

**C O N T R A C T**

**THIS CONTRACT**, hereinafter referred to as “Contract” for purposes of identification hereby numbered MA-080-23010812, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_ is

**BY AND BETWEEN**

County of Orange, a political subdivision of the State of California and the Orange County Flood Control District, a body corporate and politic, hereinafter referred to as “County”

**AND**

Dokken Engineering, 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 MA-080-23010812 Scope of Work for Consultant Services for Trabuco Canyon Road Bridge (Bridge No. 55C-0008) and Trabuco Creek Road Improvement Project hereinafter referred to as “Attachment A”; 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-E has offered, and County has accepted, the professional services of Tim Osterkamp, P.E. and A-E shall assign him/her to the Projects/Services.

**1.1.3.** A-E may employ special consultants/contractors for the accomplishment of the Projects/Services specified; and only the firms or independent consultants/contractors identified in Attachment C, attached hereto and incorporated herein by reference, may be employed by A-E to provide these Projects/Services.

**1.1.4.** Consultants/contractors may be substituted and/or added by mutual Contract 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 consultants/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, attached hereto and incorporated herein by reference. 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 the registered professional named in Section 1.1.2 herein. 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 County or at least once every four (4) weeks with County 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 five (5) 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 shall be the primary responsibility of A-E to schedule, initiate and carry through to completion.

### **1.4. Performance Period (LAPM Article IV) and Maximum Compensation**

**1.4.1.** This Contract shall go into effect upon Board of Supervisors approval, and A-E shall commence work after notification to proceed by County's Contract Administrator. The Contract shall end after the seventh year, unless extended by contract amendment.

**1.4.2.** A-E is advised that any recommendation for Contract award is not binding on County until the Contract is fully executed and approved by County.

**1.4.3. THE MAXIMUM ALLOWABLE COMPENSATION FOR THIS CONTRACT IS FOUR MILLION, TWO HUNDRED THOUSAND DOLLARS (\$4,200,000).**

- a. The work to be performed under this Contract is described in Attachment A, Statement of Work and Attachment B, Cost/Compensation. The approved A-E's Cost Proposal, dated December 9, 2022, is attached hereto (Exhibit No. 3 and Exhibit No. 4) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this Contract, this Contract shall take precedence.

### **1.5. A-E Compensation and Extra Work**

**1.5.1.** For the Projects/Services authorized under this Contract, A-E shall be compensated in accordance with the following:

- 1.5.1.1.** For completion and approval of all Projects/Services where "Extra Work" (defined as any change in approved portions of the Project/Services ordered in writing by Director which 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 B," attached hereto and incorporated herein by reference.

**1.5.1.2.** Where Extra Work is authorized for Projects/Services:

- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be 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 \$200,000 must be approved by the Board. Increases in the Contract 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 \$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 staff and number of hours worked.

**1.5.1.3.** 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. If, however, 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**

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, including 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 appear to influence individuals to act contrary to the best interests of the County.

#### **2.6 Labor Code Notice**

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 Insurance Requirements and Endorsements**

**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) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of A-E's current audited financial report. If A-E's SIR is approved, A-E, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

1. In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or subcontractor's performance of this Contract, A-E shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same;
2. A-E's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the A-E's SIR provision shall be interpreted as though the A-E was an insurer and the County was the insured.

**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	\$2,000,000 per claims made or per occurrence \$2,000,000 aggregate
Environmental/Pollution Liability*	\$1,000,000 per claims made or occurrence

## 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, Orange County Flood Control District, and their respective elected and appointed officials, employees and agents*** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
  - b. A primary non-contributing endorsement using ISO form CG 20 01 0413, or a form at least as broad 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 Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
  - a. An Additional Insured endorsement naming the ***County of Orange, Orange County Flood Control District, and their respective 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.
3. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against ***County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents***, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.

4. 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.
5. A-E shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium. A-E shall also 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.
6. If A-E's Professional Liability and/or Pollution Liability policy is a claims-made policy, A-E shall agree to maintain professional liability and/or Pollution Liability coverage for two (2) years following completion of Contract.
7. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
8. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
9. 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.
10. 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.
11. 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.
12. 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.

#### **4. INDEMNITY/COMPLIANCE**

##### **4.1 Indemnification**

**4.1.1 A-E shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County of Orange, Orange County Flood Control District, and their 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.**

**4.1.2 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.

**4.1.3 A-E agrees to, indemnify, defend with counsel approved in writing by County, and hold County of Orange, Orange County Flood Control District, and their elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising 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.**

#### **4.2 Bills and Liens**

**4.2.1 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. In accordance with the requirements of the indemnification paragraph above, A-E shall indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**

#### **4.3 Compliance with Laws**

**4.3.1 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.**

**4.3.2 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**

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. It shall be 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. 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** **Orderly Termination:** Upon termination of this Contract for any reason, each Party shall assist the other Party in transferring all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party, including all data and any unfinished, preliminary or draft documents. Each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of performance of 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**

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**

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**

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**

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**

This Contract contains the entire agreement between the parties with respect to the matters provided for herein. No alteration or variation of the terms of this Contract shall be valid unless this Contract is amended in writing and signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on either of the parties. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

**6.6 Severability**

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**

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, 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 Intentionally Omitted****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** A-E, at County's direction and upon County's request, shall transmit and convey to County all

such data described in Section 6.10.1 above, in native format and regardless of whether such data constitutes a draft, preliminary, or final document within three (3) business days. Failure by A-E to promptly comply with such direction and request by County shall constitute a material breach of A-E's responsibilities under this Contract.

- 6.10.3** 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 the award of, 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 is not authorized to serve as a media spokesperson 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, timecards 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.

For A-E:           Dokken Engineering  
                      110 Blue Ravine Road Suite 200  
                      Folsom, CA 95630  
                      Attn: Tim Osterkamp  
                      Phone: 916-858-0642  
                      E-mail: [TOsterkamp@dokkenengineering.com](mailto:TOsterkamp@dokkenengineering.com)

For County:       OC Public Works OC Construction  
                      Name: Amit Verma  
                      Address: 601 N. Ross St.,  
                      City: Santa Ana, CA 92701  
                      Phone: (714) 647-3908  
                      E-mail: [Amit.Verma@ocpw.ocgov.com](mailto:Amit.Verma@ocpw.ocgov.com)

cc:                OC Public Works Procurement Services  
                      601 N. Ross St.,  
                      Santa Ana, CA 92701  
                      Attn: Daisy Corona  
                      Phone: 714-667-9643  
                      E-mail: [Daisy.Corona@ocpw.ocgov.com](mailto:Daisy.Corona@ocpw.ocgov.com)



**6.15 Attorney's Fees**

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

**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**

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**

Unless otherwise agreed to in writing by County, acceptance of the project 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**

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

**6.20 Assignment**

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**

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. A-E agrees to pay, or credit toward future work, County's costs associated with processing the merger or acquisition.

**6.22 Force Majeure**

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**

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**

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**

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**

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).

**6.28.2** 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 Contract 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**

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**

A-E 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.

**6.31 Apprenticeship Requirements**

The A-E 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**

All A-Es and Subconsultants 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, A-E and each Subconsultant shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

### **6.33 Payroll Records**

**6.33.1** A-E and any Subconsultant(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.

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

A-E and any Subconsultant(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 A-E or any Subconsultant(s) in connection with the work.

**6.33.3** 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:

- a. The information contained in the payroll record is true and correct.
- b. 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.

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

**6.33.5** A-E shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five (5) working days, provide a notice of any change of location and address of the records.

**6.33.6** Pursuant to Labor Code Section 1776, A-E and any Subconsultant(s) shall have ten (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 A-E or any Subconsultant fails to comply within the ten (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. A-E 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 A-E. A-E is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.

**6.33.7** A-E and any Subconsultant(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. A-E 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, A-E and any Subconsultant(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

### **6.34 Work Hour Penalty**

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 A-E shall forfeit to the County Twenty-Five Dollars (\$25) for each worker employed in the execution of this Contract by the A-E or by any Subconsultant 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 A-E and Subconsultants 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 A-E 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 A-E to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.

Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the A-E and any Subconsultants 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 A-E or Subconsultant under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

**6.35.2** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the A-E and any Subconsultant under him may be required to make contributions to the apprenticeship program.

**6.35.3** The A-E and all Subconsultants under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

### **6.36 Safety**

A-E shall comply with the County's Safety and Loss Prevention Resource Manual and submit a copy of their Injury and Illness Prevention Program ("IIPP") to the Project Manager prior to the start of the project. The IIPP shall meet the minimum requirement of California Code of Regulations, Title 8, Section 1509 or 3203. A-E shall submit other safety programs that pertain to the type of job that will be performed on site.

### **6.37 Levine Act Requirement**

A-E agrees to comply with Government Code Section 84308. A-E further agrees to disclose to the County any contribution made to any members of the Board of Supervisors or County Agency Officers by A-E, A-E's agent or lobbyist, or, if applicable, any subcontractor(s) for the

twelve (12) months prior to and twelve (12) months following the approval, renewal, or extension of this Contract.

## 7. REQUIRED FEDERAL PROVISIONS

The following are required federal clauses. In the event of a potential ambiguity between the federal clauses and the remainder of the Contract, County will be solely responsible for interpreting how to implement the Contract.

### 7.1 ALLOWABLE COSTS AND PAYMENTS

- A. A-E will be reimbursed for hours worked at the hourly rates specified in the A-E's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this Contract. A-E will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate.
- B. In addition, A-E will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal and in the executed Task Order.
- C. Specific projects will be assigned to A-E through issuance of Task Orders.
- D. After a project to be performed under this Contract is identified by County, County will prepare a draft Task Order, less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a County Project Coordinator. The draft Task Order will be delivered to A-E for review. A-E shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached on the negotiable items and total cost; the finalized Task Order shall be signed by both County and A-E.
- E. Task Orders may be negotiated for a lump sum (Firm Fixed Price) or for specific rates of compensation, both of which must be based on the labor and other rates set forth in A-E's approved Cost Proposal.
- C. A-E shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. A-E is responsible for paying the appropriate rate, including escalations that take place during the term of the Contract.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. A-E will be responsible for transportation and subsistence costs in excess of State rates.
- E. When milestone cost estimates are included in the approved Cost Proposal, A-E shall obtain prior written approval in the form of a Contract amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- F. Progress payments for each Task Order will be made monthly in arrears based on services provided and actual costs incurred.



- G. A-E shall not commence performance of work or services until this Contract has been approved by County and notification to proceed has been issued by County's Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this Contract.
- J. A Task Order is of no force or effect until returned to County and signed by an authorized representative of County. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by County.
- H. A-E will be reimbursed within thirty (30) days upon receipt by County's Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed under each Task Order. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which A-E is billing, or upon completion of the Task Order. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this Contract number, project title and Task Order number. Credits due County that include any equipment purchased under the provisions of Article XI Equipment Purchase, must be reimbursed by A-E prior to the expiration or termination of this Contract. Invoices shall be mailed to County's Contract Administrator at the following address:

County of Orange / OC Public Works  
Project Manager  
601 N. Ross St  
Santa Ana, CA 92701

- I. The period of performance for Task Orders shall be in accordance with dates specified in the Task Order. No Task Order will be written which extends beyond the expiration date of this Contract.
- J. The total amount payable by County for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized by amendment.
- K. If A-E fails to satisfactorily complete a deliverable according to the schedule set forth in a Task Order, no payment will be made until the deliverable has been satisfactorily completed.
- O. Task Orders may not be used to amend the language (or the terms) of this Contract nor to exceed the scope of work under this Contract.
- P. The total amount payable by County for all Task Orders resulting from this Contract shall not exceed \$4,200,000. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Contract through Task Orders.

## **7.2 TERMINATION**

- A. This Contract may be terminated by County, provided that County gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, County shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.
- B. County may temporarily suspend this Contract, at no additional cost to County, provided that A-E is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If County gives such notice of temporary suspension, A-E shall immediately suspend its activities under this Contract. A temporary suspension may be issued concurrent with the notice of termination.

- C. Notwithstanding any provisions of this Contract, A-E shall not be relieved of liability to County for damages sustained by City by virtue of any breach of this Contract by A-E, and City may withhold any payments due to A-E until such time as the exact amount of damages, if any, due City from A-E is determined.
- D. In the event of termination, A-E shall be compensated as provided for in this Contract. Upon termination, County shall be entitled to all work, including but not appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not.

### **7.3 COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS**

- A. The A-E agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The A-E also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the A-E that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the A-E to County.
- D. When a A-E or Subconsultant is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

### **7.4 RETENTION OF RECORD/AUDITS**

For the purpose of determining compliance with Gov. Code § 8546.7, the A-E, Subconsultants, and County shall maintain all books, documents, papers, accounting records, Independent CPA Audited Indirect Cost Rate workpapers, and other evidence pertaining to the performance of the Contract including, but not limited to, the costs of administering the Contract. All parties, including the A-E's Independent CPA, shall make such workpapers and materials available at their respective offices at all reasonable times during the Contract period and for three (3) years from the date of final payment under the Contract. County, Caltrans Auditor, FHWA, or any duly authorized representative of the Federal government having jurisdiction under Federal laws or regulations (including the basis of Federal funding in whole or in part) shall have access to any books, records, and documents of the A-E, Subconsultants, and the A-E's Independent CPA, that are pertinent to the Contract for audits, examinations, workpaper review, excerpts, and transactions, and copies thereof shall be furnished if requested without limitation.

### **7.5 AUDIT REVIEW PROCEDURES**

- A. Any dispute concerning a question of fact arising under an interim or post audit of this Contract that is not disposed of by Contract, shall be reviewed by County's Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, A-E may request a review by County's Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by County will excuse A-E from full and

timely performance, in accordance with the terms of this Contract.

- D. A-E and subconsultant Contracts, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, a Contract audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the Contract, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is A-E's responsibility to ensure federal, County, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The Contract, cost proposal, and ICR shall be adjusted by A-E and approved by County Contract Administrator to conform to the audit or review recommendations. A-E agrees that individual terms of costs identified in the audit report shall be incorporated into the Contract by this reference if directed by County at its sole discretion. Refusal by A-E to incorporate audit or review recommendations, or to ensure that the federal, County or local governments have access to CPA work papers, will be considered a breach of Contract terms and cause for termination of the Contract and disallowance of prior reimbursed costs.
  - E. A-E's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or audit by the Independent Office of Audits and Investigations (IOAI). IOAI, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the A-E and approved by the County Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the A-E to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the Contract terms and cause for termination of the Contract and disallowance of prior reimbursed costs.
1. During IOAI's review of the ICR audit work papers created by the A-E's independent CPA, IOAI will work with the CPA and/or A-E toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If IOAI identifies significant issues during the review and is unable to issue a cognizant approval letter, County will reimburse the A-E at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by IOAI.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
  - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) -the accepted rate will be eighty-five percent (85%) of the proposed rate.
  - c. If the proposed rate is greater than two hundred percent (200%) -the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If IOAI is unable to issue a cognizant letter per paragraph E.1. above, IOAI may require A-E to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. IOAI will then have up to six (6) months to review the A-E's and/or the independent CPA's revisions.

3. If the A-E fails to comply with the provisions of this paragraph E, or if IOAI is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this Contract.
4. A-E may submit to County final invoice only when all of the following items have occurred: (1) IOAI accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this Contract has been completed to the satisfaction of County; and, (3) IOAI has issued its final ICR review letter. The A-E MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this Contract and all other Contracts executed between County and the A-E, either as a prime or subconsultant, with the same fiscal period ICR.

## 7.6 SUBCONTRACTING

- A. Nothing contained in this Contract or otherwise, shall create any contractual relation between the County and any Subconsultants, and no subcontract shall relieve the A-E of its responsibilities and obligations hereunder. The A-E agrees to be as fully responsible to the County for the acts and omissions of its Subconsultants and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the A-E. The A-E's obligation to pay its Subconsultants is an independent obligation from the County's obligation to make payments to the A-E.
- B. The A-E shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the County Contract Administrator, except that which is expressly identified in the A-E's approved Cost Proposal.
- C. Any subcontract entered into as a result of this Contract, shall contain all the provisions stipulated in this entire Contract to be applicable to Subconsultants unless otherwise noted.
- D. A-E shall pay its Subconsultants within Fifteen (15) calendar days from receipt of each payment made to the A-E by the County.
- E. Any substitution of Subconsultants must be approved in writing by the County Contract Administrator in advance of assigning work to a substitute Subconsultant.
- F. Prompt Progress Payment

A-E or subconsultant shall pay to any subconsultant, not later than fifteen (15) days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed A-E on account of the work performed by the subconsultants, to the extent of each subconsultant's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from A-E or subconsultant to a subconsultant, A-E or subconsultant may withhold no more than 150 percent of the disputed amount. Any violation of this requirement shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subconsultant, of 2 percent of the amount due per month for every month that payment is not made.

In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs. The sanctions authorized under this requirement shall be

separate from, and in addition to, all other remedies, either civil, administrative, or criminal. This clause applies to both DBE and non-DBE subconsultants.

G. Prompt Payment of Withheld Funds to Subconsultants

The County may hold retainage from A-E and shall make prompt and regular incremental acceptances of portions, as determined by the County, of the contract work, and pay retainage to A-E based on these acceptances. The County shall designate one of the methods below in the contract to ensure prompt and full payment of any retainage kept by A-E or subconsultant to a subconsultant.

**Method 1:** No retainage will be held by the County from progress payments due to A-E. A-E and subconsultants are prohibited from holding retainage from subconsultants. Any delay or postponement of payment may take place only for good cause and with the County's prior written approval. Any violation of these provisions shall subject the violating A-E or subconsultant to the penalties, sanctions, and other remedies specified in Section 3321 of the California Civil Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies, otherwise available to A-E or subconsultant in the event of a dispute involving late payment or nonpayment by A-E, deficient subconsultant performance and/or noncompliance by a subconsultant. This clause applies to both DBE and non-DBE subconsultants.

Any violation of these provisions shall subject the violating A-E or subconsultant to the penalties, sanctions and other remedies specified therein. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to A-E or subconsultant in the event of a dispute involving late payment or nonpayment by A-E, deficient subcontract performance, or noncompliance by a subconsultant.

## 7.7 EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by County's Contract Administrator shall be required before A-E enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or A-E services. A-E shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in A-E's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by County's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of proposal must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this Contract is subject to the following:
  - 1. A-E shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, County shall receive a proper refund or credit at the conclusion of the Contract, or if the Contract is terminated, A-E may either keep the equipment and credit County in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established County procedures; and credit County in an amount equal to the sales price. If A-E elects to keep the equipment, fair market value shall be determined at A-E's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by County and A-E, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by County.



2. Regulation 2 CFR Part 200 requires a credit to Federal funds when participating equipment with a fair market value greater than five thousand dollars (\$5,000) is credited to the project.

## 7.8 STATE PREVAILING WAGE RATES

- A. No A-E or Subconsultant may be awarded a Contract containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this Contract, including any subsequent amendments.
- B. The A-E shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this Contract are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (<https://dot.ca.gov/programs/construction/labor-compliance>). These wage rates are made a specific part of this Contract by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at County construction sites, at County facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve County projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations website at <http://www.dir.ca.gov>.
- D. Payroll Records
  1. Each A-E and Subconsultant shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 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 the A-E or Subconsultant in connection with the public work. 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:
    - a. The information contained in the payroll record is true and correct.
    - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the public works project.
  2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the A-E under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by County representatives at all reasonable hours at the principal office of the A-E. The A-E shall provide copies of certified payrolls or permit inspection of its records as follows:
    - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
    - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to County, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the A-E.



- c. The public shall not be given access to certified payroll records by the A-E. The A-E is required to forward any requests for certified payrolls to the County Contract Administrator by both email and regular mail on the business day following receipt of the request.
  3. Each A-E shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
  4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by County shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the A-E or Subconsultant performing the work shall not be marked or obliterated.
  5. The A-E shall inform County of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
  6. The A-E or Subconsultant shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the A-E or Subconsultant fails to comply within the ten (10) day period, he or she shall, as a penalty to County, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by County from payments then due. A-E is not subject to a penalty assessment pursuant to this section due to the failure of a Subconsultant to comply with this section.
- E. When prevailing wage rates apply, the A-E is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the County Contract Administrator.
- F. Penalty
1. The A-E and any of its Subconsultants shall comply with Labor Code §1774 and §1775. Pursuant to Labor Code §1775, the A-E and any Subconsultant shall forfeit to the County a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the Contract by the A-E or by its Subconsultant in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
  2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the A-E or Subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the A-E or Subconsultant in meeting their respective prevailing wage obligations, or the willful failure by the A-E or Subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the A-E or Subconsultant had knowledge of the obligations under the Labor Code. The A-E is responsible for paying the appropriate rate, including any escalations that take place during the term of the Contract.
  3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the A-E or Subconsultant.

4. If a worker employed by a Subconsultant on a public works project is not paid the general prevailing per diem wages by the Subconsultant, the prime A-E of the project is not liable for the penalties described above unless the prime A-E had knowledge of that failure of the Subconsultant to pay the specified prevailing rate of wages to those workers or unless the prime A-E fails to comply with all of the following requirements:
  - a. The Contract executed between the A-E and the Subconsultant for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
  - b. The A-E shall monitor the payment of the specified general prevailing rate of per diem wages by the Subconsultant to the employees by periodic review of the certified payroll records of the Subconsultant.
  - c. Upon becoming aware of the Subconsultant's failure to pay the specified prevailing rate of wages to the Subconsultant's workers, the A-E shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subconsultant for work performed on the public works project.
  - d. Prior to making final payment to the Subconsultant for work performed on the public works project, the A-E shall obtain an affidavit signed under penalty of perjury from the Subconsultant that the Subconsultant had paid the specified general prevailing rate of per diem wages to the Subconsultant's employees on the public works project and any amounts due pursuant to Labor Code §1813.
5. Pursuant to Labor Code §1775, County shall notify the A-E on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subconsultant has failed to pay workers the general prevailing rate of per diem wages.
6. If County determines that employees of a Subconsultant were not paid the general prevailing rate of per diem wages and if County did not retain sufficient money under the Contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, the A-E shall withhold an amount of moneys due the Subconsultant sufficient to pay those employees the general prevailing rate of per diem wages if requested by County.

#### G. Hours of Labor

Eight (8) hours labor constitutes a legal day's work. The A-E shall forfeit, as a penalty to the County, twenty-five dollars (\$25) for each worker employed in the execution of the Contract by the A-E or any of its Subconsultants for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.

#### H. Employment of Apprentices

1. Where either the prime Contract or the subcontract exceeds thirty thousand dollars (\$30,000), the A-E and any subconsultants under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
2. A-Es and subconsultants are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, A-E and subconsultants are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to-apprentice ratios for the Contract work. The A-E is responsible for all subconsultants' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

## **7.9 CONFLICT OF INTEREST**

- A. During the term of this Contract, the A-E shall disclose any financial, business, or other relationship with County that may have an impact upon the outcome of this Contract or any ensuing County construction project. The A-E shall also list current clients who may have a financial interest in the outcome of this Contract or any ensuing County construction project which will follow.
- B. A-E certifies that it has disclosed to County any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Contract. A-E agrees to advise County of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Contract. A-E further agrees to complete any statements of economic interest if required by either County ordinance or State law.
- C. The A-E hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Contract.
- D. The A-E hereby certifies that the A-E or subconsultant and any firm affiliated with the A-E or subconsultant that bids on any construction contract or on any Contract to provide construction inspection for any construction project resulting from this Contract, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

## **7.10 REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION**

The A-E warrants that this Contract was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any County employee. For breach or violation of this warranty, County shall have the right, in its discretion, to terminate this Contract without liability, to pay only for the value of the work actually performed, or to deduct from this Contract price or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

## **7.11 PROHIBITION OF EXPENDING COUNTY, STATE, OR FEDERAL FUNDS FOR LOBBYING**

- A. The A-E certifies, to the best of his or her knowledge and belief, that:
  1. No State, Federal, or County appropriated funds have been paid or will be paid, by or on behalf of the A-E, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this

Contract, or with the extension, continuation, renewal, amendment, or modification of this Contract.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the A-E shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The A-E also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

#### **7.12 NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE**

- A. The A-E's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the A-E has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR §8103.
- B. During the performance of this Contract, A-E and its subconsultants shall not deny the Contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. A-E and subconsultants shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.
- C. A-E and subconsultants shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by County to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this Contract by reference and made a part hereof as if set forth in full.
- D. A-E shall permit access by representatives of the Department of Fair Employment and Housing and the County upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or County shall require to ascertain compliance with this clause.
- E. A-E and its subconsultants shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.
- F. A-E shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Contract.

- G. The A-E, with regard to the work performed under this Contract, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The A-E shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 -Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the A-E shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subconsultants.
- I. A-E, subrecipient or subconsultant will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin. In administering the County components of the DBE Program Plan, A-E, subrecipient or subconsultant will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

### **7.13 DEBARMENT AND SUSPENSION CERTIFICATION**

- A. The A-E's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the A-E or any person associated therewith in the capacity of owner, partner, director, officer or manager:
1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
  2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
  3. Does not have a proposed debarment pending; and
  4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to County. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

### **7.14 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION**

- A. A-E, subrecipient (County), or subconsultant shall take necessary and reasonable steps to ensure that DBEs have opportunities to participate in the contract (49 CFR 26). To ensure equal participation of DBEs provided in 49 CFR 26.5, The County shows a contract goal for DBEs. A-E



shall make work available to DBEs and select work parts consistent with available DBE subconsultants and suppliers.

A-E shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal. It is A-E's responsibility to verify that the DBE firm is certified as DBE at date of proposal opening and document the record by printing out the California Unified Certification Program (CUCP) data for each DBE firm. A list of DBEs certified by the CUCP can be found here.

All DBE participation will count toward the California Department of Transportation's federally mandated statewide overall DBE goal. Credit for materials or supplies A-E purchases from DBEs counts towards the goal in the following manner:

- 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
- 60 percent counts if the materials or supplies are purchased from a DBE regular dealer.

Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49CFR26.55 defines "manufacturer" and "regular dealer."

This Contract is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". A-Es who enter into a federally-funded Contract will assist the County in a good faith effort to achieve California's statewide overall DBE goal.

- B. The goal for DBE participation for this Contract is 16%. Participation by DBE A-E or subconsultants shall be in accordance with information contained in [Exhibit 1002: Consultant Contract DBE Commitment](#) attached hereto and incorporated as part of the Contract. If a DBE subconsultant is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subconsultant, if the goal is not otherwise met.
- C. A-E can meet the DBE participation goal by either documenting commitments to DBEs to meet the Contract goal, or by documenting adequate good faith efforts to meet the Contract goal. An adequate good faith effort means that the A-E must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If A-E has not met the DBE goal, complete and submit Exhibit 15-H: DBE Information – Proposer/Contractor Good Faith Efforts to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.

D. Contract Assurance

Under 49 CFR 26.13(b):

A-E, subrecipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. A-E shall carry out applicable requirements of 49 CFR 26 in the award and administration of federal-aid contracts.

Failure by the A-E to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;



- (3) Liquidated damages; and/or
- (4) Disqualifying A-E from future proposing as non-responsible

E. Termination and Substitution of DBE Subconsultants

A-E shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless A-E or DBE subconsultant obtains the County's written consent. A-E shall not terminate or substitute a listed DBE for convenience and perform the work with their own forces or obtain materials from other sources without authorization from the County. Unless the County's consent is provided, the A-E shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE on the Exhibit 10-02 Consultant Contract DBE Commitment form, included in the Bid.

The County authorizes a request to use other forces or sources of materials if A-E shows any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. The County stipulated that a bond is a condition of executing the subcontract and the listed DBE fails to meet the County's bond requirements.
3. Work requires a A-E's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials (failing or refusing to perform is not an allowable reason to remove a DBE if the failure or refusal is a result of bad faith or discrimination).
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE is ineligible to work on the project because of suspension or debarment.
7. Listed DBE becomes bankrupt or insolvent.
8. Listed DBE voluntarily withdraws with written notice from the Contract
9. Listed DBE is ineligible to receive credit for the type of work required.
10. Listed DBE owner dies or becomes disabled resulting in the inability to perform the work on the Contract.
11. The County determines other documented good cause.

A-E shall notify the original DBE of the intent to use other forces or material sources and provide the reasons and provide the DBE with 5 days to respond to the notice and advise A-E and the County of the reasons why the use of other forces or sources of materials should not occur.

A-E's request to use other forces or material sources must include:

1. One or more of the reasons listed in the preceding paragraph.
2. Notices from A-E to the DBE regarding the request.
3. Notices from the DBEs to A-E regarding the request.

If a listed DBE is terminated or substituted, A-E must make good faith efforts to find another DBE to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet or exceed the DBE goal.

F. Commitment and Utilization

The County's DBE program must include a monitoring and enforcement mechanism to ensure that DBE commitments reconcile to DBE utilization. The County shall request A-E to:

1. Notify the County's contract administrator or designated representative of any changes to its anticipated DBE participation
2. Provide this notification before starting the affected work
3. Maintain records including:
  - Name and business address of each 1<sup>st</sup>-tier subconsultant
  - Name and business address of each DBE subconsultant, DBE vendor, and DBE trucking company, regardless of tier
  - Date of payment and total amount paid to each business (see Exhibit 9-F *Monthly Disadvantaged Business Enterprise Payment*)

If A-E is a DBE A-E, they shall include the date of work performed by their own forces and the corresponding value of the work.

If a DBE is decertified before completing its work, the DBE must notify A-E in writing of the decertification date. If a business becomes a certified DBE before completing its work, the business must notify A-E in writing of the certification date. A-E shall submit the notifications to the County. On work completion, A-E shall complete Exhibit 17-O, Disadvantaged Business Enterprises (DBE) Certification Status Change, form and submit the form to the County within 30 days of contract acceptance.

Upon work completion, A-E shall complete Exhibit 17-F Final Report – Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors and submit it to the County within 90 days of contract acceptance. The County will withhold \$10,000 until the form is submitted. The County will release the withhold upon submission of the completed form.

In the County's reports of DBE participation to Caltrans, the County must display both commitments and attainments.

- G. A DBE is only eligible to be counted toward the Contract goal if it performs a commercially useful function (CUF) on the Contract. CUF must be evaluated on a Contract by Contract basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the Contract is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its Contract with its own work force, or the DBE subcontracts a greater portion of the work of the Contract than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. A-E shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or

vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE A-E's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

- K. If a DBE subconsultant is decertified during the life of the Contract, the decertified subconsultant shall notify A-E in writing with the date of decertification. If a subconsultant becomes a certified DBE during the life of the Contract, the subconsultant shall notify A-E in writing with the date of certification. Any changes should be reported to County's Contract Administrator within thirty (30) calendar days.
- L. After submitting an invoice for reimbursement that includes a payment to a DBE, but no later than the 10<sup>th</sup> of the following month, the prime contractor/A-E shall complete and email the Exhibit 9-F: Disadvantaged Business Enterprise Running Tally of Payments to [business.support.unit@dot.ca.gov](mailto:business.support.unit@dot.ca.gov) with a copy to the Agency.
- M. Any subcontract entered into as a result of this Contract shall contain all of the provisions of this section.

## 7.15 INSURANCE

- A. Prior to commencement of the work described herein, A-E shall furnish County a Certificate of Insurance stating that there is general comprehensive liability insurance presently in effect for A-E with a combined single limit (CSL) of not less than one million dollars (\$1,000,000) per occurrence.
- B. The Certificate of Insurance will provide:
  - 1. That the insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to County.
  - 2. That County, its officers, agents, employees, and servants are included as additional insureds, but only insofar as the operations under this Contract are concerned.
  - 3. That County will not be responsible for any premiums or assessments on the policy.
- C. A-E agrees that the bodily injury liability insurance herein provided for, shall be in effect at all times during the term of this Contract. In the event said insurance coverage expires at any time or times during the term of this Contract, A-E agrees to provide at least thirty (30) calendar days prior notice to said expiration date; and a new Certificate of Insurance evidencing insurance coverage as provided for herein, for not less than either the remainder of the term of the Contract, or for a period of not less than one (1) year. New Certificates of Insurance are subject to the approval of County. In the event A-E fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Contract upon occurrence of such event.

## 7.16 FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this Contract may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the Contract were executed after that determination was made.

- B. This Contract is valid and enforceable only if sufficient funds are made available to County for the purpose of this Contract. In addition, this Contract is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or County governing board that may affect the provisions, terms, or funding of this Contract in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this Contract may be amended to reflect any reduction in funds.
- D. County has the option to terminate the Contract pursuant to Article 7.2 Termination, or by mutual agreement to amend the Contract to reflect any reduction of funds.

**7.17 CHANGE IN TERMS**

- A. This Contract may be amended or modified only by mutual written agreement of the parties.
- B. A-E shall only commence work covered by an amendment after the amendment is executed and notification to proceed has been provided by County's Contract Administrator.
- C. There shall be no change in A-E's Project Manager or members of the project team, as listed in the approved Cost Proposal, which is a part of this Contract without prior written approval by County's Contract Administrator.

**7.18 CONTINGENT FEE**

A-E warrants, by execution of this Contract that no person or selling agency has been employed, or retained, to solicit or secure this Contract upon an agreement or understanding, for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by A-E for the purpose of securing business. For breach or violation of this warranty, County has the right to annul this Contract without liability; pay only for the value of the work actually performed, or in its discretion to deduct from the Contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

**7.19 DISPUTES**

Prior to either party commencing any legal action under this Contract, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.

- A. Any dispute, other than audit, concerning a question of fact arising under this Contract that is not disposed of by agreement shall be decided by a committee consisting of County's Contract Administrator and OC Public Works Director or his designee, who may consider written or verbal information submitted by A-E.
- B. Not later than thirty (30) calendar days after completion of all work under the Contract, A-E may request review by County Governing Board of unresolved claims or disputes, other than audit. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute, nor its consideration by the committee will excuse A-E from full and timely performance in accordance with the terms of this Contract.

**7.20 INSPECTION OF WORK**

A-E and any subconsultant shall permit County, the State, and the FHWA if federal participating funds are used in this Contract; to review and inspect the project activities and files at all reasonable times during the performance period of this Contract.

## **7.21 SAFETY**

- A. A-E shall comply with OSHA regulations applicable to A-E regarding necessary safety equipment or procedures. A-E shall comply with safety instructions issued by County Safety Officer and other County representatives. A-E personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, County has determined that such areas are within the limits of the project and are open to public traffic. A-E shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. A-E shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.
- C. A-E must have a Division of Occupational Safety and Health (CAL-OSHA) permit(s), as outlined in Labor Code §6500 and §6705, prior to the initiation of any practices, work, method, operation, or process related to the construction or excavation of trenches which are five (5) feet or deeper.

## **7.22 OWNERSHIP OF DATA**

- A. It is mutually agreed that all materials prepared by A-E under this Contract shall become the property of City, and A-E shall have no property right therein whatsoever. Immediately upon termination, City shall be entitled to, and A-E shall deliver to City, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and other such materials as may have been prepared or accumulated to date by A-E in performing this Contract which is not A-E's privileged information, as defined by law, or A-E's personnel information, along with all other property belonging exclusively to City which is in A-E's possession. Publication of the information derived from work performed or data obtained in connection with services rendered under this Contract must be approved in writing by City.
- B. Additionally, it is agreed that the Parties intend this to be a Contract for services and each considers the products and results of the services to be rendered by A-E hereunder to be work made for hire. A-E acknowledges and agrees that the work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City without restriction or limitation upon its use or dissemination by City.
- C. Nothing herein shall constitute or be construed to be any representation by A-E that the work product is suitable in any way for any other project except the one detailed in this Contract. Any reuse by City for another project or project location shall be at City's sole risk.
- D. Applicable patent rights provisions regarding rights to inventions shall be included in the contracts as appropriate (48 CFR 27 Subpart 27.3 -Patent Rights under Government Contracts for federal-aid contracts).
- E. County may permit copyrighting reports or other Contract products. If copyrights are permitted; the Contract shall provide that the FHWA shall have the royalty-free nonexclusive and irrevocable right to reproduce, publish, or otherwise use; and to authorize others to use, the work for government purposes.

## **7.23 CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR**

- A. If claims are filed by County's construction contractor relating to work performed by A-E's personnel, and additional information or assistance from A-E's personnel is required in order to evaluate or defend against such claims; A-E agrees to make its personnel available for consultation with County's construction contract administration and legal staff and for testimony, if necessary, at depositions and at trial or arbitration proceedings.
- B. A-E's personnel that County considers essential to assist in defending against construction contractor claims will be made available on reasonable notice from County. Consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for A-E's personnel services under this Contract.
- C. Services of A-E's personnel in connection with County's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this Contract in order to resolve the construction claims.

#### **7.24 CONFIDENTIALITY OF DATA**

- A. All financial, statistical, personal, technical, or other data and information relative to County's operations, which are designated confidential by County and made available to A-E in order to carry out this Contract, shall be protected by A-E from unauthorized use and disclosure.
- B. Permission to disclose information on one occasion, or public hearing held by County relating to the Contract, shall not authorize A-E to further disclose such information, or disseminate the same on any other occasion.
- C. A-E shall not comment publicly to the press or any other media regarding the Contract or County's actions on the same, except to County's staff, A-E's own personnel involved in the performance of this Contract, at public hearings, or in response to questions from a Legislative committee.
- D. A-E shall not issue any news release or public relations item of any nature, whatsoever, regarding work performed or to be performed under this Contract without prior review of the contents thereof by County, and receipt of County's written permission.
- E. All information related to the construction estimate is confidential and shall not be disclosed by A-E to any entity, other than County, Caltrans, and/or FHWA. All of the materials prepared or assembled by A-E pursuant to performance of this Contract are confidential and A-E agrees that they shall not be made available to any individual or organization without the prior written approval of City or except by court order. If A-E or any of its officers, employees, or subcontractors does voluntarily provide information in violation of this Contract, City has the right to reimbursement and indemnity from A-E for any damages caused by A-E releasing the information, including, but not limited to, City's attorney's fees and disbursements, including without limitation experts' fees and disbursements.

#### **7.25 NATIONAL LABOR RELATIONS BOARD CERTIFICATION**

In accordance with Public Contract Code §10296, A-E hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against A-E within the immediately preceding two-year period, because of A-E's failure to comply with an order of a federal court that orders A-E to comply with an order of the National Labor Relations Board.

#### **7.26 EVALUATION OF CONSULTANT**



A-E's performance will be evaluated by County. A copy of the evaluation will be sent to A-E for comments. The evaluation together with the comments shall be retained as part of the Contract record.

#### **7.27 PROMPT PAYMENT FROM THE COUNTY TO A-E**

The County shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from A-E on a professional service contract. If the County fails to pay promptly, the County shall pay interest to the contractor, which accrues at the rate of 10 percent per annum on the principal amount of a money judgment remaining unsatisfied. Upon receipt of a payment request, the County shall act in accordance with both of the following:

- (1) Each payment request shall be reviewed by the County as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
- (2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to A-E as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

County of Orange, OC Public Works  
Dokken Engineering

MA-080-23010812

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

**DOKKEN ENGINEERING**

a California Corporation,

Date: 2/22/2023By: John Klemunes  
SignatureJohn Klemunes, President

Print Name &amp; 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: 2/22/2023By: Cathy Chan, Secretary  
SignatureCathy Chan, Secretary

Print Name &amp; 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: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**Office of the County Counsel  
Orange County, CaliforniaBy: William MinhPrint Name: William Minh2/22/2023

**-ATTACHMENT A  
SCOPE OF WORK****I. BACKGROUND**

- A. County is seeking to replace Trabuco Canyon Road Bridge (Bridge No. 55C-0008) spanning over Trabuco Creek Channel and make improvements to Trabuco Creek Road, from the intersection of Trabuco Canyon Road and Trabuco Creek Road to the entrance of Cleveland National Forest (Project), approximately 2.8 miles (Exhibit 1 – Location Map).
- B. PROJECT BACKGROUND: The County constructed Trabuco Canyon Road Bridge spanning over Trabuco Creek Channel in 1980. It is located approximately 1.4 miles north of Santa Margarita Parkway in Trabuco Canyon, Orange County, CA. In May 2019, California Department of Transportation, Structural Maintenance & Investigations completed their Bridge Inspection Report (Exhibit 2 – Bridge Inspection Report). The Inspections Report provided a Sufficiency Rating of 72.1 and identified numerous items for repair.

Trabuco Creek Road is a dirt roadway that has been in use since the early decades of the 20<sup>th</sup> century. The roadway spans several privately-owned parcels and does not meet current County standards for roads. In 2011, the County obtained a prescriptive easement to adopt the public road as part of the County Road System and maintain the roadway. The adoption came with various issues, primarily related to drainage and roadway stabilization.

The Project site is surrounded by the Cleveland National Forest, and a mix of public and private properties. Additionally, the area surrounding the Project site includes land uses of open space, residential development, and public facilities.

- C. EXISTING CONDITIONS: Trabuco Canyon Road Bridge spanning over Trabuco Creek Channel is a 6-span rectangular box culvert that was built in 1980. The existing bridge is approximately 24-ft wide and 71-ft long located within the creek bed. During storm events, water velocity reaches a magnitude sufficient to move 150-pound boulders and has eroded three inches of the bridge's concrete cover. The reinforcement of the invert slab is exposed to the elements and corroded. Further, the existing four-foot deep, ¼ ton riprap on the downstream side of the structure has completely eroded in multiple locations. These conditions make the bridge unstable and unsafe for passage during storm events, ultimately forcing the closure of Trabuco Canyon Road during these rain events.

Trabuco Creek Road is situated on a lower profile having no established crown. This lack of drainage causes significant issues along the road leading to potholes, ruts, and muddled areas, resulting in overall instability. At times, the road becomes unpassable and cannot be used during the wet season. During dry periods, the road is prone to fugitive dust, to speeding, especially from off-road vehicles for recreational purposes contributing to the rugged state of the road. In addition, the low-water concrete crossing (roughly 1.2-miles upstream along Trabuco Canyon Road) through Trabuco Creek Channel shows fatigue cracking so therefore may need replacement.

- D. GOALS & OBJECTIVES: The proposed goal is to deliver these projects in two phases:
- a. Phase 1 (Trabuco Canyon Bridge Replacement): The bridge replacement project will provide a long-term solution to overtopping water flows during storm events. Furthermore, replacing the existing Trabuco Canyon Road Bridge (Bridge No. 55C-0008) will help provide safe public access to the recreational opportunities in Cleveland National Forest, improve access to the properties along the connecting roads, support fish migration upstream, and allow safer access for the

Orange County Fire Authority to perform rescue, firefighting, and fire suppression activities in the area.

- b. Phase 2 (Trabuco Creek Roadway Improvements): The roadway improvements along Trabuco Creek Road will provide a long-term solution to address drainage and stabilization, while reducing fugitive dust and address the crossing through Trabuco Creek Channel. Stabilization of the road and providing a crossing through Trabuco Creek Channel will facilitate ease of access for the emergency services to the Cleveland National Forest and to properties along the road. Lastly, providing proper drainage will extend the life of the selected pavement section and controlling fugitive dust will address air quality concerns.

## II. PREMISE

### A. The general project description consists of:

- a. Reconstruct Trabuco Canyon Bridge (Bridge No. 55C-0008) spanning over Trabuco Creek Channel in order to accommodate a 100-year storm event.
- b. Integrate fish ladder migration with the Trabuco Canyon Bridge, Phase 1.
- c. Reconstructing Trabuco Creek Road in order to address slope and drainage issues with an environmentally friendly material.
- d. Rehabilitate a low water crossing to accommodate a 100-year storm event.
- e. Ancillary facilities include but are not limited to; utilities removal/relocation, structural retaining walls, water quality BMP's, drainage conveyance work, fencing, very minor landscaping, hardscape, irrigation, handicapped access, and signage.

### B. The Project must include, but not limited to:

- a. Reviewing all prior reports and documents (e.g. draft Environmental Documents and preliminary Engineering Reports) for both the Project.
- b. Develop a cost-to-benefit analysis and life-cycle cost for the alternatives. The consultant will confirm standard and industry-recognized manufacturers and replacement components in the design documents. Items to be considered shall include, but not be limited to, product reliability and performance, manufacturer's years of service, equipment costs, warranties, guarantees, delivery schedule, etc.
- c. Present the conceptual designs to both internal and external stakeholders to identify their concerns throughout preliminary design development (including but not limited to adjacent property owners, adjacent businesses, and regulatory agencies).
- d. Create a comment response matrix to identify stakeholder concerns.
- e. If required, amend the Environmental documents based on the impacts related to the final design.
- f. Finalize design drawings and specifications for the recommended mitigation approach.
- g. Provide outreach support and present the final design to the public.
- h. Provide design support during the construction phase.
- i. Prepare as-built plans based on the Contractor and OCPW redlines.

### C. ADDITIONAL REQUIREMENTS

- a. Examine the proposed project's environmental effects.
- b. Identify best management practices (BMPs).
- c. Develop Right of Way document and Construction Easement document needs required for the Project.
- d. Develop a Water Quality Management Plan (WQMP) for the Project.
- e. Develop Operations & Maintenance Plans for Phase 1 and Phase 2.

**III. CONTRACT TASK ORDER**

- A. OCPW will issue two (s) separate task orders.
  - a. Phase 1 – Trabuco Canyon Bridge Replacement
  - b. Phase 2 – Trabuco Creek Roadway Improvements
- B. The A-E shall be assigned work via a task order by OCPW which shall subsequently be referred to as the “Contract Task Order” (“CTO”). A CTO for each task shall be developed by the A-E in conjunction with OCPW Project Management staff. The OCPW Project Manager shall manage all A-E’s work including monitoring the CTO work schedule, quality of deliverables, review of invoiced amounts, adherence to set budget, and internal review of submittal packages. The A-E shall follow all requirements as outlined in the CTO and this general Scope of Work.
- C. The CTO shall include a detailed Scope Statement, describing tasks to be performed with a specific list of deliverables for each task, schedule of work, and cost to complete the work. The CTO proposal shall allow enough time for meetings with County Management staff to review the work progress, provide technical and policy direction, resolve issues and ensure adherence to the schedule. Once both Parties agree with the CTO proposal, the OCPW Project Manager shall provide the A-E with a Notice to Proceed (“NTP”) to begin work. The A-E shall submit all plans, reports, and other documents produced under the CTO to the assigned OCPW Project Manager within the timeframe and cost indicated in the CTO or as revised by the A-E and prior written approval by OCPW Project Management. The A-E shall perform no work unless issued a CTO and NTP by OCPW Project Manager.
- D. The A-E shall include a contingency in each CTO Proposal for unforeseen issues that would require additional work necessary to complete the CTO. This may include, but is not limited to: preparation of additional exhibits, additional meetings to review and address comments, additional memorandums to support the findings, increased project schedule times, re-design due to updates to design requirements and/or environmental requirements, etc. Utilization of the contingency shall be provided on an as-needed basis and must have prior written authorization by OCPW.

**IV. SCOPE OF SERVICES**

- A. These services may be utilized by OCPW, on an as-needed basis, for the following job categories to complete the Project. The proposed Project schedule is further defined as follows and is to be considered for development of CTOs:

**a. Phase 1 (Trabuco Canyon Bridge replacement):**

- 1. Preliminary Design:
  - ❖ Orange County Public Works Alternatives Workshop & Selection of the Preliminary Design Alternative – December 2022
  - ❖ Design Seminar & Selection of the Design Alternative – January 2023
  - ❖ Completion of 35% PS&E – February 2023
- 2. Final Design:
  - ❖ Right-of-Way Acquisitions & Environmental Documentation – May 2023
  - ❖ Finalization of Design – October 2023
  - ❖ Construction Contract Award – January 2024
  - ❖ Issue Construction Notice-to-Proceed – February 2024
- 3. Construction Support
  - ❖ Construction Support
  - ❖ Prepare As-Built/Record Drawings

**b. Phase 2 (Trabuco Creek Roadway Improvements):**1. Preliminary Design:

- ❖ Orange County Public Works Alternatives Workshop & Selection of the Preliminary Design Alternative – February 2023
- ❖ Design Seminar & Selection of the Design Alternative – March 2023
- ❖ Completion of 35% PS&E – April 2023

2. Final Design:

- ❖ Right-of-Way Acquisitions & Environmental Documentation – April 2024
- ❖ Finalization of Design – October 2024
- ❖ Construction Contract Award – January 2025
- ❖ Issue Construction Notice-to-Proceed – February 2025

3. Construction Support

- ❖ Construction Support
- ❖ Prepare As-Built/Record Drawings

**V. BASIC SERVICES AND RESPONSIBILITIES****A. Manner of Performance**

- a. The role and responsibility of the A-E will be to serve as the Project's Engineer-of-Record and provide services for the investigation, design, documentation, construction support, and alteration of the Project. This scope of work provides policy information, requirements, direction, and guidance for the preparation of CTO deliverables and sets forth expectations for the delivery of services, preparations of the Project construction documents, specifications, design services, cost estimates, and related work to be performed OCPW.
- b. The requirements of the Project are designed to support proper operations and maintenance of the facility, as well as meet regulatory permit requirements once construction is complete. It is the policy of OCPW to construct facilities that are functionally adequate, efficient, and which represent an economic balance between initial cost and cost of maintenance and operation. The completed Project shall be determined by its function and requirements. For these reasons, CTO proposals submitted to OCPW Project Management must fully address and incorporate the policies and instructions contained herein. In the event that the A-E determines that a County guideline is not applicable to a particular CTO, the A-E must submit a written request to deviate from the guidelines. OCPW Project Management and appropriate department personnel will review and provide a written response to the request. The A-E shall not submit designs which would necessitate variances from codes and ordinances regulating construction in Orange County.
- c. Documents prepared for the Project must provide clear, concise, and precise information for Project stakeholders and contractors. The A-E is expected to make certain that the material is understandable to the intended audience. The A-E will be required to perform, at their own expense, such redesign or revision of reports, plans, specifications, cost estimates, or other deliverables furnished under the contract if OCPW determines that such revision is necessary to correct errors or deficiencies for which the A-E is responsible.
- d. The A-E shall serve as lead of a design team that may include other professionals working together to ensure that the final design is carried through to the finished product, with no alterations in materials or design that would lead to operations and



maintenance or safety issues or compromise the quality of the facility. The County of Orange is required to select A-E firms based on demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. For these reasons, consistency in the A-E's design team is expected from preliminary design through to construction completion. The A-E shall appoint a qualified person as Project Engineer and/or Project Manager to coordinate the project from start to finish. It is expected that a principal of the firm will be kept fully advised of the project progress by the Project Engineer or Project Manager. Substitution or addition of A-E's key personnel, as defined in Attachment C – Staffing Plan of the Contract, shall be allowed only with prior written approval of the OCPW Project Manager.

**B. Duties and Responsibilities - General**

The following services shall be included for each CTO, as applicable, and summarized in the Scope Statement:

a. Project Management & Coordination

1. The A-E shall arrange, attend, and conduct weekly project meetings with the OCPW Project Manager and other Project stakeholders (as needed) to discuss project status, technical issues, schedules, and/or other details of the Project applicable to the CTO Scope Statement. The A-E shall provide a monthly master design schedule update that is inclusive of all CTOs. The A-E shall prepare and distribute the meeting agenda and minutes for each of the project meetings. The agenda shall be submitted to the attendees of the meeting at least one (1) working day prior to each meeting, while the minutes of each meeting shall be provided within five (5) working days following each meeting. Also, at the request of OCPW, the A-E shall attend other meetings (off- or on-site) and/or presentations as needed to complete the terms of CTO. The task assumes that at a minimum, the A-E Project Manager will be made available to attend these occurrences with the appropriate staff.
2. In addition to weekly project meetings, on-going informal communications, coordination, and administration, the following meetings, at a minimum, are expected during Preliminary & Final Design and are further expanded upon in Paragraph V.C Duties and Responsibilities – By Job Category:

a. Preliminary Design Meetings:

- i. *Kick-off Meeting* – The primary purpose of this meeting is to discuss Project expectations and any additional data the A-E needs to begin the first CTO.
- ii. *OCPW Alternatives Workshop(s)* – The primary purpose of this meeting(s) is to review the design alternatives with OCPW key staff, such as Engineering, Operations & Maintenance, Regulatory Permits, Environmental Resources, Planning, etc., to support selecting the Preliminary Design Alternative.
- iii. *Design Seminar* – The primary purpose of this meeting is to present the Recommended Design Alternative to OCPW executive management and key staff for approval in order to proceed in completing the 35% Design Milestone documents.

b. Final Design Meetings:

- i. *Final Design Presentation* – The primary purpose of this meeting is to present the Final Design to OCPW executive management and key staff prior to final plan approval.

- ii. *Stakeholders Pre-Construction Meeting* – The primary purpose of this meeting is to present to stakeholders the Final Design and construction expectations to obtain feedback from community members, property owners, and regulatory entities. This meeting will be jointly conducted by the Engineer of Record and Contractor.

**LIST V.B.A PROJECT MANAGEMENT & COORDINATION – ANTICIPATED DELIVERABLES:**

- Monthly Master Design Schedule Updates
- Meeting Agendas and Minutes
- Design Schedule Updates
- Public Outreach
- OCPW Alternatives Workshop Presentation(s)
- Design Seminar Presentation
- Final Design Presentation
- Final Public Outreach
- Stakeholders Pre-Construction Meeting(s)

b. *Data Collection & Literature Review*

1. The A-E shall review all still-valid work and/or information prepared for the Project, including studies, geotechnical reports, structural reports, as-built plans, design memorandums, CAD design files, environmental reports, etc. that is applicable to the CTO Scope Statement. CTO Scope Statements should build upon and utilize, but not duplicate, still-valid work and/or information previously prepared for the Project. Below is a list of the reports and/or studies that are available and will be provided to the A-E:

- a. Trabuco Creek Road Material Report 2008
- b. Trabuco Creek Road 2011 CEQA IS/MND
- c. Trabuco Creek Road Stabilization Project Programming Report, August 2018
- d. Caltrans Bridge Inspection Report, May 2019
- e. Trabuco Canyon Bridge (55C-0008) Replacement Project Programming Report, January 2022
- f. Trabuco Creek Hydrology Information
- g. Utility Drawing/Exhibits/Maps
- h. Foothill Trabuco Specific Plan (FTSP)
- i. Record Drawings for Trabuco Canyon Road Bridge
- j. Trabuco Bridge Alternatives Memo
- k. Lower San Juan Creek and Trabuco Creek Invert Stabilization Master Plan, January 2020
- l. Draft plans for Trabuco Creek Road Arizona Crossing

Relevancy of previously completed works shall be summarized in the Design Documentation Report further described below.

c. *Design Documentation Report*

1. The Engineer of Record shall prepare a Design Documentation Report, inclusive of all CTOs, for the Project. Each CTO Scope Statement shall include incorporation of the CTO deliverables into the Design Documentation Report. The report shall discuss and/or identify, but is not limited to, the following:

- a. History and/or background relevant to the Project;
  - b. Existing conditions of the facility and/or features within the project limits;
  - c. Design alternatives;
  - d. Appropriate design standards, regulations, and codes utilized;
  - e. Agreements, permits, and approvals required;
  - f. Community and/or public outreach requirements;
  - g. Environmental constraints;
  - h. Survey data utilized;
  - i. Technical discussions and assessments, including but not limited to:
    - i. Hydraulic Analysis
    - ii. Geotechnical/Hydrogeological Analysis
    - iii. Structural Analysis
  - j. Construction impacts, methods, and phasing considerations,
  - k. Right-of-way and/or easements constraints;
  - l. Utility investigations and constraints;
  - m. Lifecycle cost and cost-benefit analysis;
  - n. Additional studies/site investigations required (only for interim DDR updates);
  - o. All current design assumptions, criteria, and recommendations based on the limitations and constraints of the Project.
2. The Preliminary Design Documentation Report shall support the Selected Design Alternative presented in the 35% Plans, Specifications, and Estimate. The A-E shall provide a draft report to the County for review and comment with each PS&E milestone deliverable, further defined in Paragraph V.C.9.

**LIST V.B.C DESIGN DOCUMENTATION REPORT – ANTICIPATED DELIVERABLES:**

- Trabuco Canyon Road Bridge (Bridge No. 55C-0008):
  - Preliminary Design Documentation Report
  - 65% Design Documentation Report
  - 95% Design Documentation Report
  - Final Design Documentation Report
- Trabuco Creek Road:
  - Preliminary Design Documentation Report
  - 65% Design Documentation Report
  - 95% Design Documentation Report
  - Final Design Documentation Report

**C. Duties and Responsibilities – By Job Category**

The A-E shall be responsible for identifying all duties and responsibilities to complete the Project goals and objectives including, but not limited to, the below Job Categories as applicable to the requested CTO from OCPW Project Management and shall be summarized in the Scope Statement prepared by the A-E:

- a. Alternatives Analysis
  1. The A-E shall develop and evaluate at a minimum of three (3) alternatives for improving the facilities to accommodate the Project goals and objectives.
  2. The Preliminary Design Alternative will be established following completion of technical studies and investigations necessary for the Preliminary Design

Documentation Report. The Final Design Alternative will be established following completion of the Design Seminar. Modifications to accommodate feedback that do not compromise the Project's goals and objectives will be considered and any additional technical studies or investigations needed should be summarized in the Preliminary Design Documentation Report and included in subsequent CTO Scope Statements.

b. Hydraulic Analysis

1. The A-E shall review the Hydrology, Hydraulics, and Sediment Transport Evaluation report by West Consultants, Inc. dated June 2021 and San Juan Creek Watershed Hydrology Study by Pacific Advanced Civil Engineers, Inc. dated March 2008. If the A-E believes there is missing or outdated information contained in the reports, the A-E shall discuss with OCPW and develop a plan to address the items of concern. The A-E shall perform an independent hydraulic analysis, including sediment transport and scour analyses, to not only verify and validate the design meets OCFCD design criteria, but also to further develop the necessary design elements for each alternative to be able to complete a lifecycle analysis. The modeling approach shall be discussed and presented to OCPW prior to beginning work. The A-E shall establish the existing site conditions and the proposed alternatives site conditions. The A-E will then utilize that information to develop a hydraulic model of the project area (the study area shall extend sufficiently beyond the project area) using HEC-RAS. The peak discharges as well as intermediate discharges (2, 5, 10, 25-year) should be considered which shall be based on the information stated within the Hydrology Report for the project area and the Orange County Hydrology Manual.
2. The A-E shall present the initial, intermediate, and final findings of the hydraulic analysis to OCPW during the weekly Project meetings. The A-E shall present the findings and results of the hydraulic analysis at the Design Seminar and Final Design Presentation.

c. LOMR/CLOMR

1. A-E shall be required to prepare a floodplain study for any type of FEMA map change such as a Letter of Map Revision (LOMR) or Conditional Letter of Map Revision (CLOMR) for the Trabuco Creek Channel facility. The A-E shall present the results of the LOMR/CLOMR package including completion of MT-2 form and all supporting documentation based on the latest FEMA requirements.

d. Geotechnical Analysis

1. The A-E shall review the prior geotechnical report(s). If the A-E believes there is missing or outdated information contained in the reports, the A-E shall discuss with OCPW and develop a plan to address the items of concern. The A-E shall have the ability to perform any additional geotechnical and hydrogeological site investigations necessary to evaluate the various alternatives for scour protection and seismic stability of all project elements including, but not limited to, levee structures, embankments, abutments and foundations, as well as applicability and performance of post-construction BMPs. The A-E shall consider a risk-based approach and perform a Geotechnical analysis in accordance to with the following:

- a. Orange County Highway Design Manual;

- b. Caltrans Highway Design Manual (provisions not addressed in Orange County Highway Design Manual);
- c. California Manual on Uniform Traffic Control Devices (CA MUTCD);
- d. AASHTO LRFD Bridge Design Specifications, as modified by Caltrans;
- e. Caltrans Seismic Design Criteria;
- f. Caltrans Foundation Manual;
- g. Caltrans Geotechnical Manual;
- h. Caltrans Bridge Design and Seismic Manuals;
- i. Caltrans Bridge and Structure Construction Manuals;
- j. Orange County/OC Public Works Standard Plans (bridge typical section & roadway items);
- k. Caltrans Standard Plans;
- l. Caltrans Standard Specifications;
- m. APWA Standard Specifications for Public Works Construction, "Greenbook."

The A-E shall present the findings and results of the geotechnical analysis at the Design Seminar and Final Design Presentation.

e. Utilities

1. The implementation of the Project may require the need to coordinate existing utilities including, but not limited to, local drainage systems, gas, sewer, electric, communication, irrigation and water lines. The A-E shall identify all potential utility conflicts and avoid unnecessary utility impacts during the design development phase of the Project. In addition, the A-E shall make any necessary modifications to the design, plans and specifications if additional utility conflicts are discovered at any point in the design where the utility owner has prior rights. In situations where the County and/or OCFCD have prior rights, the A-E shall support OCPW's Utilities Section and Project Management in the resolution of the conflict and make any necessary changes to the design to accommodate the solution. The A-E shall not design improvements that substantially increase the cost of the project to accommodate a utility that does not have prior rights.
2. The A-E shall review record drawings and utility maps provided by the utility owners and check for any missing or outdated information. Responsive companies that may have facilities within the Project area include, but are not limited to, the following:

UTILITY COMPANY
Sana Ana Mountains Company Water District
COX Communications
Southern California Edison - Distribution
Trabuco Canyon Water District

3. The A-E is responsible for conducting utility research, identifying, and addressing all utility conflicts. During design development, OCPW will be the primary point-of-contact with the utility companies and will coordinate the utility requests for information and notifications. If OCPW is unable to provide utility coordination and/or locating services, the A-E shall make staffing available to coordinate and locate existing utilities, if needed. The A-

E shall develop and maintain an updated and comprehensive utilities disposition matrix and composite map that tracks/displays utility location and information.

4. If additional information, such as record drawings, GPR, or potholing is necessary, the A-E shall request this information from OCPW with an exhibit showing the utility, area of investigation, and project design element in conflict. Alternatively, the A-E may be requested to perform the locating services as part of a CTO. The A-E shall summarize all findings and additional investigation needs in the Preliminary Design Documentation Report and provide resolutions for all utility conflicts with the 65% PS&E milestone as defined below:

**LIST V.B.E UTILITIES – ANTICIPATED DELIVERABLES:**

- Utilities Base Map
- Utilities Disposition Matrix

f. Right-of-Way

1. The A-E shall review the topographic and boundary survey and identify all right-of-way needs for each alternative, including but not limited to, encroachment permits, easements, rights-of-entry, and/or right-of-way required. OCPW will be the primary point-of-contact with the property owners and will coordinate agreements and acquisitions with the support of the A-E.
2. The A-E shall summarize all right-of-way needs in the Preliminary Design Documentation Report.

g. Regulatory Permits and Agreements

1. The Project shall comply with the requirements of all federal, state, and local laws. Depending on the Preferred Design Alternative, the following table provides a summary of potential project stakeholders that will be coordinated with by OCPW. OCPW will be the primary point-of-contact with all Project stakeholders and regulatory entities. The A-E shall support OCPW negotiations with stakeholders of Project conditions, constraints, and minimization and mitigation measures that will need to be abided by for design and construction of the Project.

AGENCY	PROJECT NEXUS
US Army Corps of Engineers	Section 404 Permit
State of California - Santa Ana Regional Water Quality Control Board	401 Permit
California Department of Fish and Wildlife	Lake and Streambed Alteration Program
United States Forest Services	Right-of-Way Needs
Various Parcels	Right-of-Way Needs



2. The A-E shall include stakeholder considerations in the Alternatives Analysis and all coordination shall be summarized in the Preliminary Design Documentation Report. In addition to supporting memorandums, coordination meetings, and exhibits, the A-E shall prepare the following:
  - a. Water Quality Management Plan (WQMP) – Contingent upon the amount impervious surface created and completed WQMP Applicability Checklist, the A-E shall develop a WQMP for the project. Should a WQMP for the Project be required, it shall be in accordance with Orange County NPDES MS4 Permit from the San Diego Regional Water Quality Control Board. The WQMP shall adhere to and satisfy all the requirements stated within the MS4 Permit including the incorporation of Low Impact Development (LID) Best Management Practices (BMPs) in the Preliminary Design Alternative.

**LIST V.B.G.2.A WATER QUALITY MANAGEMENT PLAN – ANTICIPATED DELIVERABLES:**

- Phase 1 - Trabuco Canyon Bridge Replacement
    - WQMP Applicability Checklist
    - Preliminary WQMP
    - 65% WQMP
    - 95% WQMP
    - Final WQMP
  - Phase 2 - Trabuco Creek Road Improvements:
    - WQMP Applicability Checklist
    - Preliminary WQMP
    - 65% WQMP
    - 95% WQMP
    - Final WQMP
- 
3. Erosion and Sediment Control Plan (ESCP) / Stormwater Pollution Prevention Plans (SWPPP) – In accordance with Orange County NPDES MS4 Permit from the San Diego Regional Water Quality Control Board, all construction projects are required to develop and implement an ESCP. Contingent upon the amount of soil disturbed (1 acre or greater), coverage under the Statewide Construction General Permit (CGP) and a Stormwater Pollution Prevention Plan (SWPPP) may be required. The A-E shall develop an ESCP, or SWPPP if required, for the project. The ESCP or SWPPP, shall adhere to and satisfy all the requirements stated within the MS4 Permit including the incorporation of Best Management Practices (BMPs) to prevent discharge of pollutants to the MS4.

**LIST V.B.G.3 EROSION AND SEDIMENT CONTROL PLAN – ANTICIPATED DELIVERABLES:**

- Erosion and Sediment Control Plan
  - Stormwater Pollution Prevention Plan in lieu of ESCP (if required)
- 

4. Habitat Mitigation & Monitoring Plan

- a. The A-E shall review the biological and mitigation design report(s) and update the biological assessment to document baseline conditions. The A-E shall also update the jurisdictional delineation and conduct a California Rapid Assessment Method (CRAM) analysis of the project site to develop conceptual habitat mitigation plans for each alternative for inclusion in the lifecycle cost to benefit analysis. The A-E shall provide CRAM certifications for key personnel. The conceptual habitat mitigation plans must include existing and proposed functions, values, and uses of the mitigation areas, which can be aided through the use of the USACE Mitigation Ratio Setting Checklist, which is available at the following link:

<https://www.spl.usace.army.mil/Missions/Regulatory/Mitigation/>

- b. The A-E shall have key personnel with Section 10(a) Permits to conduct endangered species surveys in the Project area. Additionally, the A-E shall have an experienced geomorphologist with river restoration experience. The A-E shall develop a Habitat Mitigation & Monitoring Plan to be submitted with regulatory permits by the County for the Selected Design Alternative. The A-E shall provide a draft report to the County for review and comment.

**LIST V.B.G.4 HABITAT MITIGATION & MONITORING PLAN – ANTICIPATED DELIVERABLES:**

- Biological Assessment
  - Jurisdictional Delineation
  - Conceptual Habitat Mitigation Plan for each alternative
  - DRAFT Habitat Mitigation & Monitoring Plan for the Preliminary Design Alternative
  - FINAL Habitat Mitigation & Monitoring Plan for the Selected Design Alternative
- 
- h. Environmental Documentation
    1. The A-E shall determine the appropriate CEQA determination for the Selected Design Alternative. A-E shall obtain and review all environmental documents related to this development. The A-E shall coordinate with OCPW to identify if any additional environmental review and/or special studies associated with the Preliminary Design Alternative will be required and shall summarize these needs in the Design Documentation Report.
    2. Following the Design Seminar and in accordance with CEQA Guidelines Section 15162 and the County of Orange 2020 Local CEQA Procedures Manual, the A-E shall perform any required additional environmental reviews and documentation for the Selected Design Alternative, including any special environmental studies including but not limited to, air quality and cultural assessments.
  - i. Constructability & Operability Review
    1. The A-E shall conduct a constructability and operability review meetings with OC Construction Management and OC Operations & Maintenance to discuss potential construction means and methods for implementing each alternative and post-construction operability to be included in the lifecycle analysis.

Preliminary construction means and methods, staging plans, detour plans, and construction schedule shall be summarized Design Documentation Report.

2. The A-E shall develop an Operations & Maintenance (O&M) Manual for the Project. The O&M Manual shall include, but is not limited to, a background/summary Project information, roles and responsibilities related to O&M of the flood control facility, qualifications for maintenance personnel, flood operation procedures, routine O&M activities and procedures, corrective maintenance activities and procedures, and documentation requirements.

**LIST V.B.I CONSTRUCTABILITY & OPERABILITY REVIEW–  
ANTICIPATED DELIVERABLES:**

- Phase 1 - Trabuco Canyon Bridge Replacement
  - Preliminary Operations & Maintenance Manual
  - 65% Operations & Maintenance Manual
  - 95% Operations & Maintenance Manual
  - Final Operations & Maintenance Manual
- Phase 2 - Trabuco Creek Road Improvements:
  - Preliminary Operations & Maintenance Manual
  - 65% Operations & Maintenance Manual
  - 95% Operations & Maintenance Manual
  - Final Operations & Maintenance Manual

j. Preparation of the Plans, Specifications, and Estimate (PS&E)

1. In compliance with the appropriate design criteria, standards, regulations and codes, the A-E shall be responsible for the design and development, including sub-consultant design services, of a PS&E package for the Selected Design Alternative, which includes, but is not limited to, the following:
  - a. Phase 1 - Trabuco Canyon Bridge Replacement:
    - i. Preparation of the Design Documentation Report
    - ii. Implementation of traffic control (indicating detours, temporary signage and striping, locations of removable temporary barriers and crash cushions, and lane closures if required, etc.) within the project limits based on the various stages of construction that will occur due to the limited amount of access to the project area;
    - iii. Develop WQMP and SWPPP for the project
  - b. Phase 2 - Trabuco Creek Roadway Improvements:
    - i. Preparation of the Design Documentation Report
    - ii. Implementation of traffic control (indicating detours, temporary signage and striping, locations of removable temporary barriers and crash cushions, and lane closures if required, etc.) within the project limits based on the various stages of construction that will occur due to the limited amount of access to the project area;
    - iii. Develop WQMP and SWPPP for the project
    - iv. Prepare an O&M manual for the improvements

2. All designs, renderings, exhibits, plans, specifications, calculations, etc. developed by the A-E shall at a minimum comply with and/or be in accordance to the latest versions and/or editions at the time of the award of this contract for the following:
  - a. Orange County Flood Control District Design Manual;
  - b. Orange County Public Works Standard Specifications;
  - c. Orange County Public Works Standard Plans;
  - d. Orange County Highway Design Manual;
  - e. Orange County Technical Manuals;
  - f. Caltrans Highway Design Manual (provisions not addressed in Orange County Highway Design Manual);
  - g. Requirements within the encroachment and regulatory permits for the Project;
  - h. CEQA requirements;
  - i. Standard Plans and Specifications for Public Works Construction (Greenbook);
  - j. Caltrans Standard Plans and Standard Specifications;
3. The A-E shall not progress between phases of the PS&E preparation until after written direction is provided by OCPW. All plans shall be computer drafted on standard 22" x 34" size sheets using AutoCAD with OC Public Works borders and title blocks. The PS&E shall be prepared in accordance with the County of Orange CAD Standards Manual. In addition, the A-E shall prepare specifications (Special Provisions for Construction) per the County's specifications format for all relevant design aspects within this scope of work. Final specifications shall be provided in pdf and Microsoft word format. The A-E's schedule shall account for 15 working days for each peer review for each Project submittal. Upon receipt of the comments and recommended revisions to the PS&E from OCPW, the A-E shall evaluate and upon concurrence by OCPW, proceed with revising the plans, specifications, quantity calculations, and engineer's estimate. The review comments and responses shall be documented in a Peer Review Response Matrix. The Peer Review Response Matrix from a previous submittal review will be provided with the subsequent submittal package.
4. The A-E shall routinely conduct constructability and biddability reviews of the Scoping Documents as necessary to satisfy the needs of the Project Team. The review will attempt to identify all discrepancies and inconsistencies in the Scoping Documents especially those related to clarity, consistency, and coordination of work for subcontractors and suppliers.
5. For each PS&E package, a letter to the County's Resident Engineer (RE), including any issues requiring the RE's attention and items included in the Construction Package. The package and transmittal memo shall describe the Project, procedures, and the documents attached that will be used by field personnel during construction.
6. The components listed in Table V.B.j shall be included within the PS&E Submittal at a minimum unless otherwise approved by OCPW

**LIST V.B.I PREPARATION OF PS&E – ANTICIPATED DELIVERABLES:**

- Phase 1 - Trabuco Canyon Bridge Replacement
  - 35% Preliminary Plans, Specification, & Engineer's Estimate
  - 65% Plans, Specifications, & Engineer's Estimate
  - 95% Plans, Specifications, & Engineer's Estimate
  - Final Plans, Specifications, & Engineer's Estimate
- Phase 2 - Trabuco Creek Road Improvements:
  - 35% Preliminary Plans, Specification, & Engineer's Estimate
  - 65% Plans, Specifications, & Engineer's Estimate
  - 95% Plans, Specifications, & Engineer's Estimate
  - Final Plans, Specifications, & Engineer's Estimate

k. Construction Support

1. The A-E shall perform field visits, site meetings, and/or respond to any questions or comments requested by the Contractor that specifically relates to the design and/or construction of the Project (separate from Task 1).
2. The A-E shall review and take appropriate action upon OCPW supplied Requests for Information (RFIs) and Contract Change Orders (CCOs). The A-E's review and action taken shall be for conformance with the design concept and/or intent of the Project and based on the information within the contract documents (e.g. construction plans and specifications).
3. The A-E shall review and take appropriate action upon OCPW supplied submittals from the Contractor, which include, but are not limited to, shop drawings (including calculations), samples of construction material, material testing reports/certifications, and product data as required per the contract documents. The A-E's review and action taken shall be for conformance with the design concept and/or intent of the Project and based on the information within in the contract documents (e.g. construction plans and specifications). In addition, the A-E's review of any Contractor prepared drawings and/or documents shall not relieve the Contractor from their sole responsibility for the accuracy of the dimensions, quantities, calculations, and weights; the fabrication processes; the construction means and methods; the coordination between various trades; and the safety factors related to the construction of the Project.
4. The A-E shall review and approve all scaffolding and/or falsework drawings, specifications, calculations, and submittals.
5. The A-E shall provide adjustments, modifications, and/or revisions to the design, based upon unanticipated and/or unknown field conditions encountered during the construction.
6. The A-E shall document and incorporate all constructed modifications and/or revisions that occurred during construction onto the original construction plans and specifications such that a final "as-built" or record set of contract documents are provided to OCPW for their records.

7. In the event that any items requiring interpretation of the final PS&E prepared by the A-E are discovered during the period in which the Project is being advertised for bids, those items shall be evaluated by the A-E for decision by the County of Orange as to the proper corrective procedure required to address the comments and/or issues. The corrective action taken will either be in the form of an addendum or bulletin prepared by the A-E and issued by the County of Orange or by a CCO after the award of the construction contract. In addition, it should be noted that while the Project is being advertised for bids, all questions and/or comments concerning the design concept and/or intent of the Project shall be referred to the County of Orange for a resolution. Furthermore, depending on the variation of the project bid proposals that are received during the bid phase, the A-E shall provide review assistance and evaluation of those project bid proposals for decision by the County of Orange.
8. A-E or its sub-consultant shall not perform any work related to this task without prior direction from COUNTY. – Engineer of Record shall provide Construction Support Services, including, but not limited to, the following: Contractor Submittal Reviews, response to Requests for Information, preparation of plan revisions/clarifications, Site Visits, Construction Progress Meetings, and completion of Project Record Drawings.



Table V.B.j – PS&amp;E Requirements

Phase	Preliminary Design Milestone	65% Design Milestone	95% Design Milestone
Plans	<p>Required:</p> <ul style="list-style-type: none"> <li>Horizontal and vertical alignment</li> <li>Known utilities and utility conflicts</li> <li>All existing topographic features</li> <li>The following plan sheets are included: <ul style="list-style-type: none"> <li>Plan &amp; Profile</li> <li>Typical Sections</li> <li>Construction Notes for Major Construction Items</li> <li>Draft Water Quality Features/BMPs</li> <li>Draft Habitat Planting Plan</li> <li>Hydraulic Data Table</li> <li>Draft Structural Details and Steel Schedules</li> <li>Site Exploration Map and Soil Borings</li> </ul> </li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>Station Cross Sections</li> <li>Construction Details</li> </ul>	<p>Required:</p> <ul style="list-style-type: none"> <li>All utilities within the Project area are shown</li> <li>All utility conflicts are identified and resolved</li> <li>Final Water Quality Features/BMPs</li> <li>Draft Structural Details and Steel Schedules</li> <li>Draft Paylines</li> <li>Site Exploration Map and Soil Borings</li> <li>Construction Notes for All Construction Items</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>Station Cross Sections</li> <li>Construction Details</li> <li>Preliminary Traffic Detour/Control Plans</li> </ul>	<p>Required:</p> <ul style="list-style-type: none"> <li>Station Cross Sections</li> <li>Construction Details</li> <li>Preliminary Traffic Detour/Control Plans</li> </ul>
Specifications	<p>Required:</p> <ul style="list-style-type: none"> <li>Draft Bid Schedule (w/ Draft quantities)</li> <li>Signature Page and Table of Contents only</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>Order of Work</li> <li>Bid Item Specifications for major construction items</li> </ul>	<p>Required:</p> <ul style="list-style-type: none"> <li>Order of Work</li> <li>Bid Item Specifications</li> </ul> <p>Optional:</p> <ul style="list-style-type: none"> <li>Bid Item Payment Clauses</li> </ul>	<p>Required:</p> <ul style="list-style-type: none"> <li>Bid Item Payment Clauses</li> </ul>
Estimates	The developed 35% Engineer's Estimate shall be classified as <b>Class 3</b> in accordance with the Association for the Advancement of Cost Engineering International's (AACEI) cost estimate classification system.	The developed 65% Engineer's Estimate shall be classified as <b>Class 3</b> in accordance with the Association for the Advancement of Cost Engineering International's (AACEI) cost estimate classification system.	The developed 95% Engineer's Estimate shall be classified as <b>Class 3</b> in accordance with the Association for the Advancement of Cost Engineering International's (AACEI) cost estimate classification system.



**ATTACHMENT B**  
**COST/COMPENSATION**

- I. COMPENSATION:** This is an **actual cost-plus fixed fee** Contract between County and A-E for **Trabuco Canyon Road Bridge (Bridge No. 55C-008) and Trabuco Creek Road Improvement Project** as set forth in Attachment A, "Scope of Work."

A-E agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by A-E of all its duties and obligations hereunder. A-E shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the Total Contract Amount specified herein below unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the County Contract Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this Contract. Partial progress payments may be allowed at the discretion of the County Project Manager. Payment shall be as follows:

- A. Classification Rates:** See Exhibit No. 3 - 10-H1- Cost Proposal and Exhibit No. 4 - 10-H1- Cost Proposal

\*County will not pay A-E more than the listed amount for Subconsultant work, regardless of any agreement between the A-E and their Subconsultant. Subconsultant 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.

- B. Total Contract Amount Shall Not Exceed: \$4,200,000.00**

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to County.
- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.
- V. A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by County:

- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the County Project Manager.
- 2) Printing expenses paid to outside contractors, to the extent such contractors and reproduction rates have been approved by the County Project Manager.

- 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by A-E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
  - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and County location, as well as mileage within County property will not be reimbursed.
- 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
- 7) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the County. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

**VII. PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, as applicable. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with A-E. Incomplete or incorrect invoices are not acceptable and will be returned to the A-E for correction.

Billing shall cover services and/or goods not previously invoiced. The A-E shall reimburse the County for any monies paid to the A-E for goods or services not provided or when goods or services do not meet the Contract requirements.

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

**VIII. INVOICING INSTRUCTIONS:** The A-E will provide an invoice on the A-E's letterhead. Each invoice will have a unique number and will include the following information:

- A. A-E's name and address
- B. A-E's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number
- F. Service Date
- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

**OC Public Works  
Attn: Project Manager  
601 N. Ross St**

**Santa Ana, CA 92701**

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

**ATTACHMENT C  
STAFFING PLAN**

**1. A-E KEY PERSONNEL**

<b>Name</b>	<b>Classification/ Designation</b>	<b>Years of Experience</b>	<b>Years with Current Firm</b>	<b>Licenses/Certifications (include license number)</b>
Tim Osterkamp, PE	Project Manager	35	10	CA Civil Engineer #C46783
Mary Elizabeth Westrum, PE	Roadway Project Engineer	16	16	CA Civil Engineer #C75418
Rosa Griggs, PE	Bridge Project Engineer	20	19	CA Civil Engineer #C54169
Matt Atkinson, PE	Senior Road Engineer	12	9	CA Civil Engineer #C82099
Frank Flores, PE	Senior Road Engineer	14	14	CA Civil Engineer #C83968
Fortunato Enriquez, PE	Senior Bridge Engineer	10	10	CA Civil Engineer #C84849
Charles Tornaci, PE	Senior Bridge Engineer	22	21	CA Civil Engineer #C66058
Jena Addenbrooke, PE	Utility Coordination Lead	14	14	CA Civil Engineer # C82544
A. Jake Gusman, PE	Senior Hydraulic Engineer	24	6	CA Civil Engineer, #C61032

A-E 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 A-E's key personnel in any given category or classification shall be allowed only with prior written approval of the County's Project Manager. **Note: The written approval of substituted A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County department.**

A-E may reserve the right to involve other A-E 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 A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County Department.** County reserves the right to have any A-E 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 A-E personnel.





**2. SUBCONSULTANT(S) (IF APPLICABLE)**

Listed below are Subconsultant(s) anticipated by A-E to perform services specified in Attachment A. Substitution or addition of A-E's Subconsultants in any given project function shall be allowed only with prior written approval of the County Project Manager.

<b>Corporate Name</b>	<b>Corporate Address</b>	<b>Local Office Address*</b>	<b>Contact Name</b>	<b>Telephone Number</b>	<b>Project Function</b>	<b>DVBE Certification Number</b>	<b>SBA Certification Number</b>
River Focus, Inc.	4630 Miramonte ST, La Mesa CA 91941	Same	A. Jake Gusman	(619) 457-3119	Hydraulics & Hydrology	N/A	2003003
Earth Mechanics, Inc.	17800 Newhope ST, STE. B Fountain Valley, CA 92708	Same	Alahesh Thuraiirajah	(714) 751-3826	Geotechnical Investigation / Report	N/A	4369
Dudek	605 Third ST, Encinitas, CA 92024	27372 Calle Arroyo, San Juan Capistrano, CA 92675	Jason Reynolds	(760) 479-4108	Biological Support Services	N/A	N/A