

**CONTRACT MA-080-15011198
FOR
TRASH AND DEBRIS CAPTURE DEVICES**

THIS Contract MA-080-15011198 to provide Trash and Debris Capture Devices, (hereinafter referred to as "Contract") is made by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and Coanda, Inc., with a place of business at 3943 Irvine Blvd., #327, Irvine, CA 92602 (hereinafter referred to as "Contractor"), with County and Contractor sometimes individually referred to as ("Party") or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Trash and Debris Capture Devices under a Usage Contract; and,

WHEREAS, County solicited Trash and Debris Capture Devices as set forth herein, and Contractor has represented that it is qualified to provide Trash and Debris Capture Devices to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Trash and Debris Capture Devices to the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment B and incorporated herein;

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Trash and Debris Capture Devices, on an "as needed" basis under a usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract.
2. **Term:** The term of this Contract shall be effective March 10, 2015 and shall continue for five (5) years from that date, unless otherwise terminated as provided herein.
3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
4. **Conflict of Interest:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from making, receiving, providing or offering gifts, entertainment, payments,

loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

5. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the Contract. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
6. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County and District, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.
7. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
8. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - c. Terminate the Contract immediately without penalty.
9. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Supervisor and the County's project manager as specified in Article 12. "Notices" by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:
 - a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
 - c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County DPA or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.
10. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
11. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and Contractor personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
12. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Public Works/OC Engineering
Attn: Charles Busslinger

2301 N. Glassell St.
Orange, CA 92865
Phone: 714-955-0614
Email: charles.busslinger@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: Eddie Perkins, County DPA
300 N. Flower Street, Suite 838
Santa Ana, CA 92703
Phone: 714-667-9635
Email: eddie.perkins@ocpw.ocgov.com

Contractor: Coanda, Inc.
Attn: Steven E. Esmond
3943 Irvine Blvd., #327
Irvine, CA 92602
Phone: 714-389-2113
Email: sesmond@coanda.com

13. **Governing Law and Venue:** This Contract 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 Contract, 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
14. **Entire Contract:** This Contract, including attachments which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
15. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the Parties; no oral understanding or agreement not incorporated herein shall be binding on either of the Parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
16. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
17. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by

County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.

18. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
19. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article "46" below, and as more fully described in Article "46", harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
20. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article "46" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
21. **Assignment or Subcontracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or subcontracted by Contractor without the express written consent of County. Any attempt by Contractor to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
22. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
23. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.

24. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
25. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
26. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
27. **Performance:** **Contractor shall perform all work under this Contract, taking necessary steps and precautions** to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
28. **Insurance Provisions:** Prior to the provisions of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer: Minimum insurance company ratings as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com** shall be A- (Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk

Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

This policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of insurance:

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If Contractor's Professional Liability policy is a "claims made" policy, Contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interest's clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to:

County of Orange, OC Public Works
Procurement Services
300 N. Flower, Suite 838
Santa Ana, CA 92703

If the Contractor fails to provide the insurance certificates and endorsements within seven days of notification by OC Public Works Procurement Division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

29. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article "46" below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
30. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
31. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County..
32. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract

caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.

33. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
34. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article "46" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
35. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
36. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.
37. **Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.
38. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
39. **Headings:** The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.
40. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
41. **Calendar Days:** Any reference to the word "day" or "days" herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
42. **Attorneys Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, or

where any provision hereof is validly asserted as a defense, each Party shall bear its own attorney's fees, costs and expenses.

43. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
44. **Authority:** The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
45. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
46. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
47. **Usage:** No guarantee is given by the County to the Contractor regarding usage of this Contract. Usage figures, if provided, are approximate, based upon the last usage. The Contractor agrees to supply services and/or commodities requested, as needed by the County, at prices listed in the Contract, regardless of quantity requested. Orders may be placed against this contract at the convenience of the using agency/department.
48. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the

County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the contractor's records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's Project Manager.

49. **Prevailing Wage (Labor Code 1773):** Pursuant to the provisions of Section 1773 of the Labor Code of the state of California, the Contractor shall comply with the general prevailing wage rates of per diem wages and the general prevailing rates for holiday and overtime wages in this locality for each craft, classification, or type of worker needed to execute this contract. The rates are available from the Director of the Department of Industrial Relations at the following website: <http://www.dir.ca.gov/dlsr/DPreWageDetermination.htm>. The Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates. The Contractor shall comply with the provisions of Sections 1775 and 1813 of the Labor Code.
50. **Cooperative Agreement:** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any contract entered into with another agency or entity that is entered into as an extension of this Contract a contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this Contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.

The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date first above written.

COANDA, INC.*

a state of California corporation

By Cynthia L. Esmond

Print
Name Cynthia L. Esmond

Title President/CEO
Corporate Officer

Date 2-2-15

By Steven E. Esmond

Print
Name Steven E. Esmond

Title Vice President/CFO
Corporate Officer

Date 2-5-15

COUNTY OF ORANGE

a political subdivision of the State of California

By Eddie Perkins

Print
Name Eddie Perkins

Title Deputy Purchasing Agent

Date 3/10/15

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signator to bind the corporation.

ATTACHMENT A SCOPE OF WORK

I. BACKGROUND

The Orange County Transportation Authority's (OCTA) Environmental Cleanup Program (ECP) provides a two percent allocation of annual gross Measure M2 (M2) revenues to improve overall water quality in Orange County from transportation-related pollution. The ECP competitive funds can be used to implement water quality improvement projects addressing pollutants originating from or conveyed through transportation systems. These funds will assist Orange County cities and the County of Orange in meeting federal Clean Water Act standards for urban runoff through the purchase and installation of recognized structural best management practices (BMPs). Third parties such as public water and wastewater agencies, environmental advocacy organizations, and homeowners associations may also nominate projects through a municipality that is willing and able to take responsibility for carrying out and maintaining the project.

The ECP's Tier 1 Grant Program funds the purchase and installation of small to medium scale BMPs that capture and/or treat pollutants. Water quality projects, regardless of the type of technology implemented, are eligible for Tier 1 funding provided they have a verifiable benefit to water quality and fall within the maximum per project programming cap. The Tier 1 Grant Program is designed to supplement, not supplant existing transportation related water quality programs. Funds will be awarded to the most cost-effective projects that improve water quality. The complete Tier 1 funding guidelines can be viewed online at <http://www.octa.net/Measure-M/Environmental/Water-Quality/Overview/>.

A total of up to \$19.5 million is available for the Tier 1 program over a seven-year window of fiscal year 2011-12 through fiscal year 2017-18 with approximately \$2.8 million available for each call. Three calls for projects have been held to date for Tier 1. OCTA will reassess the call for projects cycle and funds available following the completion of fiscal year 2017-18.

II. DESCRIPTION OF PROJECT

In concert with the M2 Grant Program, this Scope of Work is designed to assemble a panel of Contractors to achieve economies of scale on a list of fixed unit prices for the purchase and installation of equipment and devices designed to remove litter, debris, and other water quality pollutants, herein referred to as "Stormwater Treatment Devices." Selected Contractors will be part of a Master Agreement between the County of Orange and OCTA that will allow municipalities to select from a listing of Contractors to provide, supply, fabricate, construct, deliver, and install Stormwater Treatment Devices. Agencies wishing to use the Master Agreement may purchase BMPs with M2 grant monies or any other funding source.

Accordingly, the goal of this RFP is to establish a Master Agreement that achieves strategic savings that would benefit the County and OCTA to act as the purchasing and contract administrators for M2 grant-eligible entities. *Proposals that do not provide a discounted price that offer economies of scale that are more than standard bulk pricing/installation listing will not be considered.* Proposals will not be accepted solely for equipment purchases or installations. Awarded ECP entities are not obligated to utilize the selected Contractors. Rather, this process is intended to provide a mechanism for reduced rates for equipment and its installation for Orange County municipalities, including those implementing projects with M2 funding. In addition, if a local agency is a party to this Master Agreement, a separate agreement, city council resolution, or other protocol may be necessary with the selected Contractor(s). The eligible qualifications are discussed below.

Each selected Contractor will be under contract with the County of Orange's OC Public Works Department and OCTA, but will take primary direction from local agency. Contractor's will directly invoice and be paid by the local agency.

III. ELIGIBILITY QUALIFICATIONS

Stormwater Treatment Devices must be capable of handling flows from a design storm of 0.2-inches/hour.

The hydrologic method to be used to calculate the flow associated with LID and water quality design storm flow is:

$$F_{\text{required}} = C \times I \times A$$

Where F_{required} = Flow capacity (cubic feet/sec); C = runoff coefficient (ranges from 0 to 1); I = 0.2 inches/hour; and A = tributary area (acres).

Treatment devices should also be able to operate in a hydraulic surcharge condition (defined as a condition that exceeds the design discharge) without releasing stored pollutants to the receiving water. Stormwater Treatment Devices which meet this definition and would be eligible for consideration are:

A. Hydrodynamic Separation and Gross Solids Removal Devices

Hydrodynamic separators are flow-through structures with a settling or separation unit to remove sediments and other pollutants and are widely used in stormwater treatment. No outside power source is required, because the energy of the flowing water allows the sediments to efficiently separate. Depending on the type of unit, this separation may be by means of centrifugal force or indirect filtration.

Gross Solids Removal Devices (either linear radial or inclined screen) are structural best management practices designed to remove trash, vegetative material, and other particles of relatively large, gross size from stormwater runoff.

B. Catch Basin Inserts

Catch basin inserts are designed to remove oil and grease, trash, debris, and sediment and improve the efficiency of catch basins. Some inserts are designed to drop directly into existing catch basins, while others may require retrofit construction. Several varieties of catch basin inserts exist for filtering runoff.

C. Automatic Retractable Screens

Automatic retractable screens are mounted inside a storm drain inlet and are designed to remain closed to capture debris during the dry season. During storm events, the screens retract, allowing heavy flows to enter the storm drain.

D. Cartridge Filter-type Control Devices

Cartridge filter-type controls typically consist of a series of vertical filters contained in a vault or catch basin that provide treatment through filtration and sedimentation.

E. Biological Treatment Devices

Bioretention devices include raingardens, swales, and filter strips; all use plants and substrate to detain and filter stormwater to reduce excessive runoff from roads and paved surfaces, and provide opportunities for enhancing natural landscape and biodiversity elements in the urban environment.

F. In-line Trash and Debris Capture Devices (Trash Booms and Trash Nets)

Trash booms and nets are designed to assist in the control, containment and recovery of floating trash, debris, timber, urban waste or aquatic plants. Typically built as floating structures, these devices are designed to control pollution along the surface of the water.

IV. REQUIREMENTS

- The devices shall be ready for shipment, delivery and/or installation within two months of receipt of orders.
- Warranty on parts and labor shall be for a minimum of 10 years.

V. EQUIPMENT DESIGN AND SPECIFICATIONS REPORT

All proposals shall include information pertaining to the proposed stormwater treatment device, including, but not limited to: product description, design, engineering, siting, operation, and maintenance. The following information should be summarized in an Equipment Design and Specification Report (Report) for each proposed device in the given order as listed below. *A submittal that does not address all aspects of the following evaluation criteria and/or cannot be readily located within the Report will be deemed incomplete. Please provide a basis for all estimated values.*

A. Description/Design/Engineering

- Describe how the equipment meets the intent of the OCTA Tier 1 Environmental Cleanup Program.
- A detailed description of the equipment and design elements, inclusive of sizing and geometry (include diagrams or CAD files).
- Materials used to construct the equipment (i.e., stainless steel, grade, plastic, etc.).
- Flow or range of flows for which equipment is rated (in cubic feet per second).
- Estimated design life of the equipment.

B. Performance Effectiveness

- Performance effectiveness in reducing trash, litter, debris and other transportation related pollutants (percent reduction) and associated transportation related water quality impacts (include independent analyses if any).
- Trash capture (meeting the definition of “full capture system”) and storage capacity of the equipment (if applicable).

- Overflow or bypass flow capacity of the equipment when full of trash and overflowing (i.e., storage capacity of the equipment when the one-year, one hour storm is no longer fully filtered) (if applicable).
- Maximum overflow or bypass flow capacity of the device (i.e., 10-year storm event) (if applicable).
- Device performance effectiveness in terms of pounds of trash removed per total project cost (see section V., F.)

C. Siting, Operation, and Maintenance

- Description of Contractor's installation process including consultation and review of device locations with municipal staff, traffic control during installation, and estimated time required to install each device.
- Description of the site-specific measurements and other information a municipality must provide the Contractor for determining the appropriate size and configuration of the device for that location (i.e. Eligible entities will need to determine how to select the right device for their desired location).
- A discussion of any regulatory permits that may be required for installation.
- Maintenance requirements (describe in detail how the device must be maintained and the approximate amount of time required for cleaning or maintenance. In addition, discuss whether the device has design capabilities for easy removal for cleaning or maintenance).
- Estimated life cycle costs for maintenance.
- Durability against external factors, such as street sweeping, car parking, etc.
- Availability of replacement parts and life expectancy.
- Warranty coverage and duration.
- Aesthetics and safety.
- Any key factors that makes the device unique among other products.

D. Contractor's Installation Background

- Ability of Contractor to have staff and/or subcontractor(s) to manufacture device and provide installation to eligible entities within Orange County.
- Experience, background, training, and number of staff and/or subcontractor(s) who will fabricate and/or install device.

E. Operating Locations, References, and Certifications

- A minimum of three locations, inclusive of address or nearest intersection, and photos of device in operation within southern California, preferably Orange County.
- Certifications obtained from public agencies and/or Regional Water Quality Control Boards.

VI. PROJECT MANAGEMENT, COORDINATION, AND ADMINISTRATION

A kick-off meeting with selected Contractors and the County and OCTA shall be held to discuss the contractual terms of the Master Agreement. This will establish management, coordination, and administration protocols, and address other issues, as necessary, to ensure that the contractual terms are met. The Contractor's Project Manager shall communicate and coordinate in a timely manner all work and progress with the County's Purchasing and Contract Services Manager and OCTA's ECP Manager.

A monthly progress report detailing the stormwater treatment device purchases and installation per local agency shall be prepared by the Contractor's Project Manager and submitted to the County's Purchasing and Contract Services Manager and OCTA's ECP Manager.

Progress reports shall include the ongoing status of work, significant accomplishments, problems encountered and anticipated with potential solutions, and work planned for the next month (by task and responsible person). In addition, the Contractor will be responsible for developing a Tier 1 Program spreadsheet to capture information from awarded ECP entities. The database will contain the following:

- Name of Entity
- Contact Name
- Contact Phone Number
- Contact E-mail Address
- Date of Installation
- Device inventory number, name, and type
- Size/capacity of device
- Location of installations
- Best estimate of catchment area
- Anticipated number of installations within the next month

The monthly progress report shall be received no later than the tenth (10th) calendar day of the month.

**ATTACHMENT B
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is a usage Contract between the County and Contractor for Trash and Debris Capture Devices, as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance requirements and taxes required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed prices specified herein unless authorized by amendment in accordance with Articles "15" and "30" of the County Contract Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this Contract. Payment shall be as follows:

Design Type	Width of Curb Inlet (feet)	Coanda Curb Inlet BMP
Design and Engineering Cost		\$100
Unit Cost of Equipment Fabrication	3	\$700
	4	\$880
	5	\$1,050
	6	\$1,250
	7	\$1,430
	8	\$1,600
	9	\$1,790
	10	\$1,950
	11	\$2,100
	12	\$2,300
Average Cost of Device Installation		\$700
Annual Operation and Maintenance Cost		\$100
Total Cost	3	\$1,500
	4	\$1,680
	5	\$1,850
	6	\$2,050
	7	\$2,230
	8	\$2,400
	9	\$2,590
	10	\$2,750
	11	\$2,900
	12	\$3,100

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of One-hundred eighty

(180) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.

- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
- V. CONTRACTOR'S EXPENSE:** The Contractor will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VI. PAYMENT TERMS:** Invoices are to be submitted in arrears, after services have been completed, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this contract and shall not be construed as acceptance of any part of the goods or services.

- VII. INVOICING INSTRUCTIONS:** The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:
- A. Contractor's name and address
 - B. Contractor's remittance address, if different from (A), above
 - C. Name of County agency/department
 - D. Delivery/service address
 - E. Contract number
 - F. Service Date
 - G. Description of Services
 - H. Total
 - I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works
Procurement Services
Attn: Accounts Payable
300 N. Flower St., 8th Fl.
Santa Ana, CA 92703

Contractor has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.