

**JOHN WAYNE AIRPORT
ON-CALL ENGINEERING SERVICES
PROJECT NO. 0310-1900-ENG
FICCADENTI WAGGONER AND CASTLE STRUCTURAL ENGINEERS**

**JOHN WAYNE AIRPORT
AGREEMENT FOR
ON-CALL ENGINEERING SERVICES**

PROJECT: On-Call Structural Engineering Services

PROJECT NO: 0310-1900-OCENG

THIS AGREEMENT (the “Agreement”), is made and entered into on the ____ day of _____, 2020, between the County of Orange, a political subdivision of the State of California (“COUNTY”), and Ficcadenti Waggoner and Castle Structural Engineers (“ARCHITECT-ENGINEER” or “A-E”). COUNTY and A-E may be referred to individually as a “PARTY” or collectively as the “PARTIES.” This Agreement will be administered by the Director of John Wayne Airport or his designee (“JWA”).

WITNESSETH:

IT IS MUTUALLY AGREED between the PARTIES hereto that:

1. TERM OF AGREEMENT

The “Term” of this Agreement shall commence upon the date of award as evidenced by the Orange County Board of Supervisors Minute Order awarding this Agreement (“Contract Award Date”). This Agreement shall expire three years from execution, at 11:59 p.m., unless the COUNTY, at its sole option, extends the Term of this Agreement up to two additional years, or any portion thereof, by giving A-E a 30-day notice of such an extension. The A-E shall not commence services under this Agreement until it has obtained all required insurance and such insurance has been approved by COUNTY. The A-E shall have 7 days from the Contract Award date to submit complete insurance documents, and COUNTY may take up to 14 days to approve said insurance. Also, A-E may not work on the site until its Safety Plan is approved by the COUNTY.

2. A-E SCOPE OF SERVICES

- A. The A-E shall perform in a competent and professional manner those tasks and duties set forth in the attached Scope of Services for Project No. 0310-1900-OCENG (“Project”) which is incorporated into this Agreement as Appendix 1.
- B. The A-E shall comply with all applicable COUNTY procedures, guidelines, and rules pertaining to the management of architectural and engineering, construction management, and construction contracts, including, but not limited to the COUNTY’s Contract Policy Manual. The A-E shall fully familiarize itself with all contracts they are tasked with managing. A-E shall enforce all contractual requirements.

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- C. The A-E is not authorized to amend any COUNTY contracts which it is assigned to manage. COUNTY contracts may only be amended by written change order first approved by JWA.
- D. The A-E's duties shall include the review, verification and recommendation for payment of pay requests submitted by all architectural, engineering, design and construction contractors within the Scope of Services. The A-E shall review and verify that any such pay requests are accurate and in compliance with the applicable contract and COUNTY and JWA requirements. A-E's recommendation of a pay request shall represent that A-E has reviewed the work, products or services for that pay request, and that the work, products or services for that pay request have been completed in a good and workmanlike manner and in compliance with the contract. The A-E shall promptly inform JWA, in writing, of any discovered work, products or services which have not been performed in compliance with the contract. The A-E shall recommend the appropriate payment for each pay request based on the A-E's review.
- E. The A-E's verification of pay requests shall include all documents necessary to support and justify the A-E's recommendations for payment. Such documentation shall include updated cost-loaded schedules and/or other applicable schedule formats as defined in contractors' agreements with COUNTY, independent cost estimates, photos of completed work, delivery tickets, and purchase orders. A-E is responsible for assuring that project files contain all documentation necessary to justify payments prior to recommending payment. Electronic copies of documents shall be maintained in JWA's electronic Project Document Management System, Oracle Primavera Unifier ("Unifier"), with the appropriate system security applied.
- F. The A-E shall make recommendations on any requests for extension of time by contractors. Such time extension requests, if approved by JWA, shall result in the issuance of a Revised Baseline Schedule in accordance with the terms defined in contractors' agreements with COUNTY, and Revised Baseline Schedule must be approved by the A-E. A-E shall procure and maintain all documentation necessary to justify A-E's recommendations on requests for extension of time. Electronic copies of documents shall be maintained in Unifier with the appropriate system security applied.
- G. A E shall diligently perform in a competent and professional manner those tasks and duties set forth in Appendix 1 - Scope of Services, attached hereto, in the time set forth in the Article titled "Time for Performance" below. The attached Appendix 1 – Scope of Services is hereby incorporated into this Agreement by reference. COUNTY, at its discretion, may reduce, limit or amend the Scope of Services and the corresponding costs upon written notification to A E as described in the Article titled "Changes in Scope of Services" of this Agreement.

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3. COMPENSATION FOR SERVICES

A. Maximum Not-To-Exceed Compensation and Reimbursable Expenses

COUNTY shall pay to A-E for performance of this Agreement on a time and material basis a not-to-exceed amount of one million five hundred thousand dollars (\$1,500,000) for A-E's approved work in accordance with the Scope of Services and approved reimbursable expenses. A-E shall only be entitled to payment for work as directed by COUNTY and completed by A-E within its Scope of Services as set forth in Appendix 1. In no event shall A-E be entitled to compensation and reimbursement that would result in the total payment by the COUNTY under this Agreement exceeding the above contract amount unless change order(s) or amendment(s) to this agreement have been approved by COUNTY, pursuant to Paragraph 4, Changes in Scope of Services.

B. Rates for A-E's Personnel

COUNTY agrees to compensate A-E for services performed by its personnel based on the hourly rates set forth in Appendix 2 for each Job Classification. The hourly rate for each job classification represents the maximum rate for that job classification. However, the COUNTY reserves the right to negotiate with A-E a lower rate for any given job classification based on the qualifications of the candidate being considered for that job classification.

C. Hourly Rate Adjustment

A-E's personnel hourly rates as listed in Appendix 2 shall remain the same each year for the term of the contract. The contract does not provide for annual cost of living adjustments.

D. Location of Work

A-E shall perform all services at a location to be determined by JWA. If A-E's personnel are assigned to work on County premises, JWA will make available for use by A-E office space, furniture, fixtures, equipment, land-line telephones, and supplies, as necessary, to perform A-E services required herein. All A-E's personnel who will be working on COUNTY premises and using the COUNTY's information network shall each sign the COUNTY's Information Technology Usage Policy.

E. Reimbursable Expenses:

A-E shall be entitled to reimbursement for the following Reimbursable Expenses. No other expenses shall be reimbursed without prior written authorization of the 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 JWA.

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All special equipment purchased by A-E shall become the property of JWA at the termination of this Agreement.

- 2) The actual cost of third-party project management tools and software recommended by A-E and approved in writing by JWA. Project management tools and software costs to include, but not limited to, purchase, lease, maintenance, external web hosting when appropriate, and server applications for multiple users to be specified by JWA.
- 3) Reproduction expenses paid to outside vendors, to the extent such vendors and reproduction rates have been approved by JWA.
- 4) Other actual costs and/or payments specifically approved and authorized in writing by JWA and actually incurred by A-E in performance of this Agreement.
- 5) Travel costs shall be reimbursed only if approved in advance in writing by JWA and are subject to the following restrictions:
 - a) Alcohol of any type will not be reimbursed
 - b) Dry cleaning will not be reimbursed
 - c) Hotel movies will not be reimbursed
 - d) Valet parking is reimbursable only if no other parking option is available.
 - e) Meals will be reimbursed for personnel on authorized business travel only at a flat per diem rate of \$60 per day.
 - f) Air travel is reimbursed at the fare for "Coach Class" seating. "Business Class" or "First Class" fares will not be reimbursed.
 - g) Lodging reimbursement shall be based on actual, reasonable, and necessary costs. Hotel rates associated with authorized business travel exceeding \$200.00 per day must be approved in writing by JWA. This written approval must be submitted with the billing for reimbursable expenses.
 - h) Phone charges during hotel stays associated with business support of the Scope of Services must be identified. Personal phone charges will not be reimbursed.
 - i) Car rental is reimbursable at the cost for mid-size or lower size vehicle. Larger size vehicle rentals must be approved in advance in writing by JWA. This written approval must be submitted with the billing for reimbursable expenses. Luxury or Sports car rentals of any type will not be reimbursed.
 - j) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this

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Agreement 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 JWA, as well as mileage within JWA's property, will not be reimbursed.

- k) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- l) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

Reimbursable expenses shall be submitted no more frequently than once every month. All reimbursable expenses must be documented with receipts and documentation must be submitted with billing. Reimbursables without back-up documentation will not be paid. A-E is responsible for submitting reimbursable billings in a format that is acceptable to JWA Accounting.

F. Labor Cost Projections and Cost Control

A-E shall exercise diligent effort to maintain best management practices control of the productivity of its personnel in performance of their tasks within the Scope of Services, and report to JWA in a timely fashion any conditions, unusual circumstances, or elements that may impact or be cause for change in A-E's Scope of Services or cost.

Upon request by County, and on a quarterly basis, or more frequently as COUNTY may consider appropriate, A-E shall submit to JWA its personnel's labor hours and costs expenditures for the previous quarter and projections for the coming quarter, and shall report potential variances, if any, in expenditures and productivity which may result in the exhaustion of funds in the Agreement prior to its term expiration. A-E shall promptly submit a request for change order or amendment for JWA's review if A-E becomes aware of conditions or circumstances that may warrant a change in Scope of Services, or which may cause labor productivity and/or expenditures to vary measurably.

G. Request for Payment

Services under this Agreement shall be billed every month on a time and materials basis using JWA's "Request for Payment" form provided by JWA and/or other electronic format of "Request for Payment" approved and made available by JWA, via Unifier. Approved and authorized reimbursable expenses shall be included in the Request for Payment. A-E will not be entitled to any mark-up on reimbursable expenses. A-E will not be entitled to reimbursement for any expense incurred in performance of this Agreement or in connection with the Scope of Services that is not specified above in this section.

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Each Request for Payment shall be accompanied by:

- 1) Scope of Services Status Report for the services being invoiced in part or in whole.
- 2) Up-to-date running account of hours and cost for all projects.
- 3) List of employees who worked on the Scope of Services during the month covered by the Request For Payment, including their names, job titles, hourly rates, and assignments.

Requests for payment should be submitted to JWA no later than 15 days following the period in which the services were performed. Requests for Payment must be approved by COUNTY Auditor before payment may be made.

4. CHANGES IN SCOPE OF SERVICES

The COUNTY may at any time direct any amendments or changes in work in the Scope of Services under this Agreement, including any reductions in the Scope of Services. If COUNTY desires a change in the services, a written change order shall be issued by COUNTY. The written change order shall set forth the nature of the change. Within a reasonable time as to allow COUNTY sufficient time for the review, analysis, processing, and issuance of written change order(s) or amendments(s), the A-E shall present to COUNTY a detailed request for change in compensation or other conditions from what is set forth in this Agreement, if any. Upon receipt, COUNTY may reject A-E's request for change, propose a revision to the requested change, or approve such change as requested by the A-E.

If A-E believes that a change in the Scope of Services is appropriate, it may submit a written request to the COUNTY to issue a change order or amendment. Such a request shall include the proposed change in the Scope of Services as well as any proposed change in compensation associated with the proposed changes in the work. COUNTY may utilize the same options in response to A-E's request for change as stated hereinabove.

All changes to the Scope of Services shall be approved in accordance with the current version of the COUNTY's Contract Policy Manual. If changes to the Scope of Services cause an increase in compensation, such increase in compensation shall be based on the terms of this Agreement.

5. CONFLICTS AND DISCLOSURES

The A-E and its personnel shall not accept any gifts or gratuities from any contractors which it is assigned to manage. A-E and its personnel shall not procure or accept any services, products or materials from any contractors which A-E is assigned to manage or oversee, without immediate disclosure to COUNTY.

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A-E shall immediately advise JWA in writing of any contracts between A-E and any contractors, architect-engineers, or other vendors and service providers it has been assigned to manage. This disclosure applies to prime contracts and/or Joint Venture agreements that the A-E has with all the assigned contractors. This disclosure shall be in addition to any other disclosures required by law or the California Political Reform Act (Government Code Section 87200, et. seq.). A-E shall, upon request by JWA, provide JWA with copies of contracts between A-E and contractors it has been assigned to manage.

6. A-E'S PERSONNEL

- A. Assigning Personnel: Throughout the term of this Agreement, the A-E shall provide those personnel qualified to perform the required Scope of Services upon the CIP Projects assigned to A-E. Upon request by COUNTY, A-E shall submit a staff authorization request for proposed personnel and for a given job classification, upon which COUNTY will render a decision on whether the proposed personnel meets the qualifications sought under the Agreement.

A-E shall also provide such fully-qualified administrative, managerial, clerical, secretarial and other support personnel as are necessary, and approved by JWA. A-E shall furnish the necessary personnel to complete the services on a timely basis in accordance with the requirements for any given Project. A-E shall have the authority to commit A-E's resources as needed and as requested by JWA.

A-E shall not bill the COUNTY for the services of any personnel not assigned to the Project without the COUNTY's prior written approval of the person by name and the person's specific hourly billing rate.

- B. Assigned Personnel: Reassignment of A-E's personnel requires prior written consent by JWA. A-E shall not be entitled to compensation for personnel who are removed from the project or the individuals who replace them without the written consent of JWA.
- C. Removal of personnel at COUNTY's Discretion: COUNTY may, at its sole discretion, require A-E to remove from the Project any of its personnel assigned to the performance of the Scope of Services. A-E shall remove such person(s) from the Project promptly after request from JWA. The A-E shall make its best efforts to replace any person so removed within seven (7) days with a person of like qualifications acceptable to COUNTY. Alterations to A-E's staff at COUNTY's or JWA's request do not constitute changes to the SCOPE OF SERVICES.
- D. Qualifications/Licensing: A-E represents that all personnel provided under this Agreement are fully qualified for the offices or positions to which they are assigned, and that they meet or exceed the qualifications for their positions.

A-E and each of its subconsultants at any tier, if any, shall maintain in full force and effect at all times during the term of this Agreement such licenses, registrations

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or permits as may be required by the State of California or any other local, regional, County, State or Federal governmental entities. A-E shall promptly inform COUNTY of any lapse of license, investigation, or disciplinary action against A-E, its employees, or its subconsultants on this project.

- E. Organization/Assignments: Within thirty days of the execution of this Agreement, A-E shall prepare and submit to JWA an organizational chart detailing A-E's Project activities by employee name, job title, and organizational unit, and showing lines of command and responsibility. A-E shall update the organizational chart to show any proposed changes at least 30 days, or sooner if JWA deems necessary, prior to the change taking effect, and shall submit the updated chart to JWA.
- F. List of Employees: A-E shall also provide JWA with a list of employees on the Project on a monthly basis, including their names, job titles and assignments, rates, and listing any employees whose services on the project have ceased in the prior month and the reason therefore. A-E shall submit this list with each monthly pay request. COUNTY reserves the right to withhold payment from A-E's pay requests until such information is submitted.
- G. Compliance with Employment Laws: A-E shall be solely responsible for complying with all laws pertaining to the employment of all of A-E's personnel, including but not limited to, compliance with all applicable laws and regulations concerning workers' compensation, social security, minimum wage, unemployment insurance, hours of labor, services, working conditions, equality in employment, and like subjects affecting employers engaged in public projects.

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7. EMPLOYMENT ELIGIBILITY VERIFICATION

The 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. The 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. The A-E shall retain all such documentation for all covered employees for the period prescribed by the law. The A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the 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.

8. OWNERSHIP OF DOCUMENTS

All documents in all forms and media pertaining to A-E's Scope of Services shall be and remain the property of COUNTY, without any additional cost to COUNTY. However, A-E does not accept responsibility for COUNTY's use of its work under this Agreement for other projects.

9. COORDINATION OF DRAWINGS

A-E shall be responsible for the coordination of all design documents relating to A-E's Scope of Services, regardless of whether such drawings or documents are prepared or performed by A-E, by A-E's sub-consultants, or by others. If others have performed preliminary, schematic, or design development work, A-E nevertheless accepts full responsibility for that work as fully as if such work had been performed by the A-E itself. A-E shall be responsible for the coordination and internal checking of all drawings within its Scope of Services and for the accuracy of all dimensional and layout information contained in them. The A-E shall be responsible for the completeness and accuracy of all drawings and all specifications within its Scope of Services and for their compliance with all applicable codes, ordinances, regulations, laws, and statutes.

A-E shall advise COUNTY of any need for securing tests, analyses, studies, reports, or sub-consultant services in connection with the development of the design and construction documents for the Project.

A-E represents and agrees that it has inspected and fully informed itself as to the state of any existing drawings and studies for the Project, that A-E has visited the job site and examined the actual job conditions and limitations of the Project, and that A-E has obtained information sufficient to allow A-E to proceed with the Scope of Services

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described herein. A-E is and will be relying strictly and solely upon its own such inspections and examinations and the advice and counsel of its agents and officers. Except as expressly set forth in this Agreement, COUNTY is not making and has not made any warranty or representation with respect to site conditions or limitations.

10. RECORD DRAWINGS

A-E shall provide record drawings on disc, to the satisfaction of Owner, showing the as-constructed condition of the Project in digital format (PDF and AutoCAD, Civil 3D, Revit and/or Microstation). The drawings shall incorporate all changes in the work made during construction, based on marked-up prints, as-built drawings provided by the Contractor, shop drawings and other data known by the A-E, and shall accurately reflect the final construction of the work. The drawings shall include, without limitation, the following systems: architectural, structural, civil, mechanical electrical, plumbing, fire protection, fire alarm, security and landscape. A-E shall provide the drawings to COUNTY promptly after the completion of construction. A-E shall upload any Record Drawings into the Oracle Primavera Unifier Project Document Management System (Unifier).

11. CONFIDENTIALITY

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 Agreement 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 Appendix 1, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the PROJECTS/SERVICES.

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

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.

12. PUBLICATION

No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Agreement, 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 Agreement. All press contacts, including graphic

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display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY approval.

The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Agreement or any subsequent amendment of, or effort under this Agreement. 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's Project Manager.

13. SUBCONSULTANTS

The retention by the A-E of any sub-consultant that is different from those noted in Appendix 2 – Hourly Rate Schedule shall be approved in writing by the COUNTY. A-E shall ensure that the contract for each of its sub-consultants providing services on this Project contain the requirements set forth in the “Accounting Records/Audit” and “Nondiscrimination” articles of this Agreement.

COUNTY may, at its sole discretion, require A-E to remove from the Project any of its sub-consultants assigned to the performance of the Scope of Services. The A-E shall remain responsible to the COUNTY for any and all services and obligations required under this Agreement, whether performed by A-E or its sub-consultants.

A-E shall pay each sub-consultant in the time periods required by law. Any sub-consultants employed by A-E shall be independent and not agents of the COUNTY. A-E shall ensure that its sub-consultants satisfy all substantive requirements for the work set forth by this Agreement, including insurance and indemnification.

14. RIGHT TO OFFSET

COUNTY, without waiver or limitation of any of its rights or remedies, shall be entitled from time to time to deduct from any amounts due or owing by COUNTY to A-E in connection with this Agreement, any and all amounts owed by A-E to COUNTY in connection with this Agreement. COUNTY will provide A-E with written notice including justifications of amounts withheld.

15. AVAILABILITY OF FUNDS

Each payment or obligation of COUNTY is contingent upon the availability of local, State, or Federal government funds which are appropriated or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the services performed, then this Agreement may be terminated or suspended by COUNTY at its convenience. COUNTY shall notify A-E promptly of any product or service that will be affected by a shortage of funds and shall make its best efforts to

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notify A-E prior to the A-E's commitment or expenditure of funds. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of suspension or termination under this paragraph.

16. TERMINATION FOR CONVENIENCE

The COUNTY may, at any time, and without cause, terminate this Agreement in whole or in part, upon written notice to A-E. Such termination shall be effected by delivery to A-E of a notice of termination specifying the effective date of the termination and the extent of the services to be terminated.

In the event of such termination, COUNTY shall pay A-E amounts owing to it for the services completed and reimbursable expenses incurred prior to the effective date of the termination, and such payment shall be A-E's sole remedy against COUNTY. Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential or special damages, or any other damages as a result of a termination or partial termination of this Agreement.

17. TERMINATION FOR DEFAULT

Notwithstanding any other provision of this Agreement, if A-E fails to perform any of its obligations under this Agreement, COUNTY may, without prejudice to any other rights or remedies it may have, cause further payment to be held in abeyance, and/or may terminate this Agreement by giving written notice to A-E specifying the cause and the date of termination.

In the event of such termination, COUNTY shall pay A-E for the portion of services performed up to the date of termination, including reimbursable expenses incurred up to that time, less any sums as may be withheld by COUNTY in its sole discretion to cover all costs, claims, damages or losses incurred by COUNTY or likely to be incurred as a result of or in connection with A-E's failure to perform. The COUNTY may set off against and deduct from any amounts payable to A-E all damages suffered by COUNTY due to any such default and failure to perform by A-E. If COUNTY has, as of the date of the termination of this Agreement, already paid A-E an amount which exceeds the amount which may be due to A-E, A-E shall refund to COUNTY the excess amount promptly after notice from COUNTY.

If the sum of the total cost to COUNTY of completing the services plus amounts previously paid to A-E exceeds the total amount the COUNTY would have paid to A-E under this Agreement for the completed services, the A-E shall promptly pay the difference to COUNTY.

Under no circumstances will A-E be entitled to anticipatory or unearned profits or special damages as a result of a termination of this Agreement.

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18. OBLIGATIONS UPON TERMINATION

In the event of termination for convenience or for default, the A-E shall immediately stop services in accordance with the notice and comply with any other direction as may be specified in the notice or as subsequently provided by COUNTY. A-E shall insert in any contract with a subcontractor that the subcontractor shall stop services on the date of and to the extent specified in a notice of termination, and shall require all subconsultants at any tier to insert the same in any lower tier contracts.

Upon termination, A-E shall turn over to COUNTY all finished and unfinished reports and other written services of any kind or quality prepared or generated in connection with the services under this Agreement, including providing copies on computer disks or other applicable media of all such services or materials that were prepared in electronic or digital form.

Upon termination, A-E shall immediately advise COUNTY of all outstanding agreements, subcontracts, rental agreements, and purchase orders which A-E has with others pertaining to performance of the services, and shall furnish COUNTY with complete copies thereof. Upon request by COUNTY, A-E shall assign to COUNTY, in form and content satisfactory to COUNTY, A-E's title to materials and equipment for the services and all its interest in any agreements, subcontracts, rental agreements, and purchase orders designated by COUNTY. A-E shall include provisions in all of its subcontracts, rental agreements, purchase orders, and other agreements related to its services under this Agreement providing that its rights thereunder may be assigned to COUNTY and that in the event of such assignment, the other contracting party agrees to be bound to the COUNTY, and shall require all subconsultants at any tier to insert the same in any lower tier contracts.

19. SUSPENSION OF SERVICES

A. COUNTY's Options

The COUNTY, at its sole discretion, may at any time by written notice to A-E suspend further performance of all or any portion of the services by A-E. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, A-E shall promptly suspend further performance of the services to the extent specified, and during the period of such suspension shall properly care for and protect all services in progress and information, materials, supplies, and equipment A-E has on hand for performance of the services.

Upon the request of COUNTY, A-E shall promptly deliver to COUNTY copies of outstanding purchase orders, agreements, and subcontracts of A-E for materials, equipment, and services for the services, and shall take such action relative to such purchase orders, agreements, and subcontracts as may be directed by COUNTY. COUNTY may at any time withdraw the suspension of performance of the services

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as to all or part of the suspended services by written, verbal, or facsimile notice to A-E specifying the effective date and scope of withdrawal, and A-E shall resume diligent performance of the services for which the suspension is withdrawn on the specified effective date of withdrawal.

B. No Agreement Modification

No suspension or withdrawal of suspension shall entitle A-E to any prospective profits or other losses or damages of any kind resulting from such suspension or withdrawal of suspension. However A-E shall be entitled to actual demobilization costs arising directly out of the suspension or withdrawal of suspension.

Furthermore, no damages, compensation, or claims shall be payable or owing by COUNTY to A-E for any interruption or cessation of A-E's business, or loss of income arising from any suspension or withdrawal of suspension.

20. REVIEW OF PROJECT DOCUMENTS AND FIELD CONDITIONS BY A-E

A-E represents and agrees that it will review and become fully informed as to the state of any existing drawings, specifications and studies for work on the CIP Project, that A-E will visit the job site and examine the actual job conditions and limitations of the Project, and that A-E will obtain information sufficient to allow it to proceed with the Project Management Scope of Services described herein. A-E is and will be relying strictly and solely upon its own such review and examinations and the advice and counsel of its agents and officers. A-E shall advise COUNTY of any need for securing any tests, analyses, studies, reports, or services in connection with assigned work and the management thereof. Except as expressly set forth in this Agreement, COUNTY is not making and has not made any warranty or representation with respect to site conditions or limitations.

21. ACCOUNTING RECORDS/AUDIT

A-E shall keep accurate accounting records of time and expenditures, and records shall be available for inspection and audit by COUNTY or its authorized representatives and/or agents, or by another appropriate governmental office, at all reasonable times, for a period of four (4) years after the final payment under the Agreement. A-E represents and agrees that failure by A-E to maintain such records in compliance with this paragraph precludes A-E from maintaining any request or claim for compensation from or against COUNTY for any time periods for which such records were not kept, and constitutes a waiver by A-E of any such claim(s) against COUNTY for such time period(s).

The COUNTY shall have the right to audit A-E's subconsultants and vendors providing services on this project. This right to audit A-E's subconsultants and vendors shall extend to COUNTY's authorized representatives and/or agents, and other appropriate governmental offices. A-E shall include in its agreements with its subconsultants and

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sub-consultants an audit provision that provides the COUNTY with the right to audit their records as set forth herein.

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Agreement involves expenditures of public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the PARTIES shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under this Agreement.

22. ASSIGNMENT

A-E shall not assign any right, nor delegate any duty, under this Agreement, or any portion thereof, without the written consent of COUNTY. Any attempted assignment or delegation without COUNTY's prior written consent shall be void.

23. SOLE AND ONLY AGREEMENT

This Agreement constitutes the sole and only agreement between the PARTIES hereto with respect to the services herein described, and correctly sets forth the obligations of each PARTY. Any representations or agreements not specifically contained herein are null and void. Any amendments hereto shall be made in writing, effective only when signed by both PARTIES.

24. NO WAIVER BY COUNTY

In the event the COUNTY does not insist upon strict performance by A-E or does not exercise any right or option herein conferred, such event shall not be deemed or construed as a waiver or a relinquishment to any extent of any right of COUNTY to insist on strict performance or to assert or rely upon any such terms or options on any future occasion.

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25. INDEMNITY

To the fullest extent permitted by law, the A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold the COUNTY, its elected and appointed officials, officers, employees, agents, and those special districts and agencies for which COUNTY's Board of Supervisors acts as the governing body (collectively "indemnitees" or each individually an "indemnitee") harmless from and against any and all claims, lawsuits, orders, judgments, damages, penalties, fines, costs, liabilities, losses or actions of every kind and description arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. In the event an indemnitee is named as a defendant in any such lawsuit, the A-E shall, at the request of the COUNTY, represent the indemnitee with qualified counsel approved in writing by the COUNTY.

A-E's indemnity obligation shall not apply in the event of any loss, damage, or expense arising from the sole and /or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors. If judgment is entered against A-E and the COUNTY or any indemnitee by a court of competent jurisdiction because of the concurrent negligence of the COUNTY or indemnitee and the A-E, then the A-E and the COUNTY agree that such liability will be apportioned as determined by the court. Neither PARTY shall request a jury apportionment.

Nothing in this Agreement shall be construed as authorizing any award of attorney's fees in any action on, or to enforce, the terms of this Agreement. The rights and obligations set forth in this paragraph shall survive the termination or completion of this Agreement.

26. ERRORS AND OMISSIONS AND NEGLIGENT PERFORMANCE

In the event of errors or omissions, or negligent performance by the A-E in the performance of this Agreement which result in damages and costs to COUNTY greater than what would have resulted if there were no such errors or omissions or negligence, any additional damages and costs incurred by the COUNTY, including without limitation direct and consequential damages as a result thereof, shall be borne by the A-E. Any COUNTY payment to the A-E shall not be deemed or construed as acceptance or waiver by COUNTY of errors or omissions or negligence by the A-E.

27. INSURANCE

Prior to the provision of services under this contract, the A-E agrees to purchase all required insurance at A-E's expense and to deposit with the COUNTY Certificates of Insurance, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the COUNTY during the entire term of this contract. The COUNTY reserves the right to request the declarations page showing all endorsements and a certified copy of the policy. In addition, all sub-consultants performing work on behalf of A-E pursuant to

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this contract shall obtain insurance subject to the same terms and conditions as set forth herein for A-E.

A-E shall ensure that all sub-consultants performing work on its behalf, pursuant to this agreement, 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 sub-consultants to work if sub-consultants have less than the level of coverage required by COUNTY from A-E under this agreement. It is the obligation of A-E to provide notice of the insurance requirements to every sub-consultant and to receive proof of insurance prior to allowing any sub-consultants to begin work. Such proof of insurance must be maintained by A-E through the entirety of this agreement for inspection by COUNTY representative(s) at any reasonable time.

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 Agreement, 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 Agreement, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 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.

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.

Qualified Insurer

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.

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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 (owned, non-owned, hired vehicles)	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability Insurance	\$1,000,000 per claims made or occurrence \$2,000,000 aggregate

Required Coverage Forms

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

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.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees and agents*** as Additional Insureds, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN AGREEMENT.***
- 2) 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.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against ***the County of Orange, its elected and***

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appointed officials, officers, employees and agents, or provide blanket coverage which shall state ***AS REQUIRED BY WRITTEN AGREEMENT***.

All insurance policies required by this Agreement 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.

A-E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the contract, upon which the COUNTY may suspend or terminate this Contract.

If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain Professional Liability coverage for Two (2) years following completion of contract.

The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by Project Manager or the agency/department Facilities Division, award may be made to the next qualified vendor.

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.

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.

The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder or 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.

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28. ACCIDENTS

All known job site and other project-related accidents, injuries, and illnesses sustained by A-E's or subconsultants' employees who require medical attention (other than first aid), shall be orally reported to COUNTY at the time of the incident. Written reports, satisfactory in form and content to COUNTY shall be submitted by A-E promptly after each such incident.

29. PUBLIC RELATIONS

A-E and its subconsultants, if any, shall not disseminate information on behalf of the COUNTY or JWA pertaining to the nature, scope, or details of the CIP Project without the prior specific written consent of JWA. All inquiries of any kind pertaining to the Project presented to A-E in any form, including but not limited to written or oral requests, and originating from any media source, such as the press and other print publications, television or radio networks, the World Wide Web or instruments thereof, community or public interest groups, or any other limited or mass media systems, shall be immediately referred by A-E to JWA.

A-E shall not release information in any manner or form on behalf of the COUNTY or JWA pertaining to the nature, scope, or details of the Project in any organized public or private event, setting, or ceremony, without the prior specific written consent of JWA.

30. INDEPENDENT CONTRACTOR

A-E is an independent contractor. Nothing in this Agreement shall be deemed to make A-E, its subconsultants, or any of their respective officers, employees, representatives, or agents, the agents or employees of COUNTY. A-E shall have responsibility for and control over the details and means for performing the services provided that A-E is in compliance with the terms of the Agreement.

31. SAFETY PLAN

The A-E must prepare and submit to COUNTY a safety plan for review and comment prior to beginning services. This safety plan shall comply with all OSHA, COUNTY, and FAA services, safety, and health rules governing the conduct of its employees, agents, and subconsultants at and about the Project job site. A-E agrees that it shall ensure that its personnel, employees, agents, and subconsultants at the job site comply strictly with such rules.

COUNTY reserves the right, from time to time, to make recommendations to revise the safety plan and revise any safety rules therein. A-E shall comply fully with such rules as revised in accordance with the foregoing provisions.

32. COMPLIANCE WITH LAWS

A-E shall comply with and give all notices required by all laws, ordinances, rules, regulations, and lawful orders of government authorities applicable to the A-E's

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performance of the Scope of Services and all other provisions of this Agreement. A-E shall promptly notify COUNTY in writing if A-E has reason to believe that any part of A-E's services is at variance with any law, ordinance, code, rule, or regulation of public authority. A-E shall not knowingly allow contractors and other parties whose services it is managing to perform services that are contrary to laws, statutes, ordinances, building codes, and rules and regulations applicable to the Project. Notwithstanding the above, A-E shall not be responsible for those designers or contractors whom they are not managing. A-E agrees to comply with all Federal laws, regulations, orders and other requirements applicable to A-E and A-E's services, including but not limited to The Americans with Disabilities Act, The Immigration Reform Act, and the Drug Free Workplace Act. A-E agrees to permit the COUNTY to verify such compliance.

33. AIRPORT SECURITY

The A-E's personnel must complete a background clearance Security Identification Display Area (SIDA) class in order to obtain an I.D. badge and a driving permit for access to drive on the Airport Operations Area.

A. Badge Acquisition:

Prior to issuance of a security badge(s), designated A-E's personnel who will be working onsite at the JWA terminal or other secure areas and engaged in the performance of work under this Agreement must pass JWA's screening requirements, which include an F.B.I. background investigation and finger printing (the estimated fee is \$29.00 per person. A-E shall verify actual fees with JWA's badging office). All actual fees shall be borne by A-E. A-E's designated personnel are required to attend a 4-hour SIDA training class at JWA, and pass the written test (the estimated fee is \$10.00 per person.) The A-E shall be responsible for all costs associated with the background checks, and abide by all of the security requirements set forth by the Federal Aviation Administration (FAA) and JWA.

B. Badge Holder Requirements and Responsibilities:

The FAA-approved security program for JWA requires that each person issued a JWA security badge be made aware of his/her responsibilities regarding the privilege of access to restricted areas of JWA.

All persons within the restricted air operation areas of JWA are required to display, on their person, a JWA security badge, unless they are specifically exempted for safety reasons or they are under escort by a properly badged individual. Each JWA employee, or JWA tenant employee who has been issued a JWA security badge is responsible for challenging any individual who is not properly displaying a JWA issued or approved and valid identification badge. Any person who is not properly displaying or who cannot produce a valid JWA security badge must immediately be referred to the Sheriff's Department - Airport Police Services Office for proper handling.

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The JWA security badge is the property of the County of Orange and must be returned upon termination of A-E's personnel employment and/or termination or expiration of this Agreement at JWA. The loss of a badge shall be reported within 24 hours to the Sheriff's Department - Airport Police Services by calling (949) 252-5000. Individuals that lose their badge shall be required to pay a fee before receiving a replacement badge. The charge for lost badge replacement will be at the current posted rate located in the JWA Administration Office. A report shall be made before a replacement badge will be issued.

The JWA security badge is nontransferable.

In the event that a A-E's badge is not returned to JWA upon termination of A-E's personnel employment and/or termination or expiration of this Agreement, a fine of \$250.00 per badge will be charged to the A-E. A-E's final payment may be held by JWA or a deduction from the A-E's payment(s) may be made to ensure that funding is available to cover the fine in the event that badges are not returned.

34. NONDISCRIMINATION

A. Compliance with Regulations

The A-E shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated herein by reference and made a part of this Agreement.

B. Nondiscrimination

The A-E, with regard to the services performed by it during the Agreement, shall not discriminate on the grounds of race, color, disability, sex, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. A-E shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the regulations.

C. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations, either by competitive bidding or negotiation, made by A-E for services to be performed under a subcontract, including procurement of materials or lease of equipment, each potential subcontractor or supplier shall be notified by A-E of A-E's obligations under this Agreement and the regulations relative to nondiscrimination on the grounds of race, color, disability, sex, or national origin.

D. Information and Reports

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A-E shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders and instructions.

Where any information required of A-E is in the exclusive possession of another who fails or refuses to furnish this information, A-E shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance

In the event of A-E's noncompliance with the nondiscrimination provisions of this contract, the COUNTY shall impose such contract sanctions as it or the FAA may determine to be appropriate, including but not limited to:

- 1) Withholding of payments to A-E under the Agreement until A-E complies, and/or
- 2) Termination or suspension of the Agreement, in whole or in part.

F. Incorporation of Provisions

The A-E shall include the provisions of subparagraphs A through E of this paragraph in all of its subcontracts and other agreements pertaining to the services under this Agreement, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued thereto. The A-E shall take such action with respect to any subcontract or procurement as the COUNTY or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, in the event A-E becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, A-E may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, A-E may request the United States to enter into such litigation to protect the interests of the United States.

35. DISADVANTAGED BUSINESS ENTERPRISE (FEDERALLY-FUNDED PROJECTS)

A. Policy

It is the policy of John Wayne Airport, under the direction of its governing body, the Orange County Board of Supervisors, to promote the objectives of the Department of Transportation with respect to the participation of Disadvantaged Business Enterprises (DBEs) in DOT – assisted contracts. This policy has been formulated to comply with 49 CFR Part 26. The objectives of the program are as follows:

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- 1) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- 2) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- 3) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- 4) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- 5) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- 6) To assist the development of firms that can compete successfully in the marketplace outside the DBE programs; and
- 7) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

John Wayne Airport has in the past, as a matter of both principle and law, established an Affirmative Action Program to ensure that no person is discriminated against on the grounds of race, color, national origin or sex in any program associated with the Airport. John Wayne Airport administers a DBE program in compliance with 49 CFR Part 26.

B. DBE Obligation

The A-E agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

C. Assurances

The A-E, contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor 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.

36. GOVERNING LAW AND VENUE

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the

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PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

37. ATTORNEY'S FEES

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

38. CONTRACT CONSTRUCTION

The PARTIES acknowledge that each PARTY and its counsel have reviewed this Agreement 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 Agreement or any amendment or exhibits hereto.

39. INTERPRETATION

- A. Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement.
- B. 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.
- C. Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other PARTY hereto or by any person representing them, or both.
- D. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the PARTY that has drafted it is not applicable and is waived.
- E. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the PARTIES and this Agreement.

40. SEVERABILITY

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

41. HEADINGS

The various headings and numbers herein, the grouping of provisions of this Agreement 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.

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42. JWA INFORMATION TECHNOLOGY NETWORK

- A. The County will provide connection to its information technology network in support of A-E's required access to JWA's electronic project management system Unifier.
- B. The A-E shall submit to the COUNTY a completed JWA User Access Request form at least seven days prior to A-E's need for access to JWA's information technology network. A JWA User Access Request form is required for each employee to access project documentation including, but not limited to: correspondence; monthly reports; schedules; RFIs; daily reports; payment applications; deliverables/submittals; change documentation; plans and drawings; and all other communication.
- C. JWA will provide Unifier system training following receipt of the JWA User Access Request form. A-E shall arrange Unifier training for its staff with the JWA project manager. JWA will create a user ID with approved access rights and provide an initial password to the user in a secure manner.
- D. County of Orange Information Technology Policy
A-E's personnel shall acknowledge prior accessing the JWA technology network and comply with the County of Orange Information Technology Usage Policy.

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County of Orange

Information Technology Usage Policy

1 INTRODUCTION:

The County of Orange Information Technology (IT) Usage Policy is the foundation of the County's information security efforts. Each member of the County workforce is responsible for understanding his/her role in maintaining County IT security. This policy summarizes your information technology responsibilities. To learn more about information security, please see the Information Technology Security Policy.

Complete **Section 5: Acknowledgement** after you have finished reading this document. Your signature on the Acknowledgement indicates that you understand and will comply with County security policy. If you disregard security policies, standards, or procedures, you can be subject to County and agency-specific disciplinary action.

2 TERMS YOU NEED TO KNOW:

Authentication	The process of verifying the identity of anyone who wants to use County information before granting them access.
Back Up	To copy files to a second medium (for example, a disk or tape) as a precaution in case the first medium fails.
Confidentiality / Non-Disclosure Agreement	An agreement that outlines sensitive materials or knowledge that two or more parties wish to share with one another. By way of such agreement, the parties to the agreement agree not to share or discuss with outside parties the information covered by the agreement.
System or Software Configuration Files	Highly important files that control the operation of entire systems or software.
Electronic Communication	Messages sent and received electronically through any electronic text or voice transfer/storage system. This includes e-mail, text messages, instant messages (IM) and voicemail.
Encryption	The translation of data into a secret code. Encryption is the most effective way to achieve data security. To read an encrypted file, you must have access to a secret key or password that enables you to <i>decrypt</i> it. Unencrypted data is called <i>plain text</i> ; encrypted data is referred to as <i>cipher text</i> .
Information Security	Safeguarding an organization's data from unauthorized access or modification to ensure its availability, confidentiality, and integrity.
Information Technology (IT)	The broad subject concerned with all aspects of managing and processing information within an organization.
Local Security Administrator (LSA)	The person at each agency who is responsible for the operational maintenance of IT security resources within the agency.
Network	Two or more linked computer systems. There are many different types of computer networks.
Password	Sequence of characters (letters, numbers, symbols) used in combination with a User ID to access a computer system or network. Passwords are used to authenticate the user before s/he gains access to the system.

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County of Orange**Information Technology Usage Policy**

Personally Identifiable Information (PII)	Any piece of information that could be used to uniquely identify, contact, or locate a single person. Examples include: full name; national identification number; email address; IP address; driver's license number; and Social Security Number.
User	Any individual who uses a computer.
User ID	Unique name given to a user for identification to a computer or telephone network, database, application, etc. Coupled with a password, it provides a minimal level of security.
Virus / Malicious Software	A software program that interferes with computer operation, damages or destroys electronic data, or spreads itself to other computers. Viruses and malicious software are often transmitted via email, documents attached to email, and the Internet.
Workforce Member	Any member of the County workforce, including employees, temporary help, contractors, vendors and volunteers.

3 POLICY OVERVIEW

As a member of the County workforce, you are expected to comply with the County's Information Technology Usage Policy. Your agency may have additional policies that you must follow as part of your job.

The following are key concepts of the County's policy:

- Information created or used in support of County business activities is the property of the County.
- Your assigned information technology resources are meant to facilitate the efficient and effective performance of your duties. It is your responsibility to ensure that resources are not misused and that you comply with policy.
- If you need to access confidential information as part of your duties, you will be asked to sign a confidentiality or non-disclosure agreement before you access the County network.
- Many County facilities house sensitive or critical information systems. You are expected to comply with all physical access controls designed to restrict unauthorized access.
- You may not remove County equipment or data in any format from the workplace unless you have received prior written approval from your supervisor or manager.
- The use of the network and Internet is a privilege, not a right. If you violate policy, you may lose your network and/or Internet access. The County may refuse to reinstate your access for the remainder of your employment at the County. The County may also take other disciplinary action as appropriate under County policy, departmental policy and applicable employment MOUs.

4 YOUR RESPONSIBILITIES

Your security responsibilities fall under several different Information Technology categories. Each category and the key responsibilities associated with it are listed below:

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County of Orange**Information Technology Usage Policy****USER IDs AND PASSWORDS**

- You will be issued a network user ID unique to you. Only you may use your user ID to access County resources (e.g. computer, telephone, FAX).
- You will be issued a default password at the same time as your user ID. You will be prompted to change your password the first time you log in to the system.
- Do not share user IDs and passwords with other users or individuals, including coworkers and supervisors. Treat your password as sensitive and highly confidential information.
- You are agreeing to follow the Information Technology Usage Policy when you accept a password from the County and use it to access the County data or telephone networks, the Internet, or the Intranet.
- Change your password immediately if you think someone else knows it. Report your suspicions to management.
- If you lose or forget your password, you are required to request a password reset. No one else can do it for you.

HARDWARE AND SOFTWARE

- The County will provide, and employees may request, peripheral equipment such as ear buds for cellular phones or Blackberry devices, as may be necessary to enable compliance with all local laws which pertain to the use of mobile communication equipment or the individual workplace needs for the employee to perform his or her employment.
- Never download or install any hardware or software without prior written approval of your agency IT representative.
- Do not make any changes to system and/or software configuration files unless specifically authorized in writing by your agency IT.
- Maintain your business data files on a network (or "shared") drive so that they can be backed up according to your agency's regular backup schedule.
- Use the "lock workstation" feature any time you leave your workstation logged on to the network and you are away from your desk.
- Do not connect a County laptop or other mobile device to the network until it has been scanned for viruses and malicious software.
- Follow the authentication procedures defined by your agency whenever you log in to the County network via Remote Access.
- Do not attempt to connect your workstation, laptop, or other computing device to the Internet via an unauthorized wireless or other connection while simultaneously connected to any County network.
- Retain original software installed on your computer if it is provided to you. The software must be available when your system is serviced in case it needs to be reinstalled.
- Do not keep liquids or magnets on or near computers, as they can cause serious damage.
- Ensure that your equipment is plugged into a surge protector at all times.

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County of Orange**Information Technology Usage Policy**

- Report all computer problems in detail on the appropriate form and/or when you contact the County Service Desk or discuss the problem with your agency's Help Desk.
- Report equipment damage immediately to the County Service Desk or your agency's Help Desk.

EMAIL and TELEPHONE

- The e-mail and telephone systems and networks are primarily for official County business.
- Management can freely inspect or review electronic mail and data files including voicemail. Employees should have no expectation of privacy regarding their internet usage, electronic mail or any other use of County computing or telephone equipment.
- Do not use a County email account or voicemail box assigned to another individual to send or receive messages unless you have been authorized, in writing, to act as that individual's delegate.
- Use of personal Internet (external) email systems from County networks and/or desktop devices is prohibited unless there is a compelling business reason for such use and prior written approval has been given by agency management and agency IT.
- Do not configure or use automated forwarding to send County email to Internet-based (external) email systems unless specifically authorized to do so, in writing, by County management.
- Send confidential information via email only with the written permission of management and only via an approved method. Mark the email according to agency policy.
- Treat confidential or restricted files sent as attachments to email messages as confidential or restricted documents. This also applies to confidential or restricted information embedded within an email message as message text or a voicemail message.
- Do not delete email or voicemail messages or other data if management has identified the subject matter as relevant to pending or anticipated litigation, personnel investigation, or other legal processes.

THE INTERNET / INTRANET

- Internet/Intranet access is primarily for County business.
- You may access the Internet for limited personal use only during nonworking time and in strict compliance with policy. If there is any doubt about whether an activity is appropriate, consult with your Department Head or his/her designee.

INFORMATION SECURITY

- Treat hardcopy or electronic Personally Identifiable Information (PII) as confidential and take all precautions necessary to ensure that it is not compromised. Intentional – or even accidental – disclosure of PII to unauthorized users is a violation of policy.
- Don't leave PII unattended or unsecured for any period of time.
- Be sure to follow your agency's policy for disposing of confidential data. This may include the physical destruction of data through shredding or other methods.
- Information created, sent, stored or received via the email system, network, Internet, telephones (including voicemail), fax or the Intranet is the property of the County.

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- Do not expect information you create and store on County systems, including email messages or electronic files, to be private. Encrypting or using other measures to protect or "lock" an email message or an electronic file does not mean that the data are private.
- The County reserves the right to, at any time and without notice, access, read and review, monitor, and copy all messages and files on its computer system as it deems necessary.
- The County may disclose text or images to law enforcement without your consent as necessary.

PROHIBITED ACTIVITY

Unless you are specifically authorized by your manager or agency in writing, the following uses are prohibited by the Information Technology Security Policy:

- Using, transmitting, or seeking inappropriate or offensive materials, including but not limited to vulgar, profane, obscene, abusive, harassing, belligerent, threatening, or defamatory (harming another's reputation by lies) language or materials.
- Accessing, attempting to access, or encouraging others to access controversial or offensive materials.
- Revealing PII without permission, such as another's home address, telephone number, credit card number or Social Security Number.
- Making offensive or harassing statements or jokes about language, race, color, religion, national origin, veteran status, ancestry, disability, age, sex, or sexual orientation.
- Sending or soliciting sexually oriented messages, images, video or sound files.
- Visiting sites featuring pornography, terrorism, espionage, theft, drugs or other subjects that violate or encourage violation of the law.
- Gambling or engaging in any other activity in violation of local, state, or federal law.
- Uses or activities that violate the law or County policy or encourage others to violate the law or County policy. These include:
 - Accessing, transmitting, or seeking confidential information about clients or coworkers without proper authorization.
 - Intruding, or trying to intrude, into the folders, files, work, networks, or computers of others, or intercepting communications intended for others.
 - Knowingly downloading or transmitting confidential information without proper authorization.
- Uses that cause harm to others or damage to their property, including but not limited to:
 - Downloading or transmitting copyrighted materials without the permission of the copyright owner. Even if materials on the network or the Internet are not marked with the copyright symbol, ©, assume that they are protected under copyright law.
 - Using someone else's password to access the network or the Internet.
 - Impersonating another user or misleading message recipients into believing that someone other than the authenticated user is communicating a message.

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- Uploading a virus, other harmful component, or corrupted data or vandalizing any part of the network.
- Creating, executing, forwarding, or introducing computer code designed to self-replicate, damage, or impede the performance of any computer's memory, storage, operating system, application software, or any other functionality.
- Engaging in activities that jeopardize the security of and access to the County network or other networks on the Internet.
- Downloading or using any software on the network other than that licensed or approved by the County.
- Conducting unauthorized business or commercial activities including, but not limited to:
 - Buying or selling anything over the Internet.
 - Soliciting or advertising the sale of any goods or services.
 - Unauthorized outside fund-raising activities, participation in any lobbying activity, or engaging in any prohibited partisan political activity.
 - Posting County, department and/or other public agency information to external news agencies, service bureaus, social networking sites, message boards, blogs or other forums.
- Uses that waste resources, including, but not limited to:
 - Printing of personal files.
 - Sending chain letters for any reason.
 - Including unnecessary recipients on an email. Only copy others on an email or voicemail message who should be "in the loop" on the topic addressed.
 - Indiscriminate use of distribution lists. Before using a distribution list, determine whether or not it is appropriate for everyone on that list to receive the email.
 - "All hands" emails. Emails of this type are to be sent only after management permission has been obtained.

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County of Orange

Information Technology Usage Policy

5 ACKNOWLEDGEMENT

- If you violate security policies, standards, or procedures, you can be subject to County and agency-specific disciplinary action up to and including discharge.

By signing this document, I acknowledge that I have read, understand and will comply with this County of Orange Information Technology Usage Policy. I understand that the complete Information Technology Usage Policy is available for me to review on the County's intranet. I also may request a copy from the County Service Desk, my agency's Help Desk, or my agency's Local Security Administrator.

Workforce Member Name (please print): _____

Workforce Member Signature: _____

Agency/Department: _____

Date: _____

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**User Access
Request Form:

IT Services
Request**

1. USER INFORMATION

User Name (First): _____ (Last): _____
 Title: _____ Phone: _____
 Supervisor's Name: _____
 Start Date: _____

2. HARDWARE REQUIRED

- | | |
|--|--|
| <input type="checkbox"/> Desktop Computer | <input type="checkbox"/> Telephone |
| <input type="checkbox"/> Portable Computer | <input type="checkbox"/> County Cellular Phone |

* Standard PC setup: MS Windows 10 and Office 2016 (Outlook, Word, Excel, PowerPoint, Anti-virus and Adobe Reader).

Other: _____

3. ACCESS REQUIRED

- | | | |
|---|--|------------------------------|
| <input type="checkbox"/> OCAIR User ID and E-mail | <input type="checkbox"/> On-Base | <input type="checkbox"/> ERM |
| <input type="checkbox"/> PropWorks | <input type="checkbox"/> Unifier (Primavera) | |
| <input type="checkbox"/> CAMS/ASR | <input type="checkbox"/> CMMS | |
| <input type="checkbox"/> CAPS/CAPS+ | <input type="checkbox"/> AVI, Gatekeeper, Great Plains | |

Off-site remote Access (JWA laptop only)

Other: _____

4. ADDITIONAL SOFTWARE REQUIRED

- | | |
|---|---|
| <input type="checkbox"/> Adobe Acrobat Professional | <input type="checkbox"/> Costworks (RS Means) |
| <input type="checkbox"/> Adobe Illustrator | <input type="checkbox"/> Microsoft Project |
| <input type="checkbox"/> Primavera P6 | <input type="checkbox"/> Microsoft Visio |

Other: _____

5. ADDITIONAL REQUIREMENTS, NOTES

6. EMPLOYEE SIGNATURE

 Signature Date

7. AGENCY APPROVAL

Manager	Deputy Airport Director
_____ Print Name	_____ Print Name
_____ Signature	_____ Signature
_____ Date	_____ Date

**Please Return Completed
Form To:**
 JWA IT
 John Wayne Airport
 3160 Airway Ave.
 Costa Mesa, CA 92626

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43. NOTICES

All notices required or provided for under this Agreement shall be sent to the following addresses:

COUNTY OF ORANGE
JOHN WAYNE AIRPORT
Attn: Mr. Larry Serafini, Deputy Airport Director, Facilities
3160 Airway Avenue
Costa Mesa, California 92626

FICCADENTI WAGGONER AND CASTLE STRUCTURAL ENGINEERS
Attn: Mark Schroeder
16969 Von Karman Ave. Suite 240
Irvine, CA 92606

SIGNATURE PAGE FOLLOWS

**JOHN WAYNE AIRPORT
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IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed on the date first written above.

DATED: _____

COUNTY OF ORANGE

By _____
Chairwoman of the Board of Supervisors
County of Orange, California

SIGNED AND CERTIFIED THAT A COPY OF THIS AGREEMENT HAS BEEN DELIVERED TO THE CHAIR OF THE BOARD PER G.C. Sec 25103, Reso 79-1535
Attest:

Robin Stieler
Clerk of the Board
County of Orange, California

A-E

By: _____

Title: _____

By: _____

Title: _____

**If A-E is a corporation, signatures of two specific corporate officers are required as further set forth:*

- *The first signature must be one of the following: a) the Chairman of the Board; b) President; or c) any Vice President.*
- *The second signature must be one of the following: a) Secretary; b) the Chief Financial Officer; c) any Assistant Secretary; or d) any Assistant Treasurer.*
- *In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

APPROVED AS TO FORM:
COUNTY COUNSEL

By  _____
Deputy

Date 3.20.2020

Attachment B

**JOHN WAYNE AIRPORT
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**APPENDIX 1
SCOPE OF SERVICES
ON-CALL STRUCTURAL ENGINEERING SERVICES**

A-E Firm shall include services customarily performed in the field of Structural Engineering, but shall not be limited to the following:

- A. Inspection, investigation, and/or analysis of various types of existing buildings and/or structures per the current and adopted evaluation, design, and construction standards and governing code requirements (both gravity and lateral (e.g. seismic and wind, etc.)) with recommendations for retrofitting, if needed.
- B. Evaluate the various load demands or forces imposed on any type of building and/or structure, including, but not limited to, dead loads, live loads, impact loads, transient loads (e.g. seismic, wind, etc.), dynamic or mechanical cyclic loads, and other types of loads in accordance with or dictated by the relevant safety specifications and governing codes.
- C. Select suitable structural systems (both gravity and lateral (e.g. seismic and wind, etc.)) to structurally support, transfer, and/or resist various load demands or forces safely to the foundation system depending on the nature of the soil (i.e. establish and maintain a defined load path).
- D. Provide detailed structural calculations, including designed/engineered details, compliant with the governing codes to properly reflect the design/engineering (i.e. size, etc.) of beams, columns, slabs, walls, foundations, staircases, lift wells, etc. of various construction material (e.g. aluminum, wood, steel, concrete, masonry, etc.) in accordance with the relevant standard specifications and/or contract documents.
- E. Design/engineer and detail non-bearing and/or bearing exterior and/or interior light gauge framing (i.e. cold-formed metal steel), such as partition walls, hard-lid ceilings, dropped soffits, etc.
- F. Design/engineer and detail exterior and/or interior aluminum framing.
- G. Design/engineer and detail of freestanding interior structures (restrooms, concessions, offices, etc.).
- H. Design/engineer and detail of floor, wall, ceiling, and roof finishes that blend with the existing and surrounding structures.
- I. Perform detailed design/construction plan, document, and/or submittal reviews for conformance to the governing codes, regulations, specifications, guidelines, and JWA standards.

Attachment B

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- J. Design/engineer and detail hangers, braces, and/or supports of IT, HVAC, electrical, mechanical, and/or plumbing systems and equipment for both gravity and lateral (e.g. seismic and wind, etc.)) loading.
- K. Design/engineer and detail accordingly for dynamic (cyclic and/or vibratory) loads from HVAC, electrical, mechanical, and/or plumbing systems and equipment.
- L. Evaluate and/or update record drawings for completeness and accuracy based on project or construction changes/revisions.
- M. Develop fully coordinated and executable construction documents, specifications, and procedures.
- N. Provide detailed Engineer's Cost Estimates of potential construction costs.
- O. Evaluate and identify deficiencies, failures, etc. and recommend designed/engineered solutions to address the issues.
- P. Conduct peer reviews of submitted plans, documents, and/or specifications.
- Q. Review and approve designs, calculations, and cost estimates.
- R. Provide new Building Information Models (BIM) and BIM additions (for projects occurring within areas of existing BIMs) in addition to plans and specifications.
- S. Ability to proficiently and accurately provide design calculations, information, and/or drawings utilizing the current industry software commonly used in the field of structural engineering at JWA, namely, ETABS, SAP 2000, SAFE, Enercalc, RISA 2D/3D, RAM Structural System, ADAPT PT/RC/Floor, CFS Designer or LGBeamer, Bluebeam Revu, FAARFIELD, AutoCAD, REVIT, Navisworks, etc.
- T. A-E Firm shall perform other Structural Engineering services at JWA as required.

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**APPENDIX 2
HOURLY RATE SCHEDULE
ON-CALL STRUCTURAL ENGINEERING SERVICES
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CONSULTING SERVICES	
Principal	\$220.00
Senior Engineer	\$175.00
Project Manager	\$155.00
Senior Designer	\$145.00
Project Engineer	\$140.00
Project Draftsperson	\$130.00
Engineer	\$125.00
Draftsperson	\$125.00
Clerical	\$60.00

COUNTY agrees to compensate A-E for services performed by its personnel based on the hourly rates set forth in Appendix 2 for each Job Classification. The hourly rate for each job classification represents the maximum rate for that job classification. However, the COUNTY reserves the right to negotiate with A-E a lower rate for any given job classification based on the qualifications of the candidate being considered for that job classification.

A-E's personnel hourly rates as listed in Appendix 2 shall remain the same each year for the term of the contract. The contract does not provide for annual cost of living adjustments.

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**APPENDIX 3
STAFFING PLAN
ON-CALL STRUCTURAL ENGINEERING SERVICES**

1. A/E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licenses/Certifications (include license number)
Mark Schroeder	Principal	29	S4110
Rui Kuroiwa	Senior Project Engineer	14	S5769
Cole Schulze	Project Engineer	5	C86985
Juan Garcia	Senior Project Draftsman	25	Certified Revit Professional

Assigning Personnel: Throughout the term of this Agreement, the A-E shall provide those personnel qualified to perform the required Scope of Services upon the CIP Projects assigned to A-E. Upon request by COUNTY, A-E shall submit a staff authorization request for proposed personnel and for a given job classification, upon which COUNTY will render a decision on whether the proposed personnel meets the qualifications sought under the Agreement.

A-E shall also provide such fully-qualified administrative, managerial, clerical, secretarial and other support personnel as are necessary, and approved by JWA. A-E shall furnish the necessary personnel to complete the services on a timely basis in accordance with the requirements for any given Project. A-E shall have the authority to commit A-E's resources as needed and as requested by JWA.

A-E shall not bill the COUNTY for the services of any personnel not assigned to the Project without the COUNTY's prior written approval of the person by name and the person's specific hourly billing rate.

Assigned Personnel: Reassignment of A-E's personnel requires prior written consent by JWA. A-E shall not be entitled to compensation for personnel who are removed from the project or the individuals who replace them without the written consent of JWA.

Removal of personnel at COUNTY's Discretion: COUNTY may, at its sole discretion, require A-E to remove from the Project any of its personnel assigned to the performance of the Scope of Services. A-E shall remove such person(s) from the Project promptly after request from JWA. The A-E shall make its best efforts to replace any person so removed within seven (7) days with a person of like qualifications acceptable to COUNTY. Alterations to A-E's staff at COUNTY's or JWA's request do not constitute changes to the SCOPE OF SERVICES.

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Qualifications/Licensing: A-E represents that all personnel provided under this Agreement are fully qualified for the offices or positions to which they are assigned, and that they meet or exceed the qualifications for their positions.

2. SUBCONTRACTOR(S) (IF APPLICABLE)

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

Company Name & Address	Contact Name and Telephone Number	Project Function