

**CONTRACT MA-080-16011848  
FOR  
CONSTRUCTION MANAGEMENT SERVICES**

**THIS CONTRACT**, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-16011848, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

**BY AND BETWEEN**

County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY”

**AND**

**Kitchell CEM, Inc.**, a California Corporation, hereinafter referred to as “A/E”,

which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES”.

**RECITALS**

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in CONTRACT MA-080-16011848 - Scope of Work for Construction Management Services for Juvenile Hall-Multipurpose Rehabilitation Center, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

**WHEREAS**, A/E is a firm whose principals are, as required by law, registered by the State of California for the practice of specialized A/E services, per the attached Scope of Work.

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

**1. GENERAL**

**1.1 Retainer**

1.1.1 COUNTY does hereby retain A/E to perform the PROJECTS/SERVICES as required by this CONTRACT.

1.1.2 A professional, in the State of California, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A/E and accepted by COUNTY is Russell Fox, President and Wendy Cohen, Vice President. Said professionals shall directly or indirectly manage the work of duly registered employees of A/E in the performance of the PROJECT/SERVICES.

1.1.3 A/E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and, it is agreed that only the following firms or independent consultants/contractors are to be employed to provide these PROJECTS/SERVICES, and that the aggregate money value of their PROJECTS/SERVICES shall not constitute more than forty-nine percent (49%) of the total amount of PROJECTS/SERVICES required under this CONTRACT:

*a. N/A*

- 1.1.4 Consultants/contractors may be substituted and/or added by mutual agreement of A/E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as "DIRECTOR".
- 1.1.5 A/E's employment of independent consultants/contractors shall not relieve A/E from the performance of its own responsibilities pursuant to this CONTRACT. However, all consultants/contractors independently contracting with COUNTY shall be independently liable to COUNTY for the performance of the work pursuant to their agreements, and A/E shall have no liability for work by contractors independently contracting with COUNTY.

## **1.2. Projects/Services**

### 1.2.1 Description of PROJECTS/SERVICES

- a. PROJECT/SERVICES to be performed by A/E shall consist of the work as specified herein and as required in Attachment A. If in the event Attachment A shall be in conflict with any provision of this CONTRACT, the wording as set forth in Attachment A shall prevail.
- b. A/E shall be responsible for submitting all PROJECTS/SERVICES to COUNTY in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency by a registered employee referenced in and professional named in Section 1.1.2 herein; and, any PROJECTS/SERVICES not meeting this requirement will be returned to A/E prior to review by COUNTY.

### 1.2.2 Design Criteria and Standards

All PROJECTS/SERVICES shall be performed in accordance with instructions, criteria and standards set forth by the DIRECTOR.

### 1.2.3 Scheduling

- a. Concurrently with the work of the CONTRACT, A/E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from COUNTY, A/E shall submit to COUNTY, two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of PROJECTS/SERVICES assignments. A/E schedule shall include required COUNTY review period(s) set forth herein. An approved copy of the progress schedule will be returned to A/E.
- b. A/E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A/E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c. A/E shall meet "on an "as-needed" basis as determined by DIRECTOR to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d. Within two (2) days working days of each meeting, A/E shall prepare a brief

memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.

- e. A/E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY within the time frame indicated in Attachment A, except A/E shall not be responsible for any delay beyond the control of A/E.
- f. In the event A/E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A/E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

### 1.3 Assistance by COUNTY STAFF

1.3.1 COUNTY shall assign an appropriate staff member to work with A/E in connection with the work of this CONTRACT. Said staff member's duties will consist of the giving of advice and consultations, assisting A/E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A/E or COUNTY's staff warrant attention, and all other duties as may be described in Attachment A.

1.3.2 All of the above activities, however, shall be the primary responsibility of A/E to schedule, initiate and carry through to completion.

### 1.4 Term and Maximum Compensation

1.4.1 The term of this CONTRACT is for ~~five~~ six ~~(5)~~ (6) years commencing upon approval by the Board of Supervisors, with a maximum allowable compensation of ~~\$823,650~~ \$1,260,498 except as permitted in Paragraph 1.5 below.

**Amendment #1 (Renewal)**  
Removed "five" and (5) from the Term and Maximum Compensation

### 1.5 A/E Compensation and Extra Work

**Amendment #1 (Renewal)**  
Added "six" and (6) to the Term and Maximum Compensation

**Amendment #1 (Renewal)**  
Removed "\$823,650" to revise increased contract amount and added \$1,260,498

1.5.1 For the PROJECTS/SERVICES authorized under this CONTRACT, A/E shall be compensated in accordance with the following:

1.5.2 For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment D", attached hereto and incorporated herein by reference.

1.5.3 Where extra work is authorized for PROJECTS/SERVICES:

- a. The amount for Extra Work shall be determined using Attachment D. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond ~~\$100,000~~ \$200,000 must be approved by the Board. Increases in the CONTRACT

**Amendment #1 (Renewal)**  
Removed "\$100,000" and added \$200,000 per 2019 DCPM

Amendment #1  
(Renewal)  
Removed  
"\$100,000" and  
added \$200,000  
per 2019 DCPM

amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or ~~\$100,000~~ \$200,000, whichever is less.

- b. A/E's billing for the Extra Work shall include but not be limited to names of A/E's staff employed in the Extra Work, classification of employees and number of hours worked.

1.5.4 For partial completion of work of PROJECTS/SERVICES followed by default on part of A/E:

- a. For failure to complete and secure approval of the first required submittal, there shall be no compensation.
- b. For failure to complete and secure approval of other authorized phases, A/E shall, upon completion of PROJECTS/SERVICES by others, be entitled to receive compensation based on approved work of PROJECTS/SERVICES not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by COUNTY of the non-approved work; provided, however, that if the cost to COUNTY to complete the contract exceeds the amount specified herein, A/E shall be liable to COUNTY for such excess costs attributable to A/E's breach of the CONTRACT.

**2. LABOR**

**2.1 Non-Employment of COUNTY Personnel**

- 2.1.1 A/E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.
- 2.1.2 Nothing in this CONTRACT shall be deemed to make A/E, or any of A/E's employees or agents, agents or employees of the COUNTY. A/E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A/E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY the right to direct A/E as to the details of the performance of the work or to exercise a measure of control over A/E shall mean that A/E shall follow the desires of COUNTY only in the results of the work.

**2.2 Non-Discrimination**

- 2.2.1 In the performance of this CONTRACT, A/E agrees that it will comply with the requirements 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.
- 2.2.2 A/E acknowledges that a violation of this provision shall subject A/E to all the penalties imposed for a violation of the California Labor Code.

### **2.3 Employee Eligibility Verification**

2.3.1 A/E 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. A/E 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. A/E shall retain all such documentation for all covered employees for the period prescribed by the law.

### **2.4 Independent Contractor**

2.4.1 As referenced in Section 2.1.2 of this CONTRACT, A/E shall be considered an independent contractor.

2.4.2 Neither A/E, its employees, nor anyone working under A/E shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

### **2.5 Conflict of Interest Contractor Personnel**

2.5.1 The A/E 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 A/E; the A/E's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and PROJECTS/SERVICES hereunder.

2.5.2 A/E'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.

### **2.6 Labor Code Notice**

2.6.1 All A/E and subcontractors must comply with the requirements of California Labor Code 1770 et seq. if the work performed is considered a "public works" under California Labor Code 1720 et seq. A/E is encouraged to contact the California Department of Industrial Relations for clarification if the A/E is unsure if some or any of the work performed under this CONTRACT qualifies as "public works".

## **3. INSURANCE**

3.1.1 Prior to the provision of services under this CONTRACT, the A/E agrees to purchase all required insurance at A/E's expense, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this CONTRACT have been complied with. A/E agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the COUNTY during the entire term of this CONTRACT. The COUNTY reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all subcontractors performing work on behalf of A/E pursuant to this CONTRACT shall obtain insurance subject to the same terms and conditions as set forth herein for A/E.

- 3.1.2 A/E shall ensure that all subcontractors performing work on behalf of A/E pursuant to this CONTRACT shall be covered under A/E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A/E. A/E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from A/E under this CONTRACT. It is the obligation of A/E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A/E through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.
- 3.1.3 All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a zero (0) by the appropriate line of coverage. Any deductible or self-insured retention (SIR) 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 upon review of A/E's current audited financial report. A/E shall be responsible for reimbursement of any deductible to the insurer.
- 3.1.4 If the A/E fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier). If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.
2. The policy or policies of insurance maintained by the A/E 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 converge 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	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate

B. Required Coverage Forms

1. The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage as broad.
2. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. 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 and agents as Additional Insureds.
  - b. A primary non-contributing endorsement evidencing that A/E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents.
3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment
4. A/E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.
5. If A/E's Professional Liability policy is a "claims made" policy, A/E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A/E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

9. COUNTY expressly retains the right to require A/E 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.
10. COUNTY shall notify A/E in writing of changes in the insurance requirements. If A/E does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to A/E, and COUNTY shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit A/E'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.

D. Certificate Holder Information

The County of Orange has contracted with Ebix RCS to monitor insurance certificated and endorsements for compliance with the above requirements. Upon initial award of a Contract, the certificate(s) and endorsement(s) should be forwarded to the agency/department address listed on the solicitation. The County will forward these documents to Ebix RCS on your behalf. Ebix RCS may contact you to advise you of deficiencies and request corrected documents. Please cooperate with their request for information or corrections in order for the County to continue your Contract through the expiration date.

- 3.2.1 If A/E subcontracts portions of the architectural or engineering design PROJECTS/SERVICES to be performed under the terms of this CONTRACT, A/E shall obtain evidence that such subcontractors have purchased Professional Liability Insurance to the same limits as described in Paragraph 3 (unless modified by Attachment A) and containing the same clauses as the insurance required of A/E under the terms of this CONTRACT. Evidence of subcontractor's insurance shall be submitted to COUNTY upon request.

**4. INDEMNITY/COMPLIANCE**

- 4.1 **A/E 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 A/E 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.**
- 4.2 All PROJECTS/SERVICES submitted by A/E shall be complete and shall be carefully checked prior to submission. A/E understands that COUNTY's checking is discretionary, and A/E shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving A/E's PROJECTS/SERVICES, the PROJECTS/SERVICES will be returned to A/E for correction. Should COUNTY or others



discover errors or omissions in the work submitted by A/E after COUNTY's approval thereof, COUNTY's approval of A/E's PROJECTS/SERVICES shall not be used as a defense by A/E.

#### **4.3 Indemnification**

4.3.1 **A/E agrees to, indemnify, defend with counsel approved in writing by COUNTY, and hold COUNTY their elected and appointed officials, officers, employees, agents and those special districts and agencies which the 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 out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A/E. If judgment is entered against A/E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of A/E and COUNTY or COUNTY INDEMNITEES, A/E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A/E of any insurance requirements or obligations created elsewhere in this CONTRACT.**

#### **4.4 Bills and Liens**

4.4.1 A/E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A/E shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, A/E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.

#### **4.5 Compliance with Laws**

4.5.1 A/E represents and agrees that services to be provided under this CONTRACT shall fully comply, at A/E'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 PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted by COUNTY.

4.5.2 A/E acknowledges that COUNTY is relying on A/E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A/E 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.**

### **5. TERMINATION**

#### **5.1 Termination of Contract for Cause**

5.1.1 If A/E breaches any of the covenants or conditions of this CONTRACT, COUNTY shall have the right to terminate this CONTRACT upon ten (10) days written notice prior to the effective day of termination.

5.1.2 A/E shall have the opportunity to cure the alleged breach prior to termination.

5.1.3 In the event the alleged breach is not cured by A/E prior to termination, all work performed by A/E pursuant to this CONTRACT, which work has been reduced to plans or other documents, shall be made available to COUNTY.

## **5.2 Termination for Convenience**

5.2.1 Notwithstanding any other provision of the CONTRACT, COUNTY may at any time, and without cause, terminate this CONTRACT in whole or in part, upon not less than seven (7) calendar days' written notice to the A/E. Such termination shall be effected by delivery to the A/E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.

5.2.2 A/E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.

5.2.3 COUNTY shall pay the A/E for the Work completed prior to the effective date of the termination, and such payment shall be the A/E's sole remedy under this CONTRACT.

5.2.4 Under no circumstances will A/E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.

5.2.5 A/E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

## **5.3 Breach of Contract**

5.3.1 The failure of the A/E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY may:

- a. afford the A/E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
- b. discontinue payment to the A/E for and during the period in which the A/E is in breach; and
- c. offset those monies disallowed pursuant to the above, against any monies billed by the A/E but yet unpaid by the COUNTY.

## **5.4 Default**

5.4.1 In the event any equipment or service furnished by the A/E in the performance of this CONTRACT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or CONTRACT, whichever is greater, the

COUNTY may reject same, and it shall become the duty of the A/E to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A/E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A/E the difference between the price specified in this CONTRACT and the actual cost to the COUNTY.

- 5.4.2 In the event the A/E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this CONTRACT.
- 5.4.3 In the event of the cancellation of this CONTRACT, either in whole or in part, by reason of the default or breach by the A/E, any loss or damage sustained by the COUNTY in procuring any equipment or service which the A/E agreed to supply under this CONTRACT shall be borne and paid for by the A/E.
- 5.4.4 Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this CONTRACT.
- 5.4.5 Upon termination of the CONTRACT with A/E, the COUNTY may begin negotiations with a third-party A/E to provide goods and/or PROJECTS/SERVICES as specified in this CONTRACT.
- 5.4.6 The right of either party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

## **6. MISCELLANEOUS**

### **6.1 Laws to be Observed**

- 6.1.1 A/E is assumed to be familiar with and, at all times, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the PROJECTS/SERVICES.

### **6.2 Award of Construction Contract and Other Future Contracts**

- 6.2.1 A/E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and COUNTY policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the project(s) on which A/E performed architectural-engineering services under this A/E CONTRACT. A/E is hereby informed that these statutes and regulations could also prohibit the award to A/E of design or other contracts on future phases related to tasks performed by A/E under this CONTRACT. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this CONTRACT.

### 6.3 Amendments

6.3.1 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.

### 6.4 Successors and Assigns

6.4.1 The terms and provisions of this CONTRACT shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

### 6.5 Entirety

6.5.1 This CONTRACT contains the entire agreement between the parties with respect to the matters provided for herein.

### 6.6 Severability

6.6.1 If any part of this CONTRACT is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this CONTRACT shall be given effect to the fullest extent reasonably possible.

### 6.7 Binding Obligation

6.7.1 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.

### 6.8 Governing Law and Venue

6.8.1 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.

6.8.2 The PARTIES specifically agree that by soliciting and entering into and performing PROJECTS/SERVICES under this CONTRACT, the A/E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all PROJECTS/SERVICES under this CONTRACT is completed, and continuing until the expiration of any applicable limitations period.

### 6.9 ~~Child Support Enforcement Requirements~~ Intentionally Omitted

~~6.9.1 To comply with child support enforcement requirements of the COUNTY, within thirty (30) days of notification of selection for award of PROJECTS/SERVICES, A/E agrees to complete and furnish to DIRECTOR the information required in County of Orange Child Support~~

Amendment #1 (Renewal)  
Article 6.9 has been removed and  
Intentionally Omitted is added

~~Enforcement Contract Certification, hereinafter referred to as "Exhibit 1," attached hereto and incorporated herein by reference.~~

~~6.9.2 It is expressly understood that this data will be transmitted by COUNTY to governmental agencies charged with the establishment and enforcement of child support orders and for no other purposes.~~

Amendment #1 (Renewal)  
Article 6.9 has been removed and  
Intentionally Omitted is added

## 6.10 Ownership of Documents

6.10.1 All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A/E and/or anyone acting under the supervision of A/E pursuant to this CONTRACT, shall become the property of COUNTY upon preparation by A/E and may be used by the COUNTY as it may require without additional cost to the COUNTY.

6.10.2 COUNTY shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A/E shall be held harmless for release of such data as may be prepared or created under this CONTRACT to any third party. If A/E and/or anyone acting under the supervision of A/E should later desire to use any of the data prepared in connection with this CONTRACT, A/E shall first obtain the written approval of COUNTY.

## 6.11 Confidentiality

6.11.1 All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A/E in connection with the performance of this CONTRACT shall be held confidential by A/E and/or anyone acting under the supervision of A/E and shall not, without the prior written consent of COUNTY, be used for any purposes other than the performance of the PROJECTS/SERVICES described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the PROJECTS/SERVICES.

6.11.2 Nothing furnished to A/E which is generally known among counties in Southern California shall be deemed confidential.

6.11.3 A/E and/or anyone acting under the supervision of A/E shall not use COUNTY name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of COUNTY.

## 6.12 Publication

6.12.1 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 A/E and/or anyone acting under the supervision of A/E to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY 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.

6.12.2 The A/E 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. A/E must first obtain review and approval of said 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. A/E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

### **6.13 Records and Audit/Inspections**

- 6.13.1 A/E shall keep an accurate record of time expended by A/E and/or consultants employed by A/E in the performance of this CONTRACT.
- 6.13.2 Within ten (10) days of COUNTY's written request, A/E shall allow COUNTY or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this CONTRACT.
- 6.13.3 A/E shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the CONTRACT or until resolution of any claim or dispute between the PARTIES, whichever is later.
- 6.13.4 Should A/E cease to exist as a legal entity, records pertaining to this CONTRACT shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY.

### **6.14 Notices**

- 6.14.1 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 PROJECTS/SERVICES.
- 6.14.2 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 (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.
- 6.14.3 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's Project Manager: OC Public Works/OC Facilities – Design & Construction  
Attn: Will Dube  
1143 E. Fruit Street  
Santa Ana, CA 92701  
Phone: 714-667-4926  
Email: Will.Dube@ocpw.ocgov.com

**Amendment #1 (Renewal)**  
Removed previous buyer and  
OCPW address and added  
current buyer and new  
address

cc: OC Public Work/Procurement Services  
Attn: ~~Darline Ramirez, DPA~~ Christina Rojas, DPA  
~~300 North Flower Street, Suite 838~~ 601 N. Ross St  
Santa Ana, CA ~~92703~~ 92701  
Phone: ~~714-667-9622~~ 714-667-9765  
Email: ~~Darline.Ramirez@ocpw.ocgov.com~~  
Christina.Rojas@ocpw.ocgov.com

Contractor: Kitchell CEM, Inc.  
Attn: Wendy Cohen, Vice-President  
940 South Coast Drive #115  
Costa Mesa, CA 92626  
Phone: 619-259-5123  
Email: wcohen@kitchell.com

## 6.15 Attorney's Fees

6.15.1 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.

## 6.16 Interpretation

6.16.1 CONTRACT has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this CONTRACT.

6.16.2 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 having the opportunity to do so.

6.16.3 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.

6.16.4 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.

6.16.5 The provisions of this CONTRACT shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this CONTRACT.

## 6.17 Headings

6.17.1 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.

## **6.18 Acceptance**

6.18.1 Unless otherwise agreed to in writing by COUNTY acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of COUNTY.

## **6.19 Changes**

6.19.1 A/E shall make no changes in the work or perform any additional work without the COUNTY's specific written approval.

## **6.20 Assignment**

6.20.1 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 sub-contracted by A/E, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of COUNTY. Any attempt by A/E 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.

## **6.21 Changes in Ownership**

6.21.1 A/E agrees that if there is a change or transfer in ownership, including but not limited to merger by acquisition, of A/E's business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume A/E's duties and obligations contained in this CONTRACT and to obtain the written approval of COUNTY of such merger or acquisition, and complete the obligations and duties contained in the CONTRACT to the satisfaction of COUNTY.

## **6.22 Force Majeure**

6.22.1 A/E shall not be assessed with 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 A/E gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and A/E avails himself of any available remedies.

## **6.23 Calendar Days**

6.23.1 Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

## **6.24 Title to Data**

6.24.1 All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the A/E in the performance of this CONTRACT, will at all times remain the property of the COUNTY. Such data or information may not be used or copied for



direct or indirect use by the A/E after completion or termination of this CONTRACT without the express written consent of the COUNTY.

6.24.2 All materials, documents, data or information, including copies furnished by COUNTY and loaned to A/E for his temporary use, must be returned to the COUNTY at the end of this CONTRACT unless otherwise specified by the DIRECTOR.

### **6.25 Availability of Funds**

6.25.1 The obligation of COUNTY is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the COUNTY to expend or as involving the COUNTY in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

### **6.26 Contingency of Funding**

6.26.1 A/E acknowledges that funding or portions of funding for this CONTRACT may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to COUNTY. If such funding and/or appropriations are not forthcoming, or otherwise limited, COUNTY may immediately terminate or modify this CONTRACT without penalty.

### **6.27 Contract Construction**

6.27.1 The parties acknowledge that each party and its counsel have reviewed this CONTRACT and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this CONTRACT or any amendment or exhibits hereto.

### **6.28 Conflicts of Interest**

6.28.1 A/E or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this Contract, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700).

5.28.2 If subject to the Act, A/E shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this Agreement by County. Pursuant to Section 4.3 "Indemnification", A/E shall indemnify and hold harmless County for any and all claims for damages resulting from Contractor's violation of this Section.

### **6.29 Usage**

6.29.1 No guarantee is given by the COUNTY to A/E regarding usage of this CONTRACT. The A/E agrees to supply services requested, as needed by the County of Orange, at prices listed in the CONTRACT, regardless of quantity requested.

**6.30 Wage Rates**

**6.30.1** Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

**Amendment #1 (Renewal)**  
Paragraphs 6.30 & 6.30.1 added

**Amendment #1 (Renewal)**  
Paragraphs 6.31 & 6.31.1 added

**6.31 Apprenticeship Requirements**

**6.31.1** The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

**6.32 Registration of Contractor**

**6.32.1** All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

**Amendment #1 (Renewal)**  
Added paragraphs 6.32 & 6.32.1

**6.33 Payroll Records**

**6.33.1** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

**Amendment #1 (Renewal)**  
Added paragraphs 6.33 & 6.33.1

**6.33.2** The requirements of Labor Code Section 1776 provide, in summary:

**6.33.3** Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.

**Amendment #1 (Renewal)**  
Added paragraphs 6.33.2, 6.33.3, 6.33.4, 6.33.5

**6.33.4** Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

**6.33.5** The information contained in the payroll record is true and correct.

**6.33.6** The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

**6.33.7** The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.

**6.33.8** Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.

**6.33.9** Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

**Amendment #1  
(Renewal)**  
Added  
paragraphs  
6.33.6, 6.33.7,  
6.33.8, 6.33.9,  
6.33.10

**6.33.10** Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

**Amendment #1  
(Renewal)**  
Added  
paragraphs 6.34  
& 6.34.1

**6.34 Work Hour Penalty**

**6.34.1** Eight hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.

**6.35 Apprentices**

**6.35.1** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

**6.35.2** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

**6.35.3** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.

**6.35.4** The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

**Amendment #1  
(Renewal)**  
Added paragraphs  
6.35, 6.35.1,  
6.35.2, 6.35.3,  
6.35.4

IN WITNESS WHEREOF, the PARTIES hereto have executed this CONTRACT on the dates  
opposite their respective signatures:

**Kitchell CEM, Inc.,**  
a California Corporation

Date: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1<sup>st</sup> must be either  
Chairman of the Board, President or any Vice President.)*

Date: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

*(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief  
Financial Officer, or any Assistant Treasurer.)*

COUNTY OF ORANGE,  
a political subdivision of the State of California

Date: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

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

By: \_\_\_\_\_  
Deputy

## ATTACHMENT A SCOPE OF WORK

### I. INTRODUCTION

Orange County Public Works on behalf of the County of Orange Probation Department (COUNTY) is seeking from qualified firms to provide Professional Services for Construction Management (CM) of the SB81 Funding for Juvenile Hall Multipurpose Rehabilitation Center project (PROJECT). CM is defined as the person who has been designated by the COUNTY to provide special management services during the construction phase of a building project.

New construction will contain the following:

- This project consists of a 26,216 square foot new building, which will include the security needs of indoor exercise recreation area and program spaces.
- Occupancy Type (CBC Chapter 3): Group I-3 Condition 4
- Separation (CBC 508): Non-separated Occupancies per CBC 508.3
- Construction Type (CBC 602 & Table 601): Type I-B with Automated Fire Sprinkler System (Wet System) & Automatic Fire Alarm System.
- Actual Building Height: 31'-4", 1 Story (< Allowable Building Height, Complies)
- Actual Building Area: 28,168 SF (< Allowable Building Area 60,400, Complies)

### II. SCOPE OF CONSTRUCTION MANAGER'S BASIC SERVICES

#### A. **General**

1.1. The COUNTY has awarded an Architect/Engineer (A/E) design firm contract for the programing and design of the project prior to a CM starting work on this PROJECT.

1.2. The CM shall provide the Basic Services set forth herein Paragraphs B., Schematic Design Phase (Preliminary Drawings) through F., Construction Phase (Administration of Construction), both inclusive.

#### B. **Schematic Design Phase (Preliminary Drawings)**

2.1. Review and Consultation. The CM shall review and comment upon the A/E's further evaluation or refinement of the Approved Program of Requirements and the schedule and budget requirements and participate in consultations with governmental authorities having jurisdiction to approve design or construction of the PROJECT.

2.2. Recommendations and Costs. The CM shall provide recommendations on constructability, logistics, availability of materials and labor, time requirements for construction and factors related to the cost of the PROJECT including costs of alternative designs or materials, preliminary budgets and possible economies.

2.3. Preliminary Life Cycle Analysis. The CM shall review any alternative design concepts for a Preliminary Life Cycle Analysis prepared or to be prepared by the A/E and provide

recommendations thereon about the matters listed herein Subparagraph 2.2., Recommendations and Costs.

2.4. Schematic Design Documents. The CM shall receive and review copies of all Schematic Design Documents from the A/E with the A/E for Constructability, and provide to the COUNTY and the A/E comprehensive recommendations in accordance herein with Subparagraph 2.2., Recommendations and Costs.

2.5. Preliminary Cost and Schedule Estimates. Upon completion of the Schematic Design Phase for each phase of the PROJECT or appropriate portion thereof, the CM shall, with the assistance of the A/E, prepare and submit a Statement of Probable Construction Cost based on current area volume and other unit costs and a Preliminary Project Schedule, which shall incorporate the Design Schedule, for approval of the COUNTY. The CM and the A/E shall review any difference between the Construction Budget and the Statement of Probable Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The CM, the A/E and the COUNTY shall agree upon the means to eliminate any difference between the Construction Budget and the Statement of Probable Construction Cost, and the CM shall prepare a report describing the agreed upon means.

2.6. Approved Program of Requirements and Revisions. The CM shall assist the A/E to prepare, date and sign a revised Program of Requirements, and shall obtain the COUNTY's approval thereof and signature thereon and deliver a copy of the signed, approved revised Program of Requirements to the COUNTY (the "Approved Program of Requirements"). If any changes or adjustments to the Approved Program of Requirements are desired at any time after the Approved Program of Requirements has been delivered to the COUNTY, the CM shall assist the A/E to prepare a written amendment to the Approved Program of Requirements describing the changes or adjustments, and shall obtain the COUNTY's approval thereof and signature thereon and deliver the amendment to the COUNTY for review and consent. The Approved Program of Requirements, as amended from time to time, shall determine the Scope of the PROJECT.

### **C. Design Development Phase (Basic Drawings)**

3.1. Life Cycle Analysis. The CM shall review the Life Cycle Cost Analysis and provide recommendations thereon about the matters listed herein Subparagraph 2.2., Recommendations and Costs.

3.2. Design Development Documents. The CM shall receive and review copies of all Design Development Documents from the A/E with the A/E for Constructability, and provide to the COUNTY and the A/E comprehensive recommendations listed in accordance herein with Subparagraph 2.2., Recommendations and Costs.

3.3. Cost Estimate and Project Schedule. Upon completion of the Design Development Phase for each phase of the PROJECT or appropriate portion thereof, the CM, with the assistance of the A/E, shall prepare and submit a Detailed Estimate of Construction Cost and a Project Schedule indicating milestone completion dates for approval by the COUNTY. In establishing the Detailed Estimate of Construction Cost, the CM shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the A/E and the COUNTY the materials, equipment, component systems and types of construction to be included

in the Contract Documents. The CM and the A/E shall review any difference between the Construction Budget or the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The CM, the A/E and the COUNTY shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the CM shall prepare a report describing the agreed upon means. The CM and the A/E shall review any differences between the Preliminary Project Schedule and the Project Schedule, identify reasons for the differences and recommend whether the differences should be eliminated and, if necessary, means to eliminate the differences. If the CM, the A/E and the COUNTY agree to eliminate any such differences, the CM shall prepare a report describing the agreed upon means. The CM, the A/E and the COUNTY shall make any necessary amendments to the Approved Program of Requirements in accordance herein with Subparagraph 2.6., Approved Program of Requirements and Revisions.

**D. Construction Documents Phase (Construction Drawings and Specifications)**

4.1. Drawings and Specifications. The CM shall prepare the Scope of Work (current Construction Specification Institute) for inclusion by the A/E in the Drawings and Specifications with the approval of the COUNTY to facilitate the bidding and awarding of Contracts, taking into consideration factors including, but not limited to, time of performance, availability of labor, overlapping trade jurisdictions, logistical coordination, provision of training for start-up and maintenance, provision of operation and maintenance manuals and provisions for temporary facilities, and to eliminate areas of conflict and overlapping in the Work to be performed by the various Contractors. The CM shall receive all Drawings and Specifications from the A/E for Constructability review to ensure final documents are completed in compliance with applicable laws and ordinances; and that the documents are biddable before transmitting them to the COUNTY for approval with any recommendations thereon about the matters listed herein Subparagraph 2.2., Recommendations and Costs, and possible Alternates.

4.2. Revisions to Cost Estimate and Project Schedule. The CM shall inform the A/E and the COUNTY of the need for any changes in PROJECT requirements or in construction materials, systems or equipment as the Drawings and Specifications are developed and of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the COUNTY of any such changes or adjustments, the CM, with the assistance of the A/E, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such changes or adjustments.

4.3. Bidding Documents. The CM shall assist the COUNTY and the A/E in the preparation of documents necessary for bidding of Contracts by reviewing those documents and making recommendations about the division of Work and matters to be included in the Special Conditions.

4.4. Government Approvals. The CM shall cooperate with the A/E in submitting to the State of California and COUNTY such sets of the Drawings and Specifications as the State of California and COUNTY may require for approval, together with any necessary completed applications. The CM shall assist the A/E to secure any necessary National Pollution Discharge Elimination System Storm Water General Permit by submitting a notice of intent application form to the California Environmental Protection Agency at least forty-five (45) days prior to the commencement of the Construction Phase, to prepare and certify a storm water pollution



prevention plan to provide sediment and erosion controls at the PROJECT and to prepare and process the required notice of termination prior to Contract Completion. In addition, the CM shall cooperate with the A/E with filing of documents required for the approval of governmental authorities having jurisdiction over the PROJECT.

4.5. Additional Filings. Upon approval of the State of California and COUNTY of the Drawings and Specifications, the CM shall receive from the A/E one (1) set of corrected copies of the Drawings and Specifications bearing approval stamps of the State of California and COUNTY.

4.6. Special Items. The CM shall schedule any necessary meetings with the A/E and the COUNTY and provide recommendations and information to the A/E and the COUNTY for discussion at such meetings regarding the assignment of responsibilities for refuse removal and for safety precautions and programs; temporary PROJECT facilities and utilities, weather protection, fire protection and scaffolding; and equipment, materials and services for common use of Contractors, if any. The CM shall also review the Contract Documents to verify that the requirements for and assignment of responsibilities are included in the Contract Documents,

4.7. Labor Recommendations. The CM shall provide to the A/E and the COUNTY an analysis of the types and quantities of labor required for the PROJECT, review the availability of appropriate categories of labor required for all Contracts and shall make recommendations for actions designed to minimize adverse effects of labor shortages.

**E. Bidding or Negotiation Phase (Bidding Assistance and Recommendation)**

5.1. Obtaining Bids. The CM shall assist with the development of and make recommendations for bidding criteria, bidding schedules and bidding information and shall develop Bidders' interest in the PROJECT.

5.2. Pre-Qualification Conference. The CM, the A/E and the COUNTY, shall conduct a mandatory pre-qualification conference to establish a list of prospective General contractors who want to bid on the construction of the PROJECT. For this PROJECT, bidders are required to become pre-qualified to bid in accordance with the COUNTY Pre-Qualification Policy. Only contractors that become pre-qualified will be allowed to submit bids on the bid package.

5.3. Pre-Bid Conference. The CM, with the assistance of the A/E, shall conduct pre-bid conferences with prospective Bidders to familiarize Bidders with the Contract Documents, any special requirements of the Contract Documents and equal employment opportunity and prevailing wage requirements. The CM shall obtain responses from the A/E to all questions at pre-bid conferences and review Addenda prepared by the A/E to incorporate those responses. The CM shall prepare a record of the questions and answers discussed at the pre-bid conferences which shall be used by the A/E to prepare Addenda.

5.4. Bid Packages. The CM shall obtain all necessary prevailing wage determinations and shall include them in packages of the Contract Documents. The CM shall assemble the Contract Documents into appropriate packages and shall provide a sufficient quantity of Contract Documents to the COUNTY for distribution to prospective Bidders, the A/E, and other appropriate persons, including without limitation any applicable local or regional plan room organizations.

5.5. Bid Review. The CM, with the assistance of the A/E, shall review all bids received for responsiveness, participate in investigating the responsibility of Bidders and deliver a written recommendation of the CM and the A/E to the COUNTY about the award of, or rejection of, any bid or bids for each Contract for the PROJECT in accordance with applicable law. The CM shall deliver a copy of such recommendation to the COUNTY. In making the recommendation, the CM and the A/E shall evaluate all applicable Alternates referenced in the Contract Documents.

5.6. Bid Substitutions. Unapproved substitutions contained in the bid of any Bidder shall not be considered by the CM in recommending the award of any Contract.

5.7. Pre-Award Conferences. The CM, with the assistance of the A/E and the COUNTY, shall gather documentation for contract execution from apparent successful Bidders which may occur at pre-award conferences with such Bidders. Upon the failure of a Bidder to provide such documentation in a timely manner, the CM shall assist the COUNTY in considering whether an extension of time for submitting such documentation is appropriate.

5.8. Subcontractor and Material Supplier Review. The CM, based upon review of the Contract Documents, any past experience and reasonable inquiry, shall participate in investigating any Subcontractor or Material Supplier proposed by any Contractor and recommend approval or disapproval in accordance with the General Conditions.

5.9. Over Budget Options. If the Construction Budget is exceeded by the total of the lowest responsive and responsible bids and any legally negotiated prices for the PROJECT, the COUNTY may, at its option (1) approve in writing an increase in the Construction Budget; (2) authorize rebidding or renegotiation for some or all parts of the PROJECT within a reasonable time without an increase in the Construction Budget; (3) abandon the PROJECT, in whole or in part, and terminate this Agreement in accordance with Paragraph 5., Termination ; and/or (4) cooperate in the revision of the Scope of the Project as defined in Subparagraph 2.2., Recommendations and Costs, to reduce the actual cost of construction to the Construction Budget. If any of the scenarios above occur, the County will review and discuss with the CM to determine a mutually agreeable solution to all parties as it relates to project schedule, CM fee and the overall project budget.

5.10. Further Revisions to Cost Estimate and Project Schedule. If necessary, the CM shall inform the A/E and the COUNTY of the need for any adjustments in the Detailed Estimate of Construction Cost and the Project Schedule. Upon approval of the COUNTY of any such adjustments, the CM, with the assistance of the A/E, shall prepare a revised Detailed Estimate of Construction Cost or a revised Project Schedule, as applicable, incorporating such adjustments, and deliver to the COUNTY.

5.11. The A/E shall incorporate all Addenda into the Contract Documents after the bids are opened and prior to the effective date of the Notice to Proceed for distribution and use in the performance of Work.

## **F. Construction Phase (Administration of Construction)**

6.1. Duration; Extent, Access. The Construction Phase will commence with the award of a Contract for the PROJECT to a Contractor and will terminate upon Final Acceptance of the

Project by the COUNTY and State of California. The CM shall at all times have access to the PROJECT whenever any Work is in preparation or in progress.

6.2. General Duties. The CM shall provide administration of the Work, scheduling of Work and coordination of the Contractors and any other persons on the site of the PROJECT. The CM shall assist the prevailing wage coordinator for the State of California. Unless otherwise waived in writing by the COUNTY, the CM shall maintain a competent, full-time staff at the PROJECT site at all times that Work is in preparation or progress on the PROJECT and shall establish and implement on-site organization and authority so that the Work on the PROJECT may be accomplished timely and efficiently. The CM shall refer all questions for interpretation of the Contract Documents to the A/E and shall notify the A/E if the presence of the A/E on the PROJECT site is necessary. The CM's duties shall not, and shall not be deemed to, require the CM to undertake any of the Contractor's Responsibilities as set forth herein Subparagraph 6.17., Contractor Responsibilities.

6.3. Investigation of Conditions. The CM, with the assistance of the A/E, shall, as portions of the PROJECT become accessible and as reasonably necessary, investigate existing conditions and assist in determining the accuracy of information contained in the Contract Documents about existing conditions.

6.4. Inspections. The CM shall inspect the Work of each Contractor for Defective Work. If, through inspection or otherwise, the CM shall become aware of any Defective Work on the PROJECT, the CM shall report all Defective Work to the COUNTY and the A/E, together with recommendations for the correction thereof, the CM shall notify applicable Contractor(s) to correct such Defective Work in a manner approved by the A/E and endorsed by the COUNTY.

6.5. Progress and Records. The CM shall record the progress of the PROJECT and provide written reports to the COUNTY on a monthly basis unless otherwise agreed in writing. Such reports shall include, without limitation, information about variations between actual and budgeted or estimated costs and information on each Contractor's Work, as well as completion status on the entire PROJECT, showing percentages of completion. The CM shall require each Contractor to submit a safety program. The CM shall review those safety programs for the purpose of coordinating them with each other. The CM's responsibilities to coordinate the safety programs shall not require the CM to control the acts of Contractors, Subcontractors or any other persons not employees of the CM. The CM shall keep a log containing a daily record of weather, number of workers on site for each Contractor, identification of equipment, work accomplished, problems encountered and other similar relevant data. The CM shall provide for the maintenance at the PROJECT site, on a current basis, of records of all Contracts, Drawings, Specifications, Shop Drawings, Product Data, Samples, purchase orders, materials, equipment, maintenance and operating manuals and instructions, and other construction-related documents, including all revisions. The CM shall maintain records of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations to the extent certified by a qualified surveyor or professional engineer and any test results, make all such records available to the A/E, the Contractors, the COUNTY and State of California at all times and at the completion of the PROJECT deliver all such records to the COUNTY.

6.6. Accounting and Audit Requirements. The CM shall maintain and provide adequate supporting documentation for SB81 and Lease Revenue Bond Financing in accordance with generally accepted accounting principles (see *Accounting Standards and Procedures for*

Counties, State Controller's Office, Division of Local Government Fiscal Affairs) and in such detail as will permit the tracking of transactions from support documentations, to the accounting records, to the financial reports and billings.

6.7. Construction Schedule. The CM shall, with the cooperation of the Contractors, prepare the Construction Schedule in accordance with the General Conditions. The CM shall provide copies of the Construction Schedule and schedule of submittals to the A/E and the COUNTY, and incorporate the Construction Schedule and schedule of submittals into the Project Schedule so that the Project Schedule includes a Critical Path for the PROJECT and provides for each Scope of Work, including without limitation, phasing of construction, times for commencement and completion required of each Contractor, ordering and delivery of materials requiring long lead-time. The CM shall require each Contractor to provide records for any materials that require long lead-time and to certify to the CM that such materials have been ordered for timely delivery to the PROJECT. The CM shall review the sufficiency of the Contractors' workforce and the number and types of equipment assigned and provided by each Contractor to the PROJECT and shall make recommendations to the COUNTY about the adequacy of such workforce and equipment. The CM shall periodically inform the A/E and the COUNTY of the need to update the Project Schedule as required stating current conditions, including without limitation, to conform to the Construction Schedule, as updated from time to time. If such conditions indicate that milestone completion dates shown on the Project Schedule may not be met, the CM shall recommend corrective action to the A/E and the COUNTY and carry out the directions of the COUNTY so that the milestone completion dates may be met, unless the COUNTY agrees in writing to revise the milestone completion dates. Whenever the Project Schedule is revised or updated as provided in this Subparagraph, the CM, with the assistance of the A/E, shall prepare a revised Project Schedule, obtain the COUNTY's signature thereon and distribute as required.

6.7. Meetings. The CM shall schedule, conduct and participate in preconstruction, progress, quality control and special meetings with the A/E, the COUNTY, appropriate Consultants, the Contractors and any other parties involved in the PROJECT to discuss such matters as procedures, progress, problems and scheduling. The CM shall prepare and distribute minutes of all such meetings to the A/E, the COUNTY, the Contractors and any other parties involved. The CM shall initiate and coordinate partnering meetings with the A/E, the COUNTY, appropriate Consultants, the Contractors and other parties involved in the PROJECT.

6.8. Tests; Inspections. The CM shall advise and consult with the COUNTY during the Construction Phase as to the need for any special testing, inspections or approval of Work on the PROJECT.

6.9. Submittal Review. The CM shall receive, review for completeness and responsiveness the Contractors' submittals such as Shop Drawings, Product Data and Samples and shall deliver them to the A/E for review as provided in the General Conditions.

6.10. Bulletins; Change Orders. The CM shall recommend necessary or desirable changes in the PROJECT to the COUNTY and the A/E, review any Bulletins prepared by the A/E prior to their issuance, review Contractor proposals and submit recommendations thereon to the COUNTY and the A/E, assist in negotiating Change Orders in accordance with the General Conditions for authorization and execution by the COUNTY and the A/E.

6.11 Project Costs. The CM shall maintain PROJECT cost accounting records on Work performed by Contractors under unit costs, actual costs for labor and materials, or other appropriate basis and allow the COUNTY and State of California access to these records at all times.

6.12 Contractor Payments. Based upon the CM's review of the applicable Work and evaluations of the applicable Contractor's Applications for Payment, the CM shall review and recommend for approval, modification or rejection the amounts shown on such Applications as being due to the applicable Contractor in accordance with the Contract Documents. Each Application for Payment shall be signed by the CM and delivered to the A/E, then to the COUNTY, as applicable.

6.13 Partial Occupancy. The CM shall assist the COUNTY in determining dates of Partial Occupancy of the Work, if necessary, or portions thereof designated by the COUNTY and shall assist in obtaining any necessary temporary occupancy certificate or other certificate from any applicable government authority. The CM shall review any lists prepared by the A/E of incomplete or unsatisfactory Work and prepare schedules for the completion or correction of such Work.

6.14 Contract Closeout. Upon receipt of a Contractor's Punch List, the CM shall provide written notice to the COUNTY and the A/E that the Work is ready for Final Inspection, notify the Contractor of acceptance or rejection of the request for Final Inspection, conduct the Final Inspection with the assistance of the A/E, review an A/E's Punch List, if applicable, and prepare and process a Certificate of Contract Completion in accordance with the General Conditions. Upon Contract Completion, the CM shall receive, review for conformity with the requirements of the Contract Documents and transmit to the COUNTY any affidavits and turn over to the COUNTY any keys, manuals and the originals of any guarantees, warranties, releases, bonds and waivers. The CM shall transmit copies of guarantees, warranties, releases, bonds and waivers to the COUNTY. The CM shall assist the COUNTY with the checkout of utilities and of operations systems and equipment for readiness and shall assist the A/E, and the COUNTY, in the initial start-up/commissioning and testing of such equipment and systems.

6.15. Contractor Claims. The CM shall review claims from Contractors for additional compensation and equitable adjustment of compensation, and shall deliver a written recommendation to the COUNTY about each claim and attend dispute resolution meetings convened by the COUNTY related to each claim.

6.16. Record Drawings. The CM shall review the As-Built Drawings provided by the Contractors and verify that the As-Built Drawings, to the best of the CM's knowledge based upon the CM's observations during the progress of the PROJECT, detail the actual construction of the PROJECT. The CM shall transmit the verified As-Built Drawings to the A/E for the preparation of Record Drawings.

6.17. Contractor Responsibilities. The CM shall not be responsible for and shall not have control or charge of construction means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor's obligations under its Contract for the PROJECT or for safety precautions and programs in connection with the Work on the PROJECT. The CM shall not be responsible for or have control or charge over the acts or

omissions of Contractors or Subcontractors or any of their agents or employees, or any other persons performing any Work on the PROJECT.

### G. Security Requirements for Probation Facilities

#### 7.1. Background Checks

All CM personnel to be employed in performance of work under this Contract shall be subject to background checks and clearance prior to working in a youth detention facility per the Vendor Clearance Process detailed in Exhibit 1 of this solicitation.

Security clearances will be required for the selected CM firm's employees or agents entering or leaving the security perimeter of Juvenile Hall. CM employees will be required to complete the security clearance process prior to commencing any work. CM employees will be required to submit to fingerprinting and a personal background check. CM should allow five (5) weeks after filing of forms for Probation Department to process clearances.

### III. Special Inspection and Testing Services

Special Inspection and Testing Services as needed during the 18-month construction phase for the Multipurpose Rehabilitation Center at Juvenile Hall.

- 1.1. **Geotechnical Consultation.** Provide consultation as necessary to the design and construction team. Respond to RFI's and provide additional or alternative design recommendations as necessary.
- 1.2. **Compaction/Materials Inspection & Testing.** Provide inspector(s) (Grading/Deputy/ or Special Inspector) as required for the project during the grading and construction period. The inspector would be equipped with a vehicle and sufficient field testing equipment to provide in-place density test results in the field, as well as to collect samples for both earth and materials testing. A Deputy or Special Inspector will be provided as required for oversight and inspection during placement of steel reinforcement, concrete, masonry, welding, epoxy and framing.
- 1.3. **Geotechnical Observation.** Site visits by our engineer and/or geologist would be performed where site conditions, such as undocumented fill removal, warrant. In addition, geologist or engineer time would be incurred for site visits, meetings and miscellaneous consultation during the construction period.
- 1.4. **Laboratory Testing.** Perform materials testing and laboratory soil testing necessary for report preparation. The quantity and type of tests performed will depend upon the conditions encountered. The actual cost for laboratory tests would be invoiced in accordance with the enclosed *Schedule of Fees*. Where possible all tests will be performed in our in-house laboratory; however, an outside laboratory may also be utilized on occasion.
- 1.5. **Report Preparation and Submittal.** Upon completion of the site grading, foundation installation, and/or materials testing, reports will be prepared as required by the Building Official. The inspection and testing services required for this project may include, but may not be limited to the following:

- A. Soil Compaction Observation and Testing (including report preparation)
- B. Approval of Excavation Bottoms
- C. Soils Laboratory Testing

Amendment #1 (Renewal)  
Addition to Scope of Services

Amendment #1 (Renewal)  
Addition to Scope of Services

Amendment #1  
(Renewal)  
Addition to Scope  
of Services

- D. Inspection of Drain/Sub-Drain Pipes
- E. Inspection of Elevator Shaft/Piston Installation
- F. Concrete and Steel Laboratory Testing
- G. Drilled-In-Anchor Inspection and Testing
- H. Structural Steel Bolting Inspection
- I. Reinforced Concrete Inspection and Testing
- J. Structural Masonry Inspection and Testing
- K. Structural Steel Welding Inspection

**ATTACHMENT B**  
**RESPONSIBILITIES OF CONSTRUCTION MANAGER**

**I. CONSTRUCTION MANAGER'S SERVICES**

1.1. Scope of Services. The CM shall provide construction management services for the PROJECT in accordance with the terms of this Contract. The CM shall provide such services in accordance with the applicable State of California rules and regulations, any applicable federal and local statutes, ordinances, rules and regulations.

1.2. Construction Budget. The total amount available for the construction of the PROJECT is \$17,500,000 Dollars (the "Construction Budget"). The COUNTY shall provide written notice to the CM of any change in the Construction Budget. It is recognized that the CM and the COUNTY do not have control over the cost of labor, materials or equipment, over Contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the CM cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of cost or evaluation prepared by or agreed to by the CM.

1.3. Timeliness; Standard of Care. The CM shall perform the CM's services in accordance with professional standards of skill, care and diligence in a timely manner in accordance with the Project Schedule and so that the PROJECT shall be completed as expeditiously and economically as possible within the Construction Budget and in the best interests of the COUNTY.

1.4. Management Schedule. Within thirty (30) days after the execution hereof, the CM shall submit for approval by the COUNTY a Management Schedule for the performance of the CM's services which shall include allowances for reasonable periods of time required for the review and approval of items by the COUNTY and for approvals of governmental authorities having jurisdiction over the PROJECT. Unless the COUNTY notifies the CM of objections to the Management Schedule within thirty (30) days of receipt thereof, the COUNTY shall be deemed to have approved the Management Schedule. The Management Schedule, when approved by the COUNTY, shall not be exceeded by the Construction Manager without notice and adjustment of the Management Schedule approved by the COUNTY. The CM shall incorporate the Management Schedule into the Project Schedule, and, upon receipt of the Design Schedule from the A/E, the CM shall incorporate the Design Schedule into the Project Schedule with the cooperation of the A/E. Once the Management Schedule is incorporated into the Project Schedule, the Management Schedule shall not be exceeded unless the Project Schedule is exceeded through no fault of the CM or with the approval of the COUNTY after notice.

1.5. Personnel. The identities of the principal person(s) and the extent of their participation in, performing the CM's services as set forth in the CM's Proposal shall not be altered without the written consent of the COUNTY.

1.6. Non-Discrimination. The CM represents that the CM is in compliance with all applicable equal employment opportunity requirements under all applicable local, state or federal laws.



1.7. Subcontractor(s). The CM may provide services through one or more Subcontractors employed by the CM (the “Subcontractors”); provided, however, the CM shall remain responsible to the COUNTY for all duties and obligations of the CM under this CONTRACT. Unless waived or otherwise modified in writing by the COUNTY upon written request of the CM, no Subcontractor shall be retained upon terms inconsistent with this CONTRACT. The identity of any Subcontractor, and the extent of such Subcontractor’s participation in, performing the CM’s services as set forth in the CM’s Proposal shall not be altered without the consent of the COUNTY.

1.8. Ethics. The CM represents that it is familiar with all applicable ethics law requirements, including without limitation and certifies that it is in compliance with such requirements.

1.9. Limitation of Authority. The CM shall not have any authority to bind the COUNTY for the payment of any costs or expenses without the express written approval of the COUNTY as applicable. The CM shall have authority to act on behalf of the COUNTY only to the extent provided herein or in the General Conditions of Contract for Construction. In the event of an emergency affecting the safety of persons, the PROJECT or adjacent property, the CM, without special instruction or authorization, shall act reasonably to prevent or minimize any threatened damage, injury or loss. The CM’s authority to act on behalf of the COUNTY shall be modified only by an amendment in accordance with Contract Subparagraph 6.3, Amendments.

1.10. Approval or Disapproval of Construction Manager’s Services. The COUNTY shall have the right to reasonably disapprove, by written notice stating the reasons for the disapproval, any portion of the CM’s services for the PROJECT. In the event that any of the CM’s services are disapproved by the COUNTY, the CM shall proceed, when requested by the COUNTY, with revisions to the services to attempt to satisfy the objections. The CM acknowledges that any review or approval by the COUNTY of any services performed by the CM pursuant to this Contract shall not relieve the Construction Manager of the CM’s responsibility to properly and timely perform such services.

ATTACHMENT C  
 STAFFING PLAN

1. CONSTRUCTION MANAGEMENT (CM) FIRM KEY PERSONNEL

Name	Classification/ Designation	Licenses/Certifications (include license/ certification number)	Years of Experience	Length of Time with Firm
Dave Kirn	Project Executive	LEED Accredited Professional; Designated Design-Build Professional	40 years	28 years
Canh Tran	Sr. Project Manager	Civil Engineer, CA - #61956; Certified Construction Manager; LEED Accredited Professional; Designated Design-Build Professional; Qualified SWPPP Developer/Practitioner, CA - #23483	18 years	9 years
Eric Nguyen	Project Engineer	None	9 years	1 year
Wendy Cohen	Principal-in-Charge	None	21 years	3 years
Kevin Carruth	SB 81 Liaison	None	8 years	42 years
Brenda Epperly	Correctional Healthcare Specialist	Registered Nurse, #N432129; Certified Correctional Health Professional, NCCHC	40 years	3 years
Gordon Rogers	Engineering & Architectural Services Manager	Architect, CA - #22679; LEED Accredited Professional Building Design + Construction; Certified Building Commissioning Professional	34 years	6 years
Heather Brown	Commissioning Manager	Mechanical Engineer, CA -#M31667; Commissioning Process Management Professional; LEED Accredited Professional	18 years	10 years
Tim Prechel	Estimating Manager	None	33 years	25 years
John Armstrong	Scheduler	None	8 years	1 year
Sean Bondar	Facility Maintenance Manager	Certified Facility Manager	16 years	5 years

CM understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of CM’s key personnel in any given category or classification shall be allowed only with prior written approval of the County Project Manager. ***Note: The written approval of substituted CM Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.***

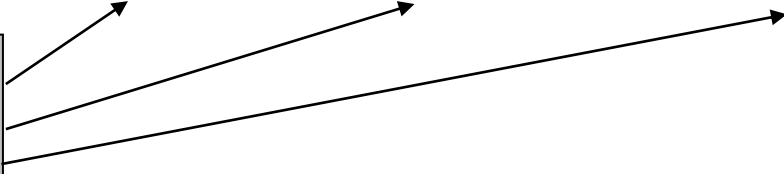
CM may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County Project Manager written approval. ***Note: The written approval of additional CM Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works.*** County reserves the right to have any CM personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any personnel.

2. SUBCONTRACTOR(S) (IF APPLICABLE)

Listed below are subcontractor(s) anticipated by CM to perform services specified in Attachment A and Attachment B. Substitution or addition of CM subcontractors in any given project function shall be allowed only with prior written approval of County’s Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
Geocon West, Inc. 15520 Rockfield Boulevard, Suite J Irvine, CA 92618	<u>949-491-6570</u>	<u>Geotechnical, Deputy, Special Inspection and Testing Services</u>

Amendment #1  
(Renewal)  
Subconsultant  
Information  
Added



**ATTACHMENT D**  
**COMPENSATION OF CONSTRUCTION MANAGER**

**I. BASIS OF COMPENSATION**

1.1. Basic Fee. For Basic Services provided by the CM and all Consultants, the COUNTY shall pay the CM a Basic Fee in accordance with Paragraph II Method and Terms of Payment, hereof in the amount of seven hundred eighty-three thousand ten Dollars (\$783,010). A change in the Basic Fee may be made only by an amendment in accordance with Contract Subparagraph 6.3, Amendments.

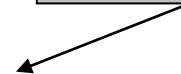
1.2. Extent of Basic Fee. The CM’s Basic Fee includes all compensation for Basic Services, including without limitation, compensation for all personnel of the CM and any Consultants, operating expenses of the CM’s principal office and branch offices, any part of the CM’s capital expenses, including interest on the CM’s capital employed for the PROJECT, overhead or expenses of any kind, except Reimbursable Expenses, any costs incurred due to the negligence of the CM, the CM’s general advertising, federal, state or local income, sales or other taxes, state franchise taxes and qualification fees, and membership in trade, business or professional organizations.

1.3. Total Compensation. The total compensation of the CM and all Consultants shall consist of the Basic Fee and Reimbursable Expenses.

<b>Role</b>	<b>Hourly Rate</b>
Project Executive	\$195
Sr. Project Manager	\$190
Estimating Manager	\$175
Scheduling Manager	\$150
Project Engineer/Doc. Ctris. Mgr.	\$115
Principal-in-Charge	\$200
SB 81 Liaison	\$220
Correctional Healthcare Specialist	\$220
QA/QC Manager	\$165
Eng. & Arch. Services Manager	\$185
Architect	\$150
Mechanical Engineer	\$150
Electrical Engineer	\$150
Civil Engineer	\$150
Structural Engineer	\$150
Commissioning Specialist	\$150
BIM Coordinator	\$150
Hazmat Investigation Manager	\$165
Facility Maintenance Manager	\$150
FF&E Procurement Manager	\$150
FOM/Admin. Asst.	\$75

<b>Geocon West, Inc. - Subconsultant</b>	
Senior Engineer (Project Management)	\$160
*Soils Inspector	\$120
*Special Inspector (Concrete, Masonry, Metal)	\$120
*Special Inspector (Other-Welding Bolting, Framing, Epoxy, etc.)	\$120
Sample Pickup (Concrete, Masonry)	\$85
Clerical/Report Distribution (Concrete, Masonry, Metal)	\$85
Dispatch	\$80
Clerical/Report Distribution	\$80
Engineering Assistant/Lab Technician	\$90
Word Processor/Non-Technical Assistant/Draftsman/Dispatcher	\$80
*Engineering Field Technician (Earthwork/Compaction Testing/Backfill)	\$75
*Engineering Inspector (Bottom Approval/Shoring/Foundations/Piles)	\$95
*LA City Deputy Grading Inspector (Bottom Approval/Shoring/Foundations/Piles)	\$105
Staff Engineer/Geologist	\$105
Project Engineer/Geologist	\$130
Senior Engineer/Geologist	\$160
Associate Engineer/Geologist	\$190
Principal Engineer/Geologist/Litigation Support	\$250
Deposition or Court Appearance	\$400
Overtime/Saturday Rate/Night Rate (10pm-6am w/ 8-Hr minimum per call out)	1.5 x Regular Hourly Rate
Sunday and Holiday Rate	2 x Regular Hourly Rate
<b>*Denotes Prevailing Wage</b>	

**Amendment #1 (Renewal)**  
 Subconsultant Fee Schedule added



**Amendment #1 (Renewal)**  
 Added for construction-related work



\*\*COUNTY will not pay A-E more than the listed amount for Sub-Contractor work, regardless of any agreement between the A-E and their Sub-Contractor. Sub-Contractor rates are listed for convenience only.

\*\*\*Construction-related work performed under A-E service contracts may meet the definition of “public work” under Labor Code § 1720 et seq. “Construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. See, Labor Code § 1720. Contracts for A-E services shall mandate that prevailing wages be paid where mandated by law.

**II. METHOD AND TERMS OF PAYMENT**

2.1. **Basic Fee.** Payment of the Basic Fee shall be made monthly in proportion to services performed in each Phase in accordance with the following percentages of the Basic Fee and estimated twenty-six months phased timeline as stated herein:

Phase	Billing Percentage (%)	Fee Billed	Notes
Schematic Design Phase	1%	\$ 7,830	Includes P/T PM, estimate, constructability on SD's and develop high level baseline schedule
Design Development Phase	10%	\$ 78,301	Includes P/T PM, estimate & constructability validation on DD drawings
Construction Documents Phase	17%	\$ 133,112	Includes P/T PM, estimate & constructability validation on CD drawings
Bidding/Negotiation Phase	7%	\$ 54,811	Project Manager
Construction Phase	60%	\$ 469,806	Project Manager and P/T Engineer
Project Closeout	5%	\$ 39,151	Project Manager and P/T Engineer
Total Fee		\$ 783,010	

Any balance of the final 5% of the Basic Fee shall be paid upon Project Closeout as follows: one-half after review of all Punch-Lists by the CM and one-half after completion of all Punch-List items to the reasonable satisfaction of the County and delivery of Project Record Submittals to the A/E. The County may waive the withholding of any final balance or part thereof, if CM has performed to the reasonable satisfaction of the County. The Basic Fee, including without limitation the final 5% thereof, shall be subject to all setoffs in favor of the County for claims against the CM. Payments for Basic Services shall be based upon a properly completed CM's application for payment in accordance with Contract Subparagraph 1.4, Term and Maximum Compensation.

2.2. Reimbursable Expenses. As set forth in Paragraph III Reimbursable Expenses, shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Construction application for payment. Reimbursable items shall be paid on actual costs supported by invoices.

2.3. Payments by Construction Manager. Within ten (10) business days of receipt of payment made pursuant to this Contract, the Construction Manager shall pay all portions thereof due to Subcontractors and to persons who provided items the expenses of which are Reimbursable Expenses.

2.4. Compensation for Extension of Project Time. If the CM notifies the County not less than thirty (30) days prior to the time for completion of the PROJECT set by the Project Schedule approved pursuant to Attachment A Subparagraph 3.3. Cost Estimate and Project Schedule, that such time for completion is reasonably expected to be exceeded by more than thirty (30) days through no fault of the CM, the compensation, if any, for Basic Services to be rendered and Reimbursable Expenses to be incurred during such extended period shall be negotiated to the mutual reasonable satisfaction of the County and the CM. If, as a result of such negotiation, the County agree that the CM shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Contract Subparagraph 6.3, Amendments, before the CM

renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the County.

2.5. Compensation for Change of Scope of Project. The Scope of the Project is defined by the Attachment A Approved Program of Requirements as provided in Subparagraph 2.6. If the County materially changes the Scope of the Project after the Schematic Design Phase at any time after the execution of this Agreement through no fault of the CM, any necessary adjustment in the compensation of the CM shall be negotiated to the mutual reasonable satisfaction of the County and the CM. If, as the result of such negotiation, the County agrees that the CM shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Contract Subparagraph 6.3, Amendments, before the CM renders any services made necessary by such change in the Scope of the Project, unless otherwise agreed in writing by the County.

**III. REIMBURSABLE EXPENSES**

3.1. Definition. Reimbursable Expenses means actual expenditures incurred by the CM or its Consultants in the interest of the PROJECT approved by the County for: (1) transportation and living when traveling in connection with the PROJECT, if approved in advance by the COUNTY; (2) record storage, if approved in advance by the County; (3) the PROJECT field office and the equipping and furnishing thereof, including without limitation utilities if not provided by the Contractors; and (4) postage, telephone, overnight courier service, photographs, copying expenses and expenses incurred in the event of an emergency. Reimbursable Expenses shall not include expenditures or expenses for commuting to or from the PROJECT or for purchasing or renting of residences for personnel of the CM or any Subcontractors or for moving such personnel to residences. No other expenditures shall be Reimbursable Expenses unless so provided in an amendment in accordance with Contract Subparagraph 6.3, Amendments.

3.2. Limits on Tangible Property. The determination of whether to purchase or rent tangible property as Reimbursable Expenses must be approved in advance by the County. The CM shall maintain a current inventory of all such property and any such property which has been purchased and has a useful life after Project Closeout shall be delivered to the County.

3.3. Limit. The CM shall use all reasonable means to minimize Reimbursable Expenses. In all events, total Reimbursable Expenses shall not exceed forty thousand six hundred forty Dollars (\$40,640), without the written approval of the County and an amendment in accordance with Contract Subparagraph 6.3, Amendments. Reimbursable Expenses for the following items shall not exceed the respective amounts unless approved by the County:

<b>Reimbursable Expense Description</b>	<b>Monthly Cost</b>	<b># of Months</b>	<b>Extended Cost</b>	<b>Notes</b>
Cell Phone	\$150	28	\$4,200	
Computer	\$150	28	\$4,200	
Reproduction Costs (Plans, etc.)	\$250	28	\$7,000	Plans, shop drawings, etc.
Postage/Mailing	\$100	28	\$2,800	USPS, FedEx, Cal Over

Office Equipment (Printer/Copier)	\$400	16	\$6,400	For Construction Field Office
Internet Service	\$200	16	\$3,200	For Construction Field Office
Office Supplies	\$100	16	\$1,600	Paper, toner, etc.
Water	\$40	16	\$640	Water Service
Office Furniture	\$5,000	1	\$5,000	For Construction Field Office
Other	\$200	28	\$5,600	All Other Expenses
Total Reimbursables			\$40,640	(\$1,451 per month)



Exhibit 1  
VENDOR CLEARANCE PROCESS



STEVEN J. SENTMAN  
CHIEF PROBATION OFFICER

TELEPHONE: (714) 645-7000

1025 N. MAIN STREET, 5<sup>TH</sup> FLOOR  
SANTA ANA, CA 92701

MAILING ADDRESS:  
P.O. BOX 10050  
SANTA ANA, CA 92711-0050

1535 EAST ORANGEWOOD AVE.  
ANAHEIM, CA. 92805

**VENDOR CLEARANCE PROCESS**

All individuals who perform work in Probation Department facilities or on Probation Department property are required to undergo and pass a security clearance including being fingerprinted.

**NOTE: A number of situations will prevent you from clearing this process, including, but not limited to: current or recent grant of probation or parole; active warrant for your arrest; or pending criminal matters, use of false or altered documents, or dishonesty when providing requested information.**

**TO BEGIN THE CLEARANCE PROCESS YOU MUST:**

1. Call and make an appointment with:
  - **Margarita Perez (714) 937- 4714**
    - ▶ If making appointment for a person other than yourself:  
**Please have full name of person available before calling to make appointment.**
2. On the day of your appointment, report to street level reception at the Orangewood Office. Ask for Margarita Perez.
3. Bring the following **required** identification with you to your appointment:
  - Government issued picture identification (i.e. driver's license)
  - Social Security Card (a photocopy is not acceptable)
  - Documents that establish employment authorization (whichever applies)
    - If born in the U.S., bring birth certificate
    - If you became an American Citizen, bring U.S. Certificate of Naturalization
    - If you are **not** an American Citizen, bring U.S. Permanent Resident Card (Green Card) or Employment Authorization Document (Work Permit)

***\*Please bring your employer's business card to the appointment.***

***(Note: All documents need to be original and valid. Only the documents listed above will be accepted. If you do not have the required identification, you will not be permitted to proceed with the clearance process.)***

**Do not contact the Probation Department for clearance results.** The results will be forwarded to the Probation Department's project coordinator and you will be notified.

4/13 mp