



September 27, 2023

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Request from the Measure M2 Taxpayer Oversight Committee to Obtain Independent Public Accounting Firm Services to Perform Measure M2 Compliance Audits on an Annual Basis Starting with Fiscal Year 2023

Overview

The Measure M2 Taxpayer Oversight Committee is requesting the Orange County Transportation Authority Board of Directors authorize an amendment to Agreement No. C-8-1911 with Crowe LLP, to provide a limited Measure M2 compliance audit for fiscal year 2023 and authorize annual Measure M2 compliance audits starting with fiscal year 2024.

Recommendations

- A. Approve a request of the Measure M2 Taxpayer Oversight Committee and authorize the Chief Executive Officer to execute Amendment No. 6 to Agreement No. C-8-1911 between the Orange County Transportation Authority and Crowe LLP, to provide a limited Measure M2 compliance audit for fiscal year 2023, on a time-and-expense basis, not to exceed \$125,000, and to extend the agreement through June 30, 2024. This limited compliance audit excludes testing at the local jurisdiction level. This will increase the maximum obligation of the agreement to a total contract value of \$1,647,505.
- B. Approve a request of the Measure M2 Taxpayer Oversight Committee for an annual Measure M2 compliance audit starting with fiscal year 2024. Contained in this request is the ability for the compliance audit to include testing at the local jurisdiction level.

- C. Approve an amendment to the Orange County Transportation Authority's Fiscal Year 2023-24 Budget, Executive Office Division, in the amount of \$965,000, to accommodate the amendment to Agreement No. C-8-1911, and to encumber additional funds for auditing services to be procured for the fiscal years ending 2024, 2025, and 2026. Additional auditing services are to be determined by the Orange County Transportation Authority Board of Directors upon request by the Taxpayer Oversight Committee and not linked to or directed by the Taxpayer Oversight Committee Audit Subcommittee Charter.

Background

On November 7, 2006, Orange County voters approved the Measure M2 (M2 Ordinance No. 3 (M2 Ordinance), the Renewed Measure M2 Transportation Investment Plan (M2 Plan), a one-half cent sales tax for transportation improvements that will fund projects, programs, and services through 2041. Measure M2 and its predecessor Measure M – approved by voters in 1990 – is administered by the Orange County Transportation Authority Board of Directors (Board) acting as the Orange County Local Transportation Authority (OCLTA).

As mandated by the M2 Ordinance, an independent M2 Taxpayer Oversight Committee (TOC) has been established and is responsible for overseeing that the Orange County Transportation Authority (OCTA) is in compliance with the M2 Ordinance. The TOC is made up of two members from each of the five supervisorial districts chosen through a random drawing following a screening process administered by the Orange County Grand Jurors' Association. In addition, per the M2 Ordinance, the Orange County Auditor-Controller acts as the Chairperson of the TOC.

As spelled out in the M2 Ordinance, the TOC is responsible for reviewing annual audits, along with other materials, and holding an annual public hearing to determine whether OCTA is proceeding in accordance with the M2 Plan. In addition, following the public hearing, the TOC Chairperson is required to annually certify whether revenues have been spent in compliance with the M2 Plan. The TOC has found OCTA has proceeded in accordance with the M2 Plan, and previous auditor-controllers have certified that revenues were spent in compliance with the M2 Plan for the past 32 years, since the inception of Measure M.

For fiscal year (FY) 2021-22, the TOC held the required annual public hearing at its meeting on June 13, 2023. The TOC voted 7-1 to affirm that OCTA was

proceeding in accordance with the M2 Plan. Newly elected Orange County Auditor-Controller, Andrew Hamilton, voted no. Mr. Hamilton subsequently provided a certification for FY 2021-22.

Following the vote, Mr. Hamilton requested an additional annual audit be performed beyond what has been provided to the TOC for the past 32 years in order to provide a certification in the future. The requested audit would be in addition to the financial statement audit of the OCLTA fund and agreed-upon procedures applied by the independent auditors to determine compliance with the annual OCLTA appropriations limit, the accuracy of the year-end M2 Revenue and Expenditure Report, and selected jurisdictions' compliance with Local Fair Share, Senior Mobility, and Senior Non-Emergency Medical Transportation Program funds. A summary of existing M2 Ordinance safeguard requirements and deliverables provided to the TOC for consideration in making its annual finding and for the auditor-controller to consider in making an annual certification can be found in Attachment A.

Discussion

The M2 Ordinance states that through OCTA, the TOC may contract for independent analysis or examination of issues within its purview. It should be noted that OCTA's Finance and Administration Committee serves as OCTA's audit committee and is therefore responsible for reviewing the scope of auditing services and making recommendations to the full OCTA Board.

At its September 12, 2023 meeting, the TOC voted to request that OCTA provide for a "Limited M2 Compliance Audit" for FY 2022-23, to be included as an amendment with Crowe LLP (Crowe), OCTA's existing independent third-party auditor. The TOC also voted to request OCTA provide a "Measure M2 Compliance Audit" for FY 2023-24 and annually thereafter.

The FY 2022-23 limited compliance audit would consist of an audit of OCTA's compliance with the M2 Ordinance, excluding testing at the local jurisdiction level. Starting with FY 2023-24, the TOC is requesting OCTA provide an independent audit of OCTA's compliance with the M Ordinance, including testing at the local jurisdiction level, and that it be consistent with the current TOC Audit Charter (Charter).

The Charter is a document developed by the TOC outlining responsibilities of its Audit Subcommittee and is not part of, nor required, by the M2 Ordinance. The Charter, for example, indicates that the Audit Subcommittee will review results

of annual audits. Recently, the TOC voted to include review of a compliance audit in its Charter.

Per OCTA legal counsel, requiring that future audits be consistent with the Charter implies that financial decisions that rest with the Board will be subject to the Charter going forward. To allow the Charter to control future audit scope would remove the Board's decision-making ability and place it with the TOC. This could result in unlimited audit scope and unlimited financial obligations outside of the Board's control. Accordingly, audit scope and financial control should reside with the Board in accordance with the M2 Ordinance.

The TOC's request for additional compliance audits is within its purview but upon OCTA's legal counsel review, linking those audits to the Charter would result in a drastic change to the ability of the Board to manage the M2 Plan as promised to voters in the M2 Ordinance.

Audit Services

Crowe, under Agreement No. C-8-1911, provides independent auditing services to OCTA and its related entities, including the OCLTA. Auditing services relating to the OCLTA and M2 compliance include an annual financial statement audit of the OCLTA fund and agreed-upon procedures services relating to the appropriation limit worksheet, the M2 Revenue and Expenditure Report, and local jurisdictions' funding under the Local Fair Share, Senior Mobility, and Senior Non-Emergency Medical Transportation programs. The limited compliance audit would be a companion product to the services already provided and would consist of an audit of OCTA's compliance with the M2 Ordinance, excluding testing at the local jurisdiction level. Costs of current auditing services related to the OCLTA are fixed at \$67,700. Crowe has agreed to provide the additional services on a time-and-expense basis and estimates additional cost of approximately \$108,000. To accommodate any potential overruns to the estimate, staff is requesting an amendment to the agreement with Crowe, for the additional time-and-expense services, with a maximum obligation up to \$125,000.

A new competitive procurement for all auditing services is expected to be released in October 2023, for a three-year period, starting with FY 2023-24, with one, two-year option term. If approved by the Board, the upcoming procurement will require firms to bid a firm-fixed price for this additional task. Crowe provided an estimate of approximately \$280,000 annually, to perform the compliance audit on an ongoing basis, including testing at the local jurisdiction level. Staff

expects that a more competitive price may be achieved when obtaining competitive bids for the entire suite of audit services.

Procurement Approach

This procurement was handled in accordance with OCTA's Board-approved procedures for professional and technical services, which conform to both federal and state laws. The original agreement was awarded on a competitive basis and includes a three-year initial term for \$888,300, and one, two-year option term. This agreement has been previously amended as shown in Attachment B.

The proposed Amendment No. 6 is to increase the maximum obligation by \$125,000, bringing the total contract value to \$1,647,505, for the provision of a limited M2 compliance audit. Crowe applied its standard hourly rates to estimate the cost for the additional services, which is deemed fair and reasonable as Crowe's standard hourly rates are consistent with the rates charged to other clients for similar services. Additionally, the proposed Amendment No. 6 extends the term of the agreement through June 30, 2024.

Fiscal Impact

Amend the Orange County Transportation Authority's Fiscal Year 2023-24 Budget, Executive Office Division, in the amount of \$965,000, to accommodate for provision of additional audit services. This amendment will be funded with local funds.

Summary

The TOC is requesting the Board provide resources for provision of M2 compliance audits on an annual basis, starting with the FY ended June 30, 2023.

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Obtain Independent Public Accounting Firm Services to Perform
Measure M2 Compliance Audits on an Annual Basis Starting with
Fiscal Year 2023**

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Attachments

- A. Existing Ordinance Safeguard Requirements and Additional Deliverables
- B. Crowe LLP Agreement No. C-8-1911 Fact Sheet

Authorized by:



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