2.5 million to accomplish the PA&ED Work for the full length of the LPPE (*i.e.*, both the RMV Segment and the County Segment). This cost cap is based upon the value of a grant of Measure M2 (OCGO) funds awarded by OCTA that may be used exclusively in relation to the PA&ED ("**OCTA Grant**").

L. The terms of the OCTA Grant require a 25% matching contribution (*i.e.*, \$625,000) from the recipient(s) of the grant funds. In satisfaction of the OCTA Grant requirement for matching funds, and as more fully set forth in Section 4.B of this Agreement,

RMV will provide 78.9% of the required matching contribution and County will provide 21.1% of the required matching contribution as calculated in Exhibit D.

M. As further set forth in this Agreement, the Parties will cooperate with respect to the identification, receipt and application of funds and credits that may be used to offset the costs incurred in relation to the PA&ED Work.

N. The County agrees to acknowledge LPPE as an Alternative Improvement within the South County Roadway Improvement Program (“SCRIP”) (*see* Section 6, below) as it is consistent with the mitigation level of the “Extend FTC-South or Arterial Connector (Cow Camp Road to FTC at Oso) (Contingency Project)” SCRIP Project #45.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants, terms and conditions herein contained, the Parties hereto agree as follows:

Section 1 IDENTIFICATION OF QUALIFIED PROFESSIONALS.

A. Qualifications-Based Selection of Professionals. Provision of the services and deliverables that comprise the PA&ED Work and the Design Work will require the utilization of Qualified Professionals who possess particularized skills and abilities for civil, traffic, geotechnical, structural engineering and CEQA document preparation. By virtue of the specialized nature of both the PA&ED Work and the Design Work, and given that LPPE constitutes a public work, Government Code Sections 4525 through 4529.5 (also known as the “**Little Brooks Act**”) mandate the use of competitive, qualifications-based selection processes for the identification and retention of the Qualified Professionals. Accordingly, the Parties agree that they shall utilize a competitive solicitation and selection protocol for the PA&ED Work and the Design Work that (i) is consistent with the requirements of the Little Brooks Act and County policies and (ii) comports with the qualifications-based selection criteria set forth in the Measure M2 Program Guidelines (“**QBS Requirements**”). As discussed below, the process of procurement is planned through a Request for Proposal (“**RFP**”), which will be evaluated for recommendation of award for PA&ED Work contracts.

B. Cooperation and Process for Identifying Qualified Professionals. In satisfaction of the QBS Requirements, County and RMV shall collaborate on the identification of the Qualified Professionals as follows:

(i) County and RMV shall establish an evaluation panel (“**Panel**”) comprised of an equal number of representatives from County and RMV (but in no event more than three (3) representatives from each Party) and an independent external representative. RMV and County shall be responsible for appointing their respective representatives to the Panel and for ensuring that their respective representatives possess the relevant skill sets and abilities to participate meaningfully on the Panel. Panel members shall have a minimum of five (5) years of experience working on civil projects and shall have previously participated on not less than two (2) other RFP evaluation panels. Each member of the Panel will be required to sign a Non-Disclosure and Conflict of Interest statement in the form attached hereto as Exhibit C (the “**NDA Form**”). No member of the Panel shall be permitted to view any submissions made in response to the RFP until the member has executed an NDA Form and returned same to County.

(ii) The RFP will be developed by County in collaboration with RMV to establish the criteria which are relevant and necessary to the performance of the PA&ED Work and the Design Work.

Section 2 SELECTION AND RETENTION OF A QUALIFIED PROFESSIONAL.

A. Review of RFP Responses; Selection of Qualified Professional.

Following receipt of responses to the RFP, the Panel shall review the responses and rate / rank the proposals consistent with the QBS Requirements. Thereafter, the Panel shall work cooperatively with the County Deputy Purchasing Agent to identify the specific Qualified Professional that will be retained to perform the PA&ED Work.

B. Retention of Selected Qualified Professional; Separate Contracts.

Following the Panel's identification of the highest-ranked Qualified Professional ("**Selected Qualified Professional**"), each Party shall commence negotiations with the Selected Qualified Professional relative to the preparation of individual contracts for performance of the PA&ED Work. Specifically, RMV shall negotiate with the Selected Qualified Professional to prepare a contract pertaining to the performance of PA&ED Work that relates to the RMV Segment ("**RMV Contract**"), and County shall negotiate with the Selected Qualified Professional to prepare a contract pertaining to the performance of PA&ED and Design Work that relates to the County Segment ("**County Contract**"). The Design Work within RMV Segment may also be awarded to the Selected Qualified Professional at a later date (subject to agreement of the Parties). Notwithstanding the separate nature of the RMV Contract and the County Contract, the Parties shall work cooperatively to ensure that the material terms of each contract (*e.g.*, scope of work, commencement date, deliverables, job classifications and rates *etc.*) are consistent and complimentary with respect to accomplishment of the PA&ED Work as an integrated project.

Section 3 ALLOCATION OF COST RESPONSIBILITY; PERFORMANCE OF INDIVIDUAL CONTRACTS.

A. Project Cost; Party Responsibilities. As indicated in Recital K, above, the Parties have established a cost cap of \$2.5 million for the PA&ED Work ("**Project Cost**"). The Parties agree to allocate responsibility for the Project Cost based upon the estimated cost to complete the PA&ED Work provided by the Selected Qualified Professional within each Party's land interest in LPPE. RMV shall be responsible for 78.9% of the Project Cost ("**RMV Percentage**") based upon the cost to complete the PA&ED Work provided by the Selected Qualified Professional within the RMV Segment, and County shall be responsible for 21.1% of the Project Cost (the "**County Percentage**") based upon the cost to complete the PA&ED Work provided by the Selected Qualified Professional within the County Segment. Based upon said allocation, RMV's share of the Project Cost is expected to be \$1,972,500 (*i.e.*, 78.9% of \$2.5 million), and County's share of the Project Cost is expected to be \$527,500 (*i.e.*, 21.1% of \$2.5 million) as calculated in Exhibit D. The Parties acknowledge that the identified Project Cost is not a guaranteed figure, as the final Project Cost could change based upon several factors (*e.g.*, timing, final scope of the PA&ED Work, revisions to the PA&ED Work, *etc.*).

Hence, the Parties agree that, upon final calculation of the Project Cost, RMV shall be responsible for PA&ED costs associated with the RMV Segment and County shall be responsible for costs associated with the County Segment. RMV and County shall be

individually responsible for (i) costs associated with (and incurred by) their respective representatives who serve on the Panel, and (ii) costs and expenses associated with staff time and other activities in relation to managing their respective contracts with the Selected Qualified Professional, and (iii) budget overruns (amounts that exceed the cost cap identified above) required to complete the original scope of work established by the Parties respective contract (*i.e.*, RMV will be fully responsible for overruns on the RMV Contract and County will be fully responsible for overruns on the County Contract).

B. Performance of Contracts. RMV shall be responsible for satisfying the terms and conditions of the RMV Contract executed by and between RMV and the Selected Qualified Professional. Similarly, County shall be responsible for satisfying the terms and conditions of the County Contract executed by and between County and the Selected Qualified Professional. In no event shall RMV be responsible or liable for, or otherwise obligated to perform or satisfy, the County Contract; and, in no event shall County be responsible or liable for, or otherwise obligated to perform or satisfy, the RMV Contract.

C. Implementation of PA&ED. County and RMV mutually understand that most scope items of PA&ED Work may require collaboration between both Parties. In such instances, the Selected Qualified Professional shall prepare deliverables for each scope element (*e.g.*, geotechnical report, topographic survey, *etc.*) split into County Segment and RMV Segment, which together shall contain all relevant information needed for the LPPE (“**Shared Deliverable**”). Upon completion of the RMV and County portions of the PA&ED Work, the Selected Qualified Professional shall prepare a comprehensive document that unifies the Shared Deliverable for the PA&ED Work, which Shared Deliverable shall contain all background information needed for the document to be a standalone instrument (*i.e.*, does not need another document for context). The background information shall be developed collaboratively, and each Party is responsible for assisting the Selected Qualified Professional in the preparation of the Shared Deliverable (*i.e.*, County is responsible for the County Segment and RMV is responsible for the RMV Segment).

Section 4 FUNDING RESOURCES FOR PROJECT COST – OCTA MEASURE M2 GRANT FUNDS.

A. Description of Available OCTA Grant Funds. OCTA has agreed that the OCTA Grant may be expended in satisfaction of the Project Cost. However, the terms of the OCTA Grant require a 25% matching contribution from the recipient(s) as a condition of receiving the grant funds. Based upon the Project Cost of \$2.5 million, the OCTA Grant would cover \$1,875,000 of the Project Cost (*i.e.*, 75%), while the recipient(s) of the grant would be responsible for providing \$625,000 of the Project Cost (*i.e.*, 25%).

B. Provision of Matching Funds by the Parties. In satisfaction of the OCTA Grant requirement, RMV will provide 78.9% of the required matching contribution (approximately \$493,125) (the “**RMV Portion**”) and County will provide 21.1% of the required matching contribution (approximately \$131,875) (the “**County Portion**”) as calculated in Exhibit D. The Parties shall work cooperatively to demonstrate to OCTA that the RMV Portion and the County Portion, respectively, have been paid, deposited or otherwise applied in accordance with the matching contribution requirement. If the final Project Cost changes (such

that OCTA Grant funds provided by OCTA are not sufficient to cover 75% of the total Project Cost) or portions of the OCTA Grant funds are withdrawn by OCTA, then the Parties shall increase the RMV Portion and the County Portion, respectively, to account for any shortcomings in available funding for the PA&ED Work. Consistent with Section 3, above, RMV shall be responsible for the RMV Percentage of any funding shortfall and County shall be responsible for the County Percentage of any funding shortfall.

C. OCTA Grant Funds Allocable to RMV. Subject to the terms and conditions of this Agreement, County shall make available and pay to RMV appropriate funding from the OCTA Grant funds pledged/provided by OCTA in relation to the PA&ED Work (“**RMV’s Share**”), which amount RMV shall use to satisfy its obligations under the RMV Contract (*see* Section 2.B, above). RMV’s Share of the OCTA Grant funds shall be paid to RMV in accordance with the procedures identified Section 4.D, below, and published Measure M2 Program Guidelines. In no event shall County be obligated to provide to RMV more than the OCTA Grant funds allocated by OCTA for the PA&ED Work, and County’s obligation to pay any portion thereof shall be contingent on County’s actual receipt of said funds from OCTA.

D. Reimbursement Procedure. County shall reimburse RMV for costs incurred in relation to the RMV Contract, up to the apportioned amount of OCTA Grant funds identified as RMV’s Share (*see* Section 4.C, above), all in accordance with the processes and procedures identified in this Section 4.D. All amounts payable to RMV shall be limited to costs which are allowable by the terms and conditions of the OCTA Grant. Any OCTA Grant funds paid to RMV which are subsequently deemed unallowable (based upon the terms and conditions of the OCTA Grant) shall be subject to return (*see* Section 4.E, below).

(i) Initial Payment Request by RMV. RMV shall present to the Manager of OC Public Works, Infrastructure Programs, Project/Program Management (“**Manager**”) a copy of the RMV Contract executed by and between RMV and the Selected Qualified Professional. Concurrent with the submission of the RMV Contract, RMV shall tender to the Manager a written request (“**Initial RMV Payment Request**”) that (A) describes the services that are covered by the RMV Contract, (B) identifies the amounts that RMV is obligated to pay the Selected Qualified Professional under the RMV Contract (“**Contract Value**”) and (C) requests reimbursement in an amount not to exceed seventy-five percent (75%) of RMV’s Share (“**Partial Contract Payment**”).

(1) County Review of Initial RMV Payment Request: Payment to RMV. Within twenty-one (21) calendar days following RMV’s submission of the Initial RMV Payment Request to County, the Manager will promptly review the Initial RMV Payment Request, work with RMV to resolve any questions concerning the Initial RMV Payment Request, and prepare a written determination as to whether RMV is entitled to payment pursuant to the terms of this Agreement.

(2) Payment Request to OCTA: Payment to RMV. Following County’s approval of the Initial RMV Payment Request, County will submit a request to OCTA for distribution of OCTA Grant funds in an amount equal to (i) the payment request appearing in the Initial RMV Payment Request (*i.e.*, an amount equal to the Partial Contract Payment) and (ii) all or a portion of the County’s Share (which amount County shall use to satisfy its

obligations under the County Contract [*see* Section 2.B., above]). County shall pay the Initial RMV Invoice within thirty (30) calendar days following County's receipt of funds from OCTA.

(ii) Final Payment Request by RMV. Following the completion of the RMV Contract, RMV shall have the right to submit a payment request to County for the remaining balance of RMV's Share ("**Final RMV Payment Request**"). The Final RMV Payment Request shall be presented to the Manager and shall (i) declare that all work under the RMV Contract has been completed and paid for and (ii) identify the amount of reimbursement sought by RMV (*i.e.*, an amount equal to the RMV Share – *LESS* – the amount previously received by RMV from County in response to the Initial RMV Payment Request).

(1) County Review of Final RMV Payment Request; Payment to RMV. Within twenty one (21) calendar days following RMV's submission of the Final RMV Payment Request to County, the Manager will promptly review the Final RMV Payment Request, work with RMV to resolve any questions concerning the Final RMV Payment Request, and prepare a written determination as to whether RMV is entitled to payment pursuant to the terms of this Agreement.

(2) Payment Request to OCTA; Payment to RMV. Following County's approval of the Final RMV Payment Request, County will submit a request to OCTA for distribution of OCTA Grant funds in an amount equal to (i) the Final RMV Payment Request and (ii) the remainder of County's Share (which amount County shall use to satisfy its remaining obligations under the County Contract. County shall pay the Final RMV Invoice within thirty (30) calendar days following County's receipt of funds from OCTA.

(iii) Petition for Review of Manager's Determination. If the Manager determines that any payment request submitted by RMV is ineligible for payment, RMV and the Manager shall work cooperatively and in good faith to satisfy and resolve any eligibility issues. If RMV and the Manager are unable to resolve the eligibility issues (or RMV is otherwise aggrieved by the determination of the Manager relative to any payment request), the Parties shall resolve all outstanding / remaining issues in accordance with the process and procedures identified in Section 10, below.

E. Repayment of Improperly Paid Funds. In the event that (i) OCTA determines that any OCTA Grant funds paid to either RMV or County in relation to the PA&ED Work were for unallowable costs and (ii) OCTA demands return of the OCTA Grant funds improperly paid for unallowable costs (the "**Improperly Paid Funds**"), then the Party that received the Improperly Paid Funds shall be responsible for returning same to OCTA within thirty (30) calendar days following OCTA's demand for repayment.

F. Allocation of Surplus Funding Benefit. The Parties have prepared an initial budget for the PA&ED Work that reflects an estimated cost of \$2,489,335 for the performance of said work (the "**Initial Budget**"). If the Project Cost exceeds the Initial Budget by \$10,665 (the "**Surplus Amount**"), the possibility exists that the added work could be completed by leveraging the OCTA Grant funds and the matching funds provided by RMV or County or both Parties. The Surplus Amount shall be allocated between the Parties in proportion to their respective percentage interests (*i.e.*, RMV shall be entitled to that portion of the Surplus

Amount that equates to the RMV Percentage, and County shall be entitled to that portion of the Surplus Amount that equates to the County Percentage).

Section 5 COMMUNITY FACILITIES DISTRICT (CFD) FUNDING

A. Identification of LPPE as an Eligible CFD Project; RMV's Right to Request Reimbursement. The Parties acknowledge that the LPPE (in whole or in part) may be identified as an eligible project under one or more community facilities districts (each, a "CFD"). If the LPPE is so identified (*i.e.*, the Acquisition, Funding and Disclosure Agreements ["AFDA"]) for the CFD(s) recognize and categorize the LPPE as a project eligible for CFD funding), then the Parties agree that RMV shall be entitled to request a distribution of funds from the CFD(s) to reimburse RMV for costs incurred in relation to PA&ED Work.

B. CFD Invoice Protocol. With respect to any CFD that identifies the LPPE as an eligible project, RMV shall have the right to prepare and submit to County one or more invoices requesting distributions from the CFD to reimburse RMV for PA&ED Work-related costs and expenses (each, a "CFD Invoice"). County shall work cooperatively with the County Executive Office and CFD District Engineer to process each CFD Invoice and provide reimbursement in accordance with the protocol identified in the AFDA. In connection with each CFD Invoice submitted to County, the Parties shall proceed as follows:

(i) County Review and Approval of CFD Invoices. Upon receipt of a CFD Invoice, County shall review same within twenty-one (21) calendar days and advise RMV, in writing, concerning (i) the completeness of the CFD Invoice or (ii) County's need for supplemental information. In the event County requests that RMV provide supplemental information, RMV shall promptly proceed to assemble and provide all supplemental information reasonably requested by County. Within fourteen (14) calendar days following County's receipt of the supplemental information, County shall review same and advise RMV concerning the sufficiency thereof or, in the alternative, whether additional information is desired or necessary. Should County request the submission of additional information, representatives of RMV and County shall meet and confer within seven (7) calendar days following said request in order to address County's questions and concerns. Said representatives shall work cooperatively and in good faith to promptly resolve said questions and concerns.

(ii) Recommendation for CFD Payment. As to any CFD Invoice recommended for payment, within fourteen (14) calendar days following County's receipt of the completed CFD Invoice (including the resolution of all reasonable questions and concerns identified by County in accordance with subsection (i), above), County shall submit to the CFD a request for disbursement directly to RMV in the amount so requested, utilizing the disbursement request form that has been approved for the CFD. Following the submittal of a request for disbursement, the County Executive Office shall determine whether payment of the CFD Invoice will comply with the terms of the applicable AFDA and, if so, such disbursement shall be made.

Section 6 SOUTH COUNTY ROADWAY IMPROVEMENT PROGRAM / FEE CREDITS

A. Program Description. On November 8, 2004, the Orange County Board of Supervisors adopted Resolution No. 04-294, approving Part 1 of the South County Roadway

Improvement Program (or “SCRIP”). In relevant part, SCRIP establishes a funding program to assist with implementation of transportation improvements in the southern portion of Orange County. SCRIP implements the transportation improvement program outlined in the Ranch Plan environmental impact report (FEIR No. 589) and Exhibit D of the Ranch Plan Development Agreement.

B. SCRIP Contributions and Credits. Pursuant to the Ranch Plan Development Agreement, RMV and its affiliated entities are obligated to contribute certain funds toward the right-of-way improvement projects that are identified in SCRIP. Notwithstanding the foregoing, Section V.13 of the SCRIP program document provides that RMV (and other development project proponents within the SCRIP “area of benefit”) are eligible to receive credits (“**SCRIP Fee Credits**”) in exchange for improvements constructed and contributions paid pursuant to development agreements, subdivision approvals or other discretionary permits/approvals.

C. SCRIP Fee Credits for RMV. County agrees that RMV shall be entitled to receive SCRIP Fee Credits in an amount equal to the aggregate value of (i) RMV Portion of the matching contribution (*see* Section 4.B, above) and (ii) the cost incurred by RMV for external design professional review costs and/or to reimburse the County during the County review process for the PA&ED Work (RMV’s internal staff time will not be included in such charges). As a condition precedent to RMV’s right to receive SCRIP Fee Credits pursuant to this Agreement, RMV shall assemble and provide to County documentation that reasonably supports the eligibility and value of the expenses, work, *etc.* for which RMV is seeking SCRIP Fee Credits. County shall promptly review RMV’s request for SCRIP Fee Credits and confirm the eligibility and value of the expenses, work, *etc.* underlying the request. Following said confirmation, County (acting through the Director of OC Public Works) shall issue SCRIP Fee Credits to RMV in compliance with the SCRIP program document and Exhibit D of the Ranch Plan Development Agreement. SCRIP Fee Credits shall be issued from SCRIP Project #29 “Fund Preliminary Designs, Env. Studies for Transportation Projects” (updated SCRIP number from Table 4, October 2005) to SCRIP Project #45 “Extend FTC-South or Arterial Connector (Cow Camp Road to FTC at Oso)”, of the same SCRIP table.

Section 7 **DISCLAIMER OF LIABILITY; INDEMNIFICATION**

Neither Party nor any officer, employee agent or representative thereof (“**Indemnified Party**”) shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the other Party (“**Indemnifying Party**”) under or in connection with any work, obligation, authority or jurisdiction delegated to, required of, or performed by the Indemnifying Party under this Agreement. It is also understood and agreed that Indemnifying Party shall fully indemnify, defend with counsel approved in writing by Indemnified Party, and hold Indemnified Party harmless from any liability imposed for injury, as defined by Government Code Section 810.8, including attorney’s fees and costs, occurring by reason of anything done or omitted to be done by Indemnifying Party under or in connection with any work, obligation, authority or jurisdiction delegated to, required of, or performed by Indemnifying Party under this Agreement; provided, however, that Indemnifying Party shall have no responsibility or liability to indemnify, defend and hold Indemnified Party harmless

from any liabilities, claims or damages to the extent arising from the gross negligence or willful misconduct of Indemnified Party, its officers, employees, agents or representatives.

Section 8 TERM OF AGREEMENT.

This Agreement will commence on the Effective Date and shall continue in full force and effect until all OCTA Grant funds are received and the Final Report has been accepted by OCTA. [Note: OCTA allows three (3) years for completion of work from time of contract award. Contract award in relation to the PA&ED Work is anticipated to occur on or before October 18, 2022, with an outside completion date of approximately October 18, 2025. The three (3) year completion period may be extended by two (2) years upon request to and approval by OCTA, as requested by County.] Notwithstanding the foregoing, the term of this Agreement may be extended at any time upon the mutual written agreement of the Parties.

Section 9 INDEPENDENT CONTRACTOR.

Nothing herein contained shall be deemed to create an agency, joint venture, partnership or franchise relationship between the Parties hereto, or between the Parties and any Selected Qualified Professional retained by either County or RMV pursuant to the County Contract or the RMV Contract, respectively. Each Party shall ensure that each agreement between itself and any Selected Qualified Professional will contain appropriate provisions wherein the professional acknowledges that it is an independent contractor, is not an agent or employee of either County or RMV, is not an employee of and is not entitled to any rights or benefits from either County or RMV, and is not authorized to act on behalf of County or RMV.

Section 10 DISPUTE RESOLUTION

Unless a resolution protocol is expressly identified in this Agreement for a particular circumstance or issue (*see* Sections 4.D.(iii) and 6.C, above), any disputes between the Parties which arise out of this Agreement shall be resolved in accordance with the following protocol:

A. Step One – Notice of Dispute: Meet and Confer. The aggrieved Party shall prepare a written notice that describes the dispute (“**Notice of Dispute**”) and deliver same to the other Party. Within ten (10) business days following the aggrieved Party’s dispatch of the Notice of Dispute, representatives of RMV and OC Public Works shall meet and confer in good faith for the purpose of identifying a mutually-acceptable resolution of the issues/items identified in the Notice of Dispute. If resolution is achieved, the terms of said resolution shall be memorialized in a writing that is executed or otherwise acknowledged by the appropriate representatives of RMV and OC Public Works.

B. Step Two – Submission of Dispute to County Engineer and RMV Chief Financial Officer. If the Parties are unable to resolve the dispute during the meet and confer process identified in Step One, above, the Notice of Dispute shall be presented (concurrently) to the County of Orange, County Engineer (“**County Engineer**”) and the Chief Financial Officer of RMV (“**CFO**”) for consideration. The County Engineer and the CFO shall meet within fifteen (15) business days following receipt of the Notice of Dispute to address the issues presented therein. At the discretion of the County Engineer and/or the CFO, other representatives of County and RMV may be asked to participate in the meeting and to provide

statements, documents and other information that is relevant to the Notice of Dispute. The County Engineer and the CFO shall work cooperatively and in good faith to resolve the issues presented in the Notice of Dispute. If said individuals are able to achieve a mutually-acceptable resolution of the issues, said resolution shall be memorialized in a writing that is executed or otherwise acknowledged by the County Engineer and the CFO.

C. Step Three – Submission of Dispute to Director of Orange County Public Works and RMV Chief Operating Officer. If the County Engineer and the CFO are unable to resolve the dispute within thirty (30) calendar days following their receipt of the Notice of Dispute, then the matter shall be presented to Director of OC Public Works (“**Director**”) and the Chief Operating Officer of RMV (“**COO**”), for consideration. The County Engineer and the CFO shall deliver to each of the Director and the COO a copy of the Notice of Dispute and such other information as the County Engineer and/or the CFO believe to be relevant / important in relation to the dispute. Following receipt of the Notice of Dispute and accompanying documentation/information, the Director and the COO shall identify a mutually-acceptable time and location to meet and discuss the unresolved issue. At the discretion of the Director and/or the COO, other representatives of County and RMV may be asked to participate in the meeting and to provide statements, documents and other information that is relevant to the Notice of Dispute. The Director and the COO shall work cooperatively and in good faith to resolve the issues presented in the Notice of Dispute. If the Director and the COO are able to achieve a mutually-acceptable resolution of the issues, said resolution shall be memorialized in a writing that is executed or otherwise acknowledged by the Director and the COO.

D. Step Four – Legal Challenge. If the Director and the COO are unable to achieve resolution of the issues addressed in the Notice of Dispute within forty-five (45) calendar days following their receipt of the Notice of Dispute, then either Party shall have the right to file and pursue a legal action seeking resolution of the dispute (*see* Section 12.B, below, regarding venue for any legal proceedings).

Section 11 NOTICES.

All notices, requests and demands hereunder must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed given upon delivery if delivered personally (which includes notices delivered by messenger or overnight courier) or, if delivered by mail, shall be deemed given three days after being deposited by certified mail in any duly authorized United States mail depository, postage prepaid. All such notices shall be addressed as follows, or to such other address or addresses as the Parties may from time to time specify in writing:

To County:	County of Orange OC Public Works 601 N. Ross Street Santa Ana, CA 92701 Attn: Director of Public Works
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To RMV: RMV Community Development, LLC
c/o Rancho Mission Viejo, LLC
28811 Ortega Highway
San Juan Capistrano, CA 92675
Attn: Senior Vice-President – Capital Projects

Section 12 MISCELLANEOUS

A. Successors and Assigns. This Agreement and the rights and obligations of the Parties hereunder shall inure to the benefit of, and be binding upon, the Parties' respective successors, assigns and legal representatives. Neither party shall assign its performance of this Agreement, nor any part thereof, without the prior written consent of the non-assigning party.

B. Governing Law and Venue. This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

C. Attorney's Fees. In any action or proceeding to enforce or interpret any provision of this Agreement, or where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

D. No Third-Party Rights. Nothing in this Agreement shall be deemed or otherwise construed as granting any rights, benefits or interests to any individual, entity or body who/that is not a Party to this Agreement.

E. Authority and Requisite Action. The Parties to this Agreement represent, covenant and affirm that the individuals executing this Agreement have the legal power, right and authority to enter into this Agreement and to bind their respective principals/entities to the terms and conditions set forth herein. Furthermore, the Parties covenant that all requisite action has been taken by their respective principals/entities in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby.

F. Entire Agreement. This writing constitutes the entire agreement between the Parties, and no modification of this Agreement shall be valid unless executed in writing by the Parties hereto. Further, none of the Parties to this Agreement shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

G. No Waiver. The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time.

H. Captions. The captions of the various Sections in this Agreement are for convenience and organization only and are not intended to be any part of the body of this

Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

I. Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

COUNTY OF ORANGE,

By: Doug Chaffee
Chair of the Board of Supervisors
Orange County, California

APPROVED AS TO FORM
Office of the County Counsel
Orange County, California

By: DD 8/25/2022
Deputy

11/29/22
Date

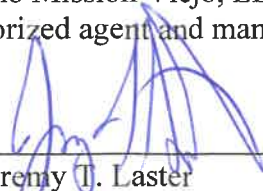
FACSIMILE SIGNATURE AUTHORIZED
PER G.C. SEC. 25103, RESO 79-1535
SIGNED AND CERTIFIED THAT A COPY OF
THIS DOCUMENT HAS BEEN DELIVERED
TO THE CHAIR OF THE BOARD



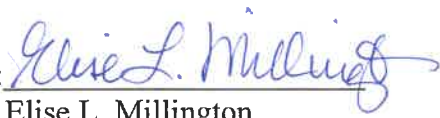
ATTEST:
Robin Stielor
ROBIN STIELER
CLERK OF THE BOARD OF SUPERVISORS
ORANGE COUNTY, CALIFORNIA

RANCHO MISSION VIEJO, LLC,
a Delaware limited liability company

By: Rancho Mission Viejo, LLC
Its: Authorized agent and manager

By: 

Jeremy T. Laster
Executive Vice President and
Chief Operating Officer

By: 

Elise L. Millington
Executive Vice President and
Chief Financial Officer

EXHIBIT A

PA&ED Work

The Project Approval and Environmental Document (“PA&ED”) of the Planning Phase in general consists of the following:

- Project management tasks such as risk matrix, quality control (“QC”) plan, meetings including stakeholder coordination, coordination, project controls, etc.; and
- Preliminary engineering design tasks such as basis of design, concept plans, 25% plans, preliminary cost estimates, bridge type selection report, project report, preliminary studies including (geotechnical, hydraulic/hydrology, water quality management plan (“WQMP”), traffic analysis, design survey, utility coordination, right-of-way (“R/W”) engineering, environmental consultation etc.).

EXHIBIT B

Depiction of Centerline Length of LPPE (for PA&ED Purposes Only)
with RMV Segment and County Segment

(See Attached)

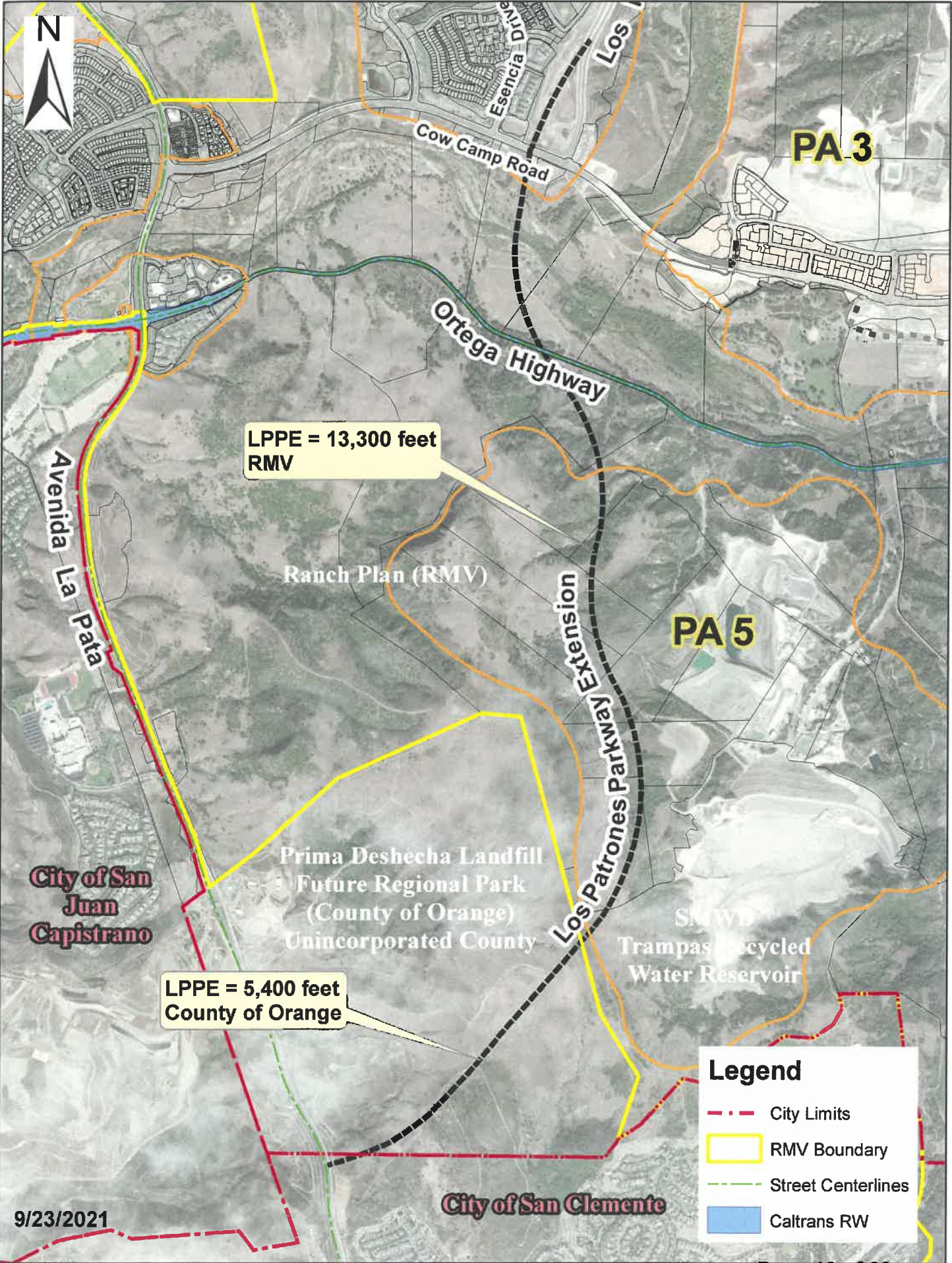


EXHIBIT C

Copy of NDA Form

[See Attached]



Non-Disclosure and Conflict of Interest Statement

Request for Proposals No. 080-CXXXXX-XX for Provision of Planning Administration and Environmental Review / Documentation Services Relative to the Los Patrones Parkway Extension Project (the "Preliminary LPPE Services")

County Administration South
601 North Ross Street
Santa Ana, CA 92701

P.O. Box 4048
Santa Ana, CA 92702

(714) 667-8800

info@ocpw.ocgov.com

OCPublicWorks.com

Administrative Services

OC Development Services

OC Facilities Design & Construction Management

OC Facilities Maintenance & CUF

OC Fleet Services

OC Construction

OC Environmental Resources

OC Operations & Maintenance

OC Infrastructure Programs

OC Survey

Instructions: Please initial where requested to indicate you read and understood the associated Part. Please sign where requested to indicate agreement with the contents of this form.

Scope of Statement

This Non-Disclosure and Conflict of Interest Statement ("Statement") relates to the undersigned's participation in one or more groups or committees formed by the County of Orange (individually and collectively, the "Evaluation Committee") to (i) prepare the above-referenced Request for Qualifications and Request for Proposals ("RFQ/RFP") and (ii) review all proposals received by the County of Orange in response thereto (the "RFQ/RFP Activities").

Part 1 - Respondents

If I am not a County employee or public official, I agree to abide by and conform to all the rules and regulations described below as if I were a County employee or public official in my role as a member of the Evaluation Committee appointed to assist in the RFQ/RFP Activities.

As a member of the Evaluation Committee appointed to assist in the RFQ/RFP Activities, I hereby certify I do not represent any conflict of interest as defined under California Government Code Sections 87100 and 87103 (reproduced below), as set forth in the County of Orange Contract Policy Manual Section 2.1 entitled Ethics in Public Contracting – County Employees, and as set forth in the County of Orange Design and Construction Procurement Policy Manual Section 2.1 entitled Ethics in Public Contracting – County Employees with any of the Respondents or subconsultants/subcontractors listed below, who have received or responded to the above-referenced RFQ/RFP solicitation.

Respondents (including subconsultants/subcontractors):

- 1.
- 2.
- 3.
- 4.

Initials

Part 2: Non-Disclosure

To help assure the procurement process is conducted in an impartial and appropriate manner, I agree to adhere to the following Evaluation Committee guidelines:

- 1. Confidential or trade information and/or any other information provided by Respondents or other parties participating in the RFQ/RFP Activities shall not be disclosed to other Respondents or with any individual outside the appointed Evaluation Committee.

2. Information regarding the RFQ/RFP Activities shall not be disclosed to anyone who is not directly participating in the RFQ/RFP Activities or otherwise legally entitled to such information.
3. All Evaluation Committee members shall report to the representative from OC Public Works/Procurement Services any inquiries received and/or attempts to obtain information made by anyone not participating in the RFQ/RFP Activities, as well as any information indicating possible disclosures of information relating to the RFQ/RFP Activities.
4. If demonstrations or presentations by the Respondents are required, OC Public Works/Procurement Services will be responsible for contacting the Respondents, in writing, to schedule any such meetings. During presentations by the Respondents, Evaluation Committee members shall avoid:
 - a. Discussing the proposal of any competitor.
 - b. Revealing proprietary data or any other information within other proposals.
 - c. Disclosing any evaluator's opinion of the proposals.
 - d. Prejudicing subsequent negotiations by making comments endorsing a specific technique or pricing feature.

Initials

Part 3: Conflict of Interest

I have reviewed the California Government Code relating to conflict of interests (reproduced below) and agree to abide by and conform to it regardless of whether or not I am a County employee or public official. The California Government Code addresses conflicts of interest as follows:

- Section 87100: "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."
- Section 87103: "A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:
 - (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
 - (b) Any real property in which public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
 - (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
 - (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
 - (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within twelve months prior to the time when the decision is made. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the commission to equal the same amount determined by the commission pursuant to subdivision (f) of Section 89503.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.”

I understand the awarding agency may provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

Initials

Part 4 – Additional Provisions

In addition to the above, I affirm the following:

- I fully understand and agree to immediately disqualify myself as soon as I am aware of a conflict of interest that may compromise my fair and impartial consideration of the proposals.
- I certify that I will hold in the strictest confidence all bids, proposals, correspondence, memoranda, working papers, or any other media which has any bearing on, or disclose any aspect of, any respondent or potential respondent to the RFQ/RFP above. I will not discuss the RFQ/RFP Activities with anyone not directly involved in the RFQ/RFP Activities until said activities are complete.
- I fully understand that it is unlawful for a person to utilize any organization name or auxiliary organization information, which is not a matter of public record, for personal gain.
- I fully understand that any violation of the above is a basis for disciplinary action, up to and including termination or referral to the appropriate authorities for further investigation.
- I am aware that the above listed Respondents and subconsultants/subcontractors have received an RFQ/RFP solicitation and that some (or all) of said parties have submitted proposals in response to the RFQ/RFP solicitation.

Initials

Part 5 - Signature

By signing below, I affirm I have reviewed the Non-Disclosure and Conflict of Interest Statement in its entirety and understand its contents. Further, I agree to conduct myself as if I were a County employee or public official and conform my actions with all the rules and regulations described herein.

Date: _____

Signed: _____

Name: _____

Title: _____

Dept./Local Agency: _____

Employer: _____

EXHIBIT D**PA&ED Calculation****PA&ED Work Initial Project Costs**

Rancho Mission Viejo Cost	Orange County Public Works Cost	Total Cost
\$1,963,759	\$525,576	\$2,489,335

M2 Matching Funds by each Party

OCTA's 25% Required Match Contribution = \$625,000

$$RMV \text{ Percentage} = \frac{\$1,963,759}{\$2,489,335} \times 100 = 78.9\%$$

$$RMV \text{ Portion} = 78.9\% \times \$625,000 = \$493,125.00$$

$$County \text{ Percentage} = \frac{\$525,576}{\$2,489,335} \times 100 = 21.1\%$$

$$County \text{ Portion} = 21.2\% \times \$625,000 = \$131,875.00$$

Table 1: PA&ED Fee Estimate

Design Firm	Rancho Mission Viejo	Orange County Public Works	Total Price
Huitt-Zollars	\$623,867	\$230,745	\$854,612
GMU	\$448,765	\$163,740	\$612,505
Parsons	\$289,327		\$289,327
Fehr & Peers	\$124,096	\$45,898.38	\$169,994
Pace	\$247,370		\$247,370
Psomas	\$27,168	\$10,048.31	\$37,216
Moran	\$96,214	\$35,586.00	\$131,800
Additional Work	\$106,953	\$39,558	\$146,511
Phase 1: Design Total:	\$1,963,759	\$525,576	\$2,489,335