

CONTRACT

THIS CONTRACT, hereinafter referred to as “CONTRACT” for purposes of identification hereby numbered MA-080-19011921, and dated _____ day of _____, 20_____ is

BY AND BETWEEN

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

AND

Mark Thomas & Company, Inc., a California Corporation, hereinafter referred to as “A-E”,

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

RECITALS

WHEREAS, COUNTY requires professional services to accomplish projects and/or services (“PROJECTS/SERVICES”) as described in MA-080-19011921 Scope Of Work for Design Services for Carbon Canyon Channel Class 1 Bikeway (OC Loop Segment D) and Box Culvert, hereinafter referred to as “Attachment A,” attached hereto and incorporated herein by reference; and

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

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

1. GENERAL**1.1. Retainer**

- 1.1.1.** COUNTY does hereby retain A-E to perform the PROJECTS/SERVICES as required by this CONTRACT.
- 1.1.2.** A-E has offered, and COUNTY has accepted, the professional services of **Rob Himes, P.E.** and A-E shall assign him/her to the PROJECTS/ SERVICES.
- 1.1.3.** A-E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and only the firms or independent consultants/contractors identified in Attachment C may be employed by A-E to provide these PROJECTS/SERVICES.
- 1.1.4.** Consultants/contractors may be substituted and/or added by mutual agreement of A-E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as “DIRECTOR”.
- 1.1.5.** A-E's employment of independent consultants/contractors shall not relieve A-E from the performance of its own responsibilities pursuant to this CONTRACT. However, all consultants/contractors independently contracting with COUNTY shall be independently liable to COUNTY for the performance of the work pursuant to their agreements, and A-E shall have no liability for work by contractors independently contracting with COUNTY.

1.2. Projects/Services**1.2.1. Description of PROJECTS/SERVICES**

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

1.2.2. Design Criteria and Standards

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

1.2.3. Scheduling (*subject to change per scope of work*)

- a) Concurrently with the work of the CONTRACT, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from COUNTY, A-E shall submit to COUNTY two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of PROJECTS/SERVICES assignments. A-E schedule shall include required COUNTY review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A-E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c) A-E shall meet on an as-needed basis as determined by COUNTY or at least once every four (4) weeks with COUNTY to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.
- e) A-E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.
- f) In the event A-E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

1.3. Assistance by COUNTY STAFF

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

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

1.4. Term and Maximum Compensation

1.4.1. This CONTRACT shall go into effect upon Board approval and A-E shall commence work after notification to proceed by COUNTY'S Contract Administrator. The CONTRACT term ends on August 27, 2026, unless extended by contract amendment.

1.4.2. A-E is advised that any recommendation for contract award is not binding on COUNTY until the CONTRACT is fully executed and approved by the COUNTY.

~~**1.4.3.** The maximum allowable compensation for this CONTRACT is **eight hundred and fifty-eight thousand, four hundred and nineteen dollars and seventy-four cents (\$858,419.74).**~~

~~a) The work to be performed under this CONTRACT is described in Attachment A, Statement of Work and Attachment B Cost/Compensation. The approved A-E's Cost Proposal, dated July 19, 2019, is attached hereto (Exhibit No. 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.~~

~~**1.4.3.** The maximum allowable compensation for this CONTRACT is **nine hundred and nine thousand, four hundred and eighty-nine dollars and seventy-four cents (\$909,489.74).**~~

~~a) The work to be performed under this CONTRACT is described in Attachment A, Statement of Work and Attachment B Cost/Compensation. The approved A-E's Cost Proposal, dated July 19, 2019, is attached hereto (Exhibit No. 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.~~

~~**1.4.3.** The maximum allowable compensation for this CONTRACT is **nine hundred and fifty-eight thousand, four hundred and nineteen dollars and seventy-four cents (\$958,419.74).**~~

~~a) The work to be performed under this CONTRACT is described in Attachment A, Statement of Work and Attachment B Cost/Compensation. The approved A-E's Cost Proposal, dated July 19, 2019, is attached hereto (Exhibit No. 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.~~

1.4.3. The maximum allowable compensation for this CONTRACT is **One Million, one hundred eight thousand, four hundred nineteen dollars and seventy-four cents (\$1,108,419.74).**

a) The work to be performed under this CONTRACT is described in Attachment A, Statement of Work and Attachment B Cost/Compensation. The approved A-

Amendment
No. 4
Contract
Extension

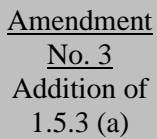
Amendment No. 2
Contract Increase

Amendment No. 3
Contract Increase

Amendment No. 4
Contract Increase

E's Cost Proposal, dated July 19, 2019, is attached hereto (Exhibit No. 1) and incorporated by reference. If there is any conflict between the approved Cost Proposal and this CONTRACT, this CONTRACT shall take precedence.

Amendment
No. 3
Addition of
1.5.3 (a)



1.5. A-E Compensation and Extra Work

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

- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by Director. If this Contract is not approved by the Board of Supervisors, any change that increases the cumulative Contract price beyond \$200,000 must be approved by the Board. Extensions and increases in the Contract amount for services within the existing scope of work may be granted by the Director where the amount does not exceed 25 percent of the existing Contract price or \$200,000, whichever is less.

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

1.5.5. Where extra work is authorized for PROJECTS/SERVICES:

- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$100,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$100,000, whichever is less.
- b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.

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

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

2. LABOR

2.1 Non-Employment of COUNTY Personnel

2.1.1 A-E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.

2.1.2 Nothing in this CONTRACT shall be deemed to make A-E, or any of A-E's employees or agents, agents or employees of the COUNTY. A-E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of COUNTY, only in the results of the work.

2.2 Non-Discrimination

2.2.1 In the performance of this CONTRACT, A-E agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.

2.2.2 A-E acknowledges that a violation of this provision shall subject A-E to all the penalties imposed for a violation of the California Labor Code.

2.3 Employee Eligibility Verification

2.3.1 A-E warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this CONTRACT meet the citizenship or alien status requirement set forth in Federal statutes and regulations. A-E shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. A-E shall retain all such documentation for all covered employees for the period prescribed by the law.

2.4 Independent Contractor

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

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

2.5 Conflict of Interest Contractor Personnel

2.5.1 The A-E shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the COUNTY. This obligation shall apply to the A-E; the A-E's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and PROJECTS/SERVICES hereunder.

2.5.2 A-E's efforts shall include, but not be limited to establishing precautions to prevent its

employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

2.6. Labor Code Notice

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

3. INSURANCE

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

3.1.2 A-E shall ensure that all subcontractors performing work on behalf of A-E pursuant to this CONTRACT shall be covered under A-E's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for A-E. A-E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by COUNTY from A-E under this CONTRACT. It is the obligation of A-E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A-E through the entirety of this CONTRACT for inspection by COUNTY representative(s) at any reasonable time.

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

1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or subcontractor's performance of this CONTRACT, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; 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.

- 3.1.4** If the A-E fails to maintain insurance acceptable to the COUNTY for the full term of this CONTRACT, the COUNTY may terminate this CONTRACT.

A. Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

2. The policy or policies of insurance maintained by the A-E shall provide the minimum limits and coverage as set forth below:

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

B. Required Coverage Forms

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

C. Required Endorsements

1. The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
 - a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
 - b. A primary non-contributing endorsement using ISO form CG 20

01 0413, or a form at least as broad evidencing that A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the *County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents*, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN AGREEMENT**.
3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. A-E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.
5. If A-E's Professional Liability policy is a claims-made policy, A-E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
9. COUNTY expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
10. COUNTY shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to A-E, and COUNTY shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

- 4.1 A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, Orange County Flood Control District and their respective agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this CONTRACT.**
- 4.2 All PROJECTS/SERVICES submitted by A-E shall be complete and shall be carefully checked prior to submission. A-E understands that COUNTY's checking is discretionary, and A-E shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving A-E's PROJECTS/SERVICES, the PROJECTS/SERVICES will be returned to A-E for correction. Should COUNTY or others discover errors or omissions in the work submitted by A-E after COUNTY's approval thereof, COUNTY's approval of A-E's PROJECTS/SERVICES shall not be used as a defense by A-E.**
- 4.3 Indemnification**
- 4.3.1 A-E agrees to, indemnify, defend with counsel approved in writing by COUNTY, and hold the County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees, agents and those special districts and agencies which COUNTY'S Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of A-E and COUNTY or COUNTY INDEMNITEES, A-E and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this CONTRACT.**
- 4.4 Bills and Liens**
- 4.4.1 A-E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, A-E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold COUNTY harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**
- 4.5 Compliance with Laws**
- 4.5.1 A-E represents and agrees that services to be provided under this CONTRACT shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by COUNTY in its governmental capacity and all other laws applicable to the PROJECTS/SERVICES at the time PROJECTS/SERVICES are provided to and accepted by COUNTY.**
- 4.5.2 A-E acknowledges that COUNTY is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, A-E agrees that it shall defend, indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all**

liability, damages, costs and expenses arising from or related to a violation of such laws.

5. TERMINATION

5.1 Termination of Contract for Cause

- 5.1.1 If A-E breaches any of the covenants or conditions of this CONTRACT, COUNTY shall have the right to terminate this CONTRACT upon thirty (30) days written notice prior to the effective day of termination.
- 5.1.2 A-E shall have the opportunity to cure the alleged breach prior to termination.
- 5.1.3 In the event the alleged breach is not cured by A-E prior to termination, all work performed by A-E pursuant to this CONTRACT, which work has been reduced to plans or other documents, shall be made available to COUNTY.

5.2 Termination for Convenience

- 5.2.1 Notwithstanding any other provision of the CONTRACT, COUNTY may at any time, and without cause, terminate this CONTRACT in whole or in part, upon not less than seven (7) calendar days' written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.
- 5.2.2 A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by COUNTY.
- 5.2.3 COUNTY shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this CONTRACT.
- 5.2.4 Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.
- 5.2.5 A-E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination, and shall require subcontractors to insert the same condition in any lower tier subcontracts.

5.3 Breach of Contract

- 5.3.1 The failure of the A-E to comply with any of the provisions, covenants or conditions of this CONTRACT shall be a material breach of this CONTRACT. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this CONTRACT, the COUNTY may:
- a) afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this CONTRACT within which to cure the breach;
 - b) discontinue payment to the A-E for and during the period in which the A-E is in breach; and
 - c) offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the COUNTY.

5.4 Default

- 5.4.1** In the event any equipment or service furnished by the A-E in the performance of this CONTRACT should fail to conform to the specifications therein within one (1) calendar year from the COUNTY's acceptance of the equipment or service, or any performance period specifically specified within the specifications or CONTRACT, whichever is greater, the COUNTY may reject same, and it shall become the duty of the A-E to reclaim and remove the items without expense to the COUNTY and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A-E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the COUNTY shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A-E the difference between the price specified in this CONTRACT and the actual cost to the COUNTY.
- 5.4.2** In the event the A-E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the COUNTY to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this CONTRACT.
- 5.4.3** In the event of the cancellation of this CONTRACT, either in whole or in part, by reason of the default or breach by the A-E, any loss or damage sustained by the COUNTY in procuring any equipment or service which the A-E agreed to supply under this CONTRACT shall be borne and paid for by the A-E.
- 5.4.4** Default shall include failure to carry out any of the requirements of this CONTRACT, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the PROJECTS/SERVICES as agreed to herein, or otherwise substantially violating any provision of this CONTRACT.
- 5.4.5** Upon termination of the CONTRACT with A-E, the COUNTY may begin negotiations with a third-party A-E to provide goods and/or PROJECTS/SERVICES as specified in this CONTRACT.
- 5.4.6** The right of either party to terminate this CONTRACT hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

6. MISCELLANEOUS**6.1 Laws to be Observed**

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

6.2 Award of Construction Contract and Other Future Contracts

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

6.3 Amendments

6.3.1 No alteration or variation of the terms of this CONTRACT shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on COUNTY unless authorized by COUNTY in writing.

6.4 Successors and Assigns

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

6.5 Entirety

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

6.6 Severability

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

6.7 Binding Obligation

6.7.1 The PARTIES to this CONTRACT represent and warrant that this CONTRACT has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

6.8 Governing Law and Venue

6.8.1 This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

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

6.9 Child Support Enforcement Requirements

6.9.1 All Contractors are required to comply with the child support enforcement requirements of the County of Orange. Failure of the Contractor to comply with all federal, state, and local reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment shall constitute a material breach of the CONTRACT. In order to comply with the child support enforcement requirements of the County of Orange, all bidders/proposers must furnish to the Contract administrator, the Purchasing Agent, or the agency/department Deputy Purchasing Agent:

- A. In the case of an individual Contractor, his/her name, date of birth, Social Security number, and residence address;
- B. In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, Social Security number, and residence address of each individual who owns an interest of 10 percent or more in the Contracting entity;
- C. A certification that the Contractor has fully complied with all applicable federal and state reporting requirements regarding its employees; and
- D. A certification that the Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Failure to cure such breach within 60 calendar days of notice from the COUNTY shall constitute grounds for termination of the CONTRACT.

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

6.10 Ownership of Documents

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

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

6.11 Confidentiality

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

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

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

6.12 Publication

- 6.12.1** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this CONTRACT, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this CONTRACT. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY approval.
- 6.12.2** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the COUNTY. A-E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

6.13 Records and Audit/Inspections

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

6.14 Notices

- 6.14.1** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the PARTIES' project managers' routine exchange of information and cooperation during the PROJECTS/SERVICES.
- 6.14.2** Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.
- 6.14.3** All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For A-E:

Mark Thomas & Company, Inc.
16795 Von Karman Avenue, Suite 240
Irvine, CA 92606
Attn: Rob Himes
Phone: 949-333-9690
E-mail: rhimes@markthomas.com

For COUNTY:

OC Public Works/ OC Infrastructure Programs
300 N. Flower St., 7th Floor
Santa Ana, CA 92703
Attn: Brad Fowler
Phone: 949-337-0512
E-mail: Brad.Fowler2@ocpw.ocgov.com

cc: OC Public Works Procurement Services
300 N. Flower St., Suite 838
Santa Ana, CA 92703
Attn: Christina Rojas
Phone: 714-667-9765
E-mail: Christina.Rojas@ocpw.ocgov.com

6.15 Attorney's Fees

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

6.16 Interpretation

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

6.16.2 In addition, each PARTY has been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite having the opportunity to do so.

6.16.3 Each PARTY further acknowledges that they have not been influenced to any extent whatsoever in executing this CONTRACT by any other PARTY hereto or by any person representing them, or both.

6.16.4 Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this CONTRACT against the PARTY that has drafted it is not applicable and is waived.

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

6.17 Headings

6.17.1 The various headings and numbers herein, the grouping of provisions of this CONTRACT into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

6.18 Acceptance

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

6.19 Changes

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

6.20 Assignment

6.20.1 The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this CONTRACT nor any portion thereof may be assigned or sub-contracted by A-E, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of COUNTY. Any attempt by A-E to assign or sub-contract the performance or any portion thereof of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTRACT.

6.21 Changes in Ownership

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

6.22 Force Majeure

6.22.1 A-E shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this CONTRACT caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided A-E gives written notice of the cause of the delay to COUNTY within thirty-six (36) hours of the start of the delay and A-E avails himself of any available remedies.

6.23 Calendar Days

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

6.24 Title to Data

6.24.1 All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the A-E in the performance of this CONTRACT, will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this CONTRACT without the express written consent of the COUNTY.

6.24.2 All materials, documents, data or information, including copies furnished by COUNTY

and loaned to A-E for his temporary use, must be returned to the COUNTY at the end of this CONTRACT unless otherwise specified by the DIRECTOR.

6.25 Availability of Funds

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

6.26 Contingency of Funding

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

6.27 Contract Construction

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

6.28 Conflicts of Interest

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

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

6.29 Usage

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

FEDERALLY REQUIRED PROVISIONS

The following are Federally required clauses. In the event of a potential ambiguity between the Federal clauses and the remainder of the CONTRACT, COUNTY will be solely responsible for interpreting how to implement the CONTRACT.

7.1 ALLOWABLE COSTS AND PAYMENTS

- A. A-E will be reimbursed for hours worked at the hourly rates specified in the A-E's approved Cost Proposal. The specified hourly rates shall include direct salary costs, employee benefits, prevailing wages, employer payments, overhead, and fee. These rates are not adjustable for the performance period set forth in this CONTRACT. A-E will be reimbursed within thirty (30) days upon receipt by COUNTY'S Contract Administrator of itemized invoices in duplicate.
- B. In addition, A-E will be reimbursed for incurred (actual) direct costs other than salary costs that are in the approved Cost Proposal and identified in the approved Cost Proposal.
- C. A-E shall be responsible for any future adjustments to prevailing wage rates including, but not limited to, base hourly rates and employer payments as determined by the Department of Industrial Relations. A-E is responsible for paying the appropriate rate, including escalations that take place during the term of the CONTRACT.
- D. Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal. A-E will be responsible for transportation and subsistence costs in excess of State rates.
- E. When milestone cost estimates are included in the approved Cost Proposal, A-E shall obtain prior written approval in the form of a CONTRACT amendment for a revised milestone cost estimate from the Contract Administrator before exceeding such estimate.
- F. Progress payments will be made monthly in arrears based on services provided and actual costs incurred.
- G. A-E shall not commence performance of work or services until this CONTRACT has been approved by COUNTY and notification to proceed has been issued by COUNTY'S Contract Administrator. No payment will be made prior to approval or for any work performed prior to approval of this CONTRACT.
- H. A-E will be reimbursed within thirty (30) days upon receipt by COUNTY'S Contract Administrator of itemized invoices in duplicate. Separate invoices itemizing all costs are required for all work performed. Invoices shall be submitted no later than thirty (30) calendar days after the performance of work for which A-E is billing. Invoices shall detail the work performed on each milestone, on each project as applicable. Invoices shall follow the format stipulated for the approved Cost Proposal and shall reference this CONTRACT number and project title. Credits due COUNTY that include any equipment purchased under the provisions of Section 7.7 Equipment Purchase, must be reimbursed by A-E prior to the expiration or termination of this CONTRACT. Invoices shall be mailed to COUNTY's Contract Administrator at the following address:
- County of Orange/OC Public Works
Brad Fowler
300 N. Flower St.
Santa Ana, CA 92703
- I. The period of performance for work performed shall be in accordance with dates specified in the CONTRACT. No work will extend beyond the expiration date of this CONTRACT.

- J. The total amount payable by COUNTY shall not exceed the amount agreed to, unless authorized by amendment.
- K. If A-E fails to satisfactorily complete a deliverable according to the schedule set forth in CONTRACT, no payment will be made until the deliverable has been satisfactorily completed.
- L. The total amount payable by COUNTY for all Task Orders resulting from this CONTRACT shall not exceed **858,419.74**. It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this CONTRACT.

7.2 TERMINATION

- A. This CONTRACT may be terminated by COUNTY, provided that COUNTY gives not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 6.10 Ownership of Documents and Section 7.2 Ownership of Data.
- B. COUNTY may temporarily suspend this CONTRACT, at no additional cost to COUNTY, provided that A-E is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If COUNTY gives such notice of temporary suspension, A-E shall immediately suspend its activities under this CONTRACT. A temporary suspension may be issued concurrent with the notice of termination provided for in subsection A of this Section.
- C. Notwithstanding any provisions of this CONTRACT, A-E shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of this CONTRACT by A-E, and COUNTY may withhold any payments due to A-E until such time as the exact amount of damages, if any, due COUNTY from A-E is determined.
- D. In the event of termination, A-E shall be compensated as provided for in this CONTRACT. Upon termination, COUNTY shall be entitled to all work, including but not limited to, reports, investigations, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date, whether completed or not, and in accordance with Section 6.10 Ownership of Documents and Section 7.2 Ownership of Data.

7.3 COST PRINCIPLES AND ADMINISTRATIVE REQUIREMENTS

- A. The A-E agrees that 48 CFR Part 31, Contract Cost Principles and Procedures, shall be used to determine the allowability of individual terms of cost.
- B. The A-E also agrees to comply with Federal procedures in accordance with 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- C. Any costs for which payment has been made to the A-E that are determined by subsequent audit to be unallowable under 48 CFR Part 31 or 2 CFR Part 200 are subject to repayment by the A-E to COUNTY.

- D. When an A-E or Subcontractor is a Non-Profit Organization or an Institution of Higher Education, the Cost Principles for Title 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards shall apply.

7.4 RETENTION OF RECORDS/AUDIT

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

7.5 AUDIT REVIEW PROCEDURES

- A. Any dispute concerning a question of fact arising under an interim or post audit of this CONTRACT that is not disposed of by CONTRACT, shall be reviewed by COUNTY'S Chief Financial Officer.
- B. Not later than thirty (30) calendar days after issuance of the final audit report, A-E may request a review by COUNTY'S Chief Financial Officer of unresolved audit issues. The request for review will be submitted in writing.
- C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse A-E from full and timely performance, in accordance with the terms of this CONTRACT.
- D. A-E and subcontractor contracts, including cost proposals and Indirect Cost Rates (ICR), may be subject to audits or reviews such as, but not limited to, a CONTRACT audit, an incurred cost audit, an ICR Audit, or a CPA ICR audit work paper review. If selected for audit or review, the CONTRACT, cost proposal and ICR and related work papers, if applicable, will be reviewed to verify compliance with 48 CFR Part 31 and other related laws and regulations. In the instances of a CPA ICR audit work paper review it is A-E's responsibility to ensure federal, COUNTY, or local government officials are allowed full access to the CPA's work papers including making copies as necessary. The CONTRACT, cost proposal, and ICR shall be adjusted by A-E and approved by COUNTY Contract Administrator to conform to the audit or review recommendations. A-E agrees that individual terms of costs identified in the audit report shall be incorporated into the CONTRACT by this reference if directed by COUNTY at its sole discretion. Refusal by A-E to incorporate audit or review recommendations, or to ensure that the federal, COUNTY or local governments have access to CPA work papers, will be considered a breach of CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.
- E. A-E's Cost Proposal may be subject to a CPA ICR Audit Work Paper Review and/or

audit by Caltrans Audits and Investigation (A&I). Caltrans A&I, at its sole discretion, may review and/or audit and approve the CPA ICR documentation. The Cost Proposal shall be adjusted by the A-E and approved by the COUNTY Contract Administrator to conform to the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report. Refusal by the A-E to incorporate the Work Paper Review recommendations included in the management letter or audit recommendations included in the audit report will be considered a breach of the CONTRACT terms and cause for termination of the CONTRACT and disallowance of prior reimbursed costs.

1. During Caltrans A&I's review of the ICR audit work papers created by the A-E's independent CPA, Caltrans A&I will work with the CPA and/or A-E toward a resolution of issues that arise during the review. Each party agrees to use its best efforts to resolve any audit disputes in a timely manner. If Caltrans A&I identifies significant issues during the review and is unable to issue a cognizant approval letter, COUNTY will reimburse the A-E at an accepted ICR until a FAR (Federal Acquisition Regulation) compliant ICR {e.g. 48 CFR Part 31; GAGAS (Generally Accepted Auditing Standards); CAS (Cost Accounting Standards), if applicable; in accordance with procedures and guidelines of the American Association of State Highways and Transportation Officials (AASHTO) Audit Guide; and other applicable procedures and guidelines} is received and approved by A&I.

Accepted rates will be as follows:

- a. If the proposed rate is less than one hundred fifty percent (150%) - the accepted rate reimbursed will be ninety percent (90%) of the proposed rate.
 - b. If the proposed rate is between one hundred fifty percent (150%) and two hundred percent (200%) - the accepted rate will be eighty-five percent (85%) of the proposed rate.
 - c. If the proposed rate is greater than two hundred percent (200%) - the accepted rate will be seventy-five percent (75%) of the proposed rate.
2. If Caltrans A&I is unable to issue a cognizant letter per paragraph E.1. above, Caltrans A&I may require A-E to submit a revised independent CPA-audited ICR and audit report within three (3) months of the effective date of the management letter. Caltrans A&I will then have up to six (6) months to review the A-E's and/or the independent CPA's revisions.
 3. If the A-E fails to comply with the provisions of this paragraph E, or if Caltrans A&I is still unable to issue a cognizant approval letter after the revised independent CPA audited ICR is submitted, overhead cost reimbursement will be limited to the accepted ICR that was established upon initial rejection of the ICR and set forth in paragraph E.1. above for all rendered services. In this event, this accepted ICR will become the actual and final ICR for reimbursement purposes under this CONTRACT.
 4. A-E may submit to COUNTY final invoice only when all of the following items have occurred: (1) Caltrans A&I accepts or adjusts the original or revised independent CPA audited ICR; (2) all work under this CONTRACT has been completed to the satisfaction of COUNTY; and, (3) Caltrans A&I has issued

its final ICR review letter. The A-E MUST SUBMIT ITS FINAL INVOICE TO COUNTY no later than sixty (60) calendar days after occurrence of the last of these items. The accepted ICR will apply to this CONTRACT and all other agreements executed between COUNTY and the A-E, either as a prime or subcontractor, with the same fiscal period ICR.

7.6 SUBCONTRACTING

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

7.7 EQUIPMENT PURCHASE AND OTHER CAPITAL EXPENDITURES

- A. Prior authorization in writing by COUNTY's Contract Administrator shall be required before A-E enters into any unbudgeted purchase order, or subcontract exceeding five thousand dollars (\$5,000) for supplies, equipment, or A-E services. A-E shall provide an evaluation of the necessity or desirability of incurring such costs.
- B. For purchase of any item, service, or consulting work not covered in A-E's approved Cost Proposal and exceeding five thousand dollars (\$5,000), with prior authorization by COUNTY's Contract Administrator, three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.
- C. Any equipment purchased with funds provided under the terms of this CONTRACT is subject to the following:
 1. A-E shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of five thousand dollars (\$5,000) or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the CONTRACT, or if the CONTRACT is terminated, A-E may either keep the equipment and credit COUNTY in an

amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit COUNTY in an amount equal to the sales price. If A-E elects to keep the equipment, fair market value shall be determined at A-E's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by COUNTY and A-E, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY.

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

7.8 STATE PREVAILING WAGE RATES

- A. No A-E or Subcontractor may be awarded an CONTRACT containing public work elements unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code §1725.5. Registration with DIR must be maintained throughout the entire term of this CONTRACT, including any subsequent amendments.
- B. The A-E shall comply with all of the applicable provisions of the California Labor Code requiring the payment of prevailing wages. The General Prevailing Wage Rate Determinations applicable to work under this CONTRACT are available and on file with the Department of Transportation's Regional/District Labor Compliance Officer (http://www.dot.ca.gov/hq/construc/LaborCompliance/documents/District-Region_Map_Construction_7-8-15.pdf). These wage rates are made a specific part of this CONTRACT by reference pursuant to Labor Code §1773.2 and will be applicable to work performed at a construction project site. Prevailing wages will be applicable to all inspection work performed at COUNTY construction sites, at COUNTY facilities and at off-site locations that are set up by the construction contractor or one of its subcontractors solely and specifically to serve COUNTY projects. Prevailing wage requirements do not apply to inspection work performed at the facilities of vendors and commercial materials suppliers that provide goods and services to the general public.
- C. General Prevailing Wage Rate Determinations applicable to this project may also be obtained from the Department of Industrial Relations Internet site at <http://www.dir.ca.gov>.
- D. Payroll Records
 1. Each A-E and Subcontractor shall keep accurate certified payroll records and supporting documents as mandated by Labor Code §1776 and as defined in 8 CCR §16000 showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the A-E or Subcontractor in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
 - a. The information contained in the payroll record is true and correct.
 - b. The employer has complied with the requirements of Labor Code §1771, §1811, and §1815 for any work performed by his or her employees on the

public works project.

2. The payroll records enumerated under paragraph (1) above shall be certified as correct by the A-E under penalty of perjury. The payroll records and all supporting documents shall be made available for inspection and copying by COUNTY representative's at all reasonable hours at the principal office of the A-E. The A-E shall provide copies of certified payrolls or permit inspection of its records as follows:
 - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.
 - b. A certified copy of all payroll records enumerated in paragraph (1) above, shall be made available for inspection or furnished upon request to a representative of COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations. Certified payrolls submitted to COUNTY, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards shall not be altered or obliterated by the A-E.
 - c. The public shall not be given access to certified payroll records by the A-E. The A-E is required to forward any requests for certified payrolls to the COUNTY Contract Administrator by both email and regular mail on the business day following receipt of the request.
 3. Each A-E shall submit a certified copy of the records enumerated in paragraph (1) above, to the entity that requested the records within ten (10) calendar days after receipt of a written request.
 4. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by COUNTY shall be marked or obliterated in such a manner as to prevent disclosure of each individual's name, address, and social security number. The name and address of the A-E or Subcontractor performing the work shall not be marked or obliterated.
 5. The A-E shall inform COUNTY of the location of the records enumerated under paragraph (1) above, including the street address, city and county, and shall, within five (5) working days, provide a notice of a change of location and address.
 6. The A-E or Subcontractor shall have ten (10) calendar days in which to comply subsequent to receipt of written notice requesting the records enumerated in paragraph (1) above. In the event the A-E or Subcontractor fails to comply within the ten (10) day period, he or she shall, as a penalty to COUNTY, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Such penalties shall be withheld by COUNTY from payments then due. A-E is not subject to a penalty assessment pursuant to this Section due to the failure of a Subcontractor to comply with this Section.
- E. When prevailing wage rates apply, the A-E is responsible for verifying compliance with certified payroll requirements. Invoice payment will not be made until the invoice is approved by the COUNTY Contract Administrator.
- F. Penalty
1. The A-E and any of its Subcontractors shall comply with Labor Code §1774

- and §1775. Pursuant to Labor Code §1775, the A-E and any Subcontractor shall forfeit to the COUNTY a penalty of not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of DIR for the work or craft in which the worker is employed for any public work done under the CONTRACT by the A-E or by its Subcontractor in violation of the requirements of the Labor Code and in particular, Labor Code §§1770 to 1780, inclusive.
2. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of mistake, inadvertence, or neglect of the A-E or Subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of the A-E or Subcontractor in meeting their respective prevailing wage obligations, or the willful failure by the A-E or Subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rates of prevailing wages is not excusable if the A-E or Subcontractor had knowledge of the obligations under the Labor Code. The A-E is responsible for paying the appropriate rate, including any escalations that take place during the term of the CONTRACT.
 3. In addition to the penalty and pursuant to Labor Code §1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the A-E or Subcontractor.
 4. If a worker employed by a Subcontractor on a public works project is not paid the general prevailing per diem wages by the Subcontractor, the prime A-E of the project is not liable for the penalties described above unless the prime A-E had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime A-E fails to comply with all of the following requirements:
 - a. The CONTRACT executed between the A-E and the Subcontractor for the performance of work on public works projects shall include a copy of the requirements in Labor Code §§ 1771, 1775, 1776, 1777.5, 1813, and 1815.
 - b. The A-E shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees by periodic review of the certified payroll records of the Subcontractor.
 - c. Upon becoming aware of the Subcontractor's failure to pay the specified prevailing rate of wages to the Subcontractor's workers, the A-E shall diligently take corrective action to halt or rectify the failure, including but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public works project.
 - d. Prior to making final payment to the Subcontractor for work performed on the public works project, the A-E shall obtain an affidavit signed under penalty of perjury from the Subcontractor that the Subcontractor had paid the specified general prevailing rate of per diem wages to the Subcontractor's employees on the public works project and any amounts due pursuant to Labor Code §1813.
 5. Pursuant to Labor Code §1775, COUNTY shall notify the A-E on a public works project within fifteen (15) calendar days of receipt of a complaint that a Subcontractor has failed to pay workers the general prevailing rate of per diem wages.
 6. If COUNTY determines that employees of a Subcontractor were not paid the general prevailing rate of per diem wages and if COUNTY did not retain sufficient money under the CONTRACT to pay those employees the balance of

wages owed under the general prevailing rate of per diem wages, the A-E shall withhold an amount of moneys due the Subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by COUNTY.

- G. Hours of Labor
Eight (8) hours labor constitutes a legal day's work. The A-E shall forfeit, as a penalty to the COUNTY, twenty-five dollars (\$25) for each worker employed in the execution of the CONTRACT by the A-E or any of its Subcontractors for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of the Labor Code, and in particular §§1810 to 1815 thereof, inclusive, except that work performed by employees in excess of eight (8) hours per day, and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day and forty (40) hours in any week, at not less than one and one-half (1.5) times the basic rate of pay, as provided in §1815.
- H. Employment of Apprentices
1. Where either the prime CONTRACT or the subagreement exceeds thirty thousand dollars (\$30,000), the A-E and any subcontractors under him or her shall comply with all applicable requirements of Labor Code §§ 1777.5, 1777.6 and 1777.7 in the employment of apprentices.
 2. A-Es and subcontractors are required to comply with all Labor Code requirements regarding the employment of apprentices, including mandatory ratios of journey level to apprentice workers. Prior to commencement of work, A-E and subcontractors are advised to contact the DIR Division of Apprenticeship Standards website at <https://www.dir.ca.gov/das/>, for additional information regarding the employment of apprentices and for the specific journey-to- apprentice ratios for the CONTRACT work. The A-E is responsible for all subcontractors' compliance with these requirements. Penalties are specified in Labor Code §1777.7.

7.9 CONFLICT OF INTEREST

- A. During the term of this CONTRACT, the A-E shall disclose any financial, business, or other relationship with COUNTY that may have an impact upon the outcome of this CONTRACT or any ensuing COUNTY construction project. The A-E shall also list current clients who may have a financial interest in the outcome of this CONTRACT or any ensuing COUNTY construction project which will follow.
- B. A-E certifies that it has disclosed to COUNTY any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this CONTRACT. A-E agrees to advise COUNTY of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this CONTRACT. A-E further agrees to complete any statements of economic interest if required by either COUNTY ordinance or State law.
- C. The A-E hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this CONTRACT.
- D. The A-E hereby certifies that the A-E or subcontractor and any firm affiliated with the A-E or subcontractor that bids on any construction contract or on any

Agreement to provide construction inspection for any construction project resulting from this CONTRACT, has established necessary controls to ensure a conflict of interest does not exist. An affiliated firm is one, which is subject to the control of the same persons, through joint ownership or otherwise.

7.10 REBATES, KICKBACKS OR OTHER UNLAWFUL CONSIDERATION

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

7.11 PROHIBITION OF EXPENDING COUNTY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. A-E certifies to the best of his or her knowledge and belief that:
1. No State, Federal, or COUNTY appropriated funds have been paid or will be paid, by or on behalf of the A-E, to any person for influencing or attempting to influence an officer or employee of any local, State, or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding or making of this CONTRACT, or with the extension, continuation, renewal, amendment, or modification of this CONTRACT.
 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this CONTRACT, the A-E shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than one hundred thousand dollars (\$100,000) for each such failure.
- C. The A-E also agrees by signing this document that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed one hundred thousand dollars (\$100,000), and that all such subrecipients shall certify and disclose accordingly.

7.12 NON-DISCRIMINATION CLAUSE AND STATEMENT OF COMPLIANCE

- A. The A-E's signature affixed herein and dated shall constitute a certification under penalty of perjury under the laws of the State of California that the A-E has, unless exempt, complied with the nondiscrimination program requirements of Gov. Code §12990 and 2 CCR § 8103.
- B. During the performance of this CONTRACT, A-E and its subcontractors shall not

deny the CONTRACT's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. A-E and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

- C. A-E and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 et seq.), the applicable regulations promulgated there under (2 CCR §11000 et seq.), the provisions of Gov. Code §§11135-11139.5, and the regulations or standards adopted by COUNTY to implement such article. The applicable regulations of the Fair Employment and Housing Commission implementing Gov. Code §12990 (a-f), set forth 2 CCR §§8100-8504, are incorporated into this CONTRACT by reference and made a part hereof as if set forth in full.
- D. A-E shall permit access by representatives of the Department of Fair Employment and Housing and the COUNTY upon reasonable notice at any time during the normal business hours, but in no case less than twenty-four (24) hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or COUNTY shall require to ascertain compliance with this clause.
- E. A-E and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
- F. A-E shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this CONTRACT.
- G. The A-E, with regard to the work performed under this CONTRACT, shall act in accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d et seq.). Title VI provides that the recipients of federal assistance will implement and maintain a policy of nondiscrimination in which no person in the United States shall, on the basis of race, color, national origin, religion, sex, age, disability, be excluded from participation in, denied the benefits of or subject to discrimination under any program or activity by the recipients of federal assistance or their assignees and successors in interest.
- H. The A-E shall comply with regulations relative to non-discrimination in federally-assisted programs of the U.S. Department of Transportation (49 CFR Part 21 - Effectuation of Title VI of the Civil Rights Act of 1964). Specifically, the A-E shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR §21.5, including employment practices and the selection and retention of Subcontractors.

7.13 DEBARMENT AND SUSPENSION CERTIFICATION

- A. The A-E's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the A-E or any person

associated therewith in the capacity of owner, partner, director, officer or manager:

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years;
 3. Does not have a proposed debarment pending; and
 4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.
- B. Any exceptions to this certification must be disclosed to COUNTY. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining responsibility. Disclosures must indicate the party to whom the exceptions apply, the initiating agency, and the dates of agency action.
- C. Exceptions to the Federal Government Excluded Parties List System maintained by the U.S. General Services Administration are to be determined by FHWA.

7.14 DISADVANTAGED BUSINESS ENTERPRISES (DBE) PARTICIPATION

- A. This CONTRACT is subject to 49 CFR Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs". A-Es who enter into a federally-funded agreement will assist the COUNTY in a good faith effort to achieve California's statewide overall DBE goal.
- B. The goal for DBE participation for this CONTRACT is **18%**. Participation by DBE A-E or subcontractors shall be in accordance with information contained in Exhibit 10-02: Consultant Contract DBE Commitment attached hereto and incorporated as part of the CONTRACT. If a DBE subcontractor is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- C. A-E can meet the DBE participation goal by either documenting commitments to DBEs to meet the CONTRACT goal, or by documenting adequate good faith efforts to meet the CONTRACT goal. An adequate good faith effort means that the A-E must show that it took all necessary and reasonable steps to achieve a DBE goal that, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the DBE goal. If A-E has not met the DBE goal, complete and submit Exhibit 15-H: *DBE Information – Good Faith Efforts* to document efforts to meet the goal. Refer to 49 CFR Part 26 for guidance regarding evaluation of good faith efforts to meet the DBE goal.
- D. DBEs and other small businesses, as defined in 49 CFR Part 26 are encouraged to participate in the performance of contracts financed in whole or in part with federal funds. The COUNTY, A-E or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The A-E shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the CONSULTANT 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 COUNTY

deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
 - (2) Assessing sanctions;
 - (3) Liquidated damages; and/or
 - (4) Disqualifying the contractor from future bidding as non-responsible
- E. A DBE firm may be terminated only with prior written approval from COUNTY and only for the reasons specified in 49 CFR §26.53(f). Prior to requesting COUNTY consent for the termination, A-E must meet the procedural requirements specified in 49 CFR §26.53(f). If a DBE subcontractor is unable to perform, A-E must make a good faith effort to replace him/her with another DBE subcontractor, if the goal is not otherwise met.
- F. Consultant shall not be entitled to any payment for such work or material unless it is performed or supplied by the listed DBE or by other forces (including those of Consultant) pursuant to prior written authorization of the COUNTY's Contract Administrator.
- G. A DBE is only eligible to be counted toward the CONTRACT goal if it performs a commercially useful function (CUF) on the CONTRACT. CUF must be evaluated on an agreement by agreement basis. A DBE performs a Commercially Useful Function (CUF) when it is responsible for execution of the work of the CONTRACT and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the CONTRACT, for negotiating price, determining quality and quantity, ordering the material and installing (where applicable), and paying for the material itself. To determine whether a DBE is performing a CUF, evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the CONTRACT is commensurate with the work it is actually performing, and other relevant factors.
- H. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, agreement, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, examine similar transactions, particularly those in which DBEs do not participate.
- I. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its CONTRACT with its own work force, or the DBE subcontracts a greater portion of the work of the CONTRACT than would be expected on the basis of normal industry practice for the type of work involved, it will be presumed that it is not performing a CUF.
- J. A-E shall maintain records of materials purchased or supplied from all subcontracts entered into with certified DBEs. The records shall show the name and business address of each DBE or vendor and the total dollar amount actually paid each DBE or vendor, regardless of tier. The records shall show the date of payment and the total dollar figure paid to all firms. DBE prime A-E's shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.
- K. Upon completion of the CONTRACT, a summary of these records shall be

prepared and submitted on the form entitled, Exhibit 17-F: Final Report-Utilization of Disadvantaged Business Enterprise (DBE) First-Tier Subcontractors, certified correct by A-E or A-E's authorized representative and shall be furnished to the Contract Administrator with the final invoice. Failure to provide the summary of DBE payments with the final invoice will result in twenty-five percent (25%) of the dollar value of the invoice being withheld from payment until the form is submitted. The amount will be returned to A-E when a satisfactory "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" is submitted to the Contract Administrator.

- L. If a DBE subcontractor is decertified during the life of the CONTRACT, the decertified subcontractor shall notify A-E in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the CONTRACT, the subcontractor shall notify A-E in writing with the date of certification. Any changes should be reported to COUNTY's Contract Administrator within thirty (30) calendar days.
- M. Any subcontract entered into as a result of this CONTRACT shall contain all of the provisions of this Section.

7.15 FUNDING REQUIREMENTS

- A. It is mutually understood between the parties that this CONTRACT may have been written before ascertaining the availability of funds or appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays that would occur if the CONTRACT were executed after that determination was made.
- B. This CONTRACT is valid and enforceable only, if sufficient funds are made available to COUNTY for the purpose of this CONTRACT. In addition, this CONTRACT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the Congress, State Legislature, or COUNTY governing board that may affect the provisions, terms, or funding of this CONTRACT in any manner.
- C. It is mutually agreed that if sufficient funds are not appropriated, this CONTRACT may be amended to reflect any reduction in funds.
- D. COUNTY has the option to terminate the CONTRACT pursuant to Section 5 and Section 7.2 Termination, or by mutual agreement to amend the CONTRACT to reflect any reduction of funds.

7.16 CHANGE IN TERMS

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

7.17 CONTINGENT FEE

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

7.18 DISPUTES

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

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

7.19 INSPECTION OF WORK

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

7.20 SAFETY

- A. A-E shall comply with OSHA regulations applicable to A-E regarding necessary safety equipment or procedures. A-E shall comply with safety instructions issued by COUNTY Safety Officer and other COUNTY representatives. A-E personnel shall wear hard hats and safety vests at all times while working on the construction project site.
- B. Pursuant to the authority contained in Vehicle Code §591, COUNTY has determined that such areas are within the limits of the project and are open to public traffic. A-E shall comply with all of the requirements set forth in Divisions 11, 12, 13, 14, and 15 of the Vehicle Code. A-E shall take all reasonably necessary precautions for safe operation of its vehicles and the protection of the traveling public from injury and damage from such vehicles.

7.21 OWNERSHIP OF DATA

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

7.22 CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR

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

7.23 CONFIDENTIALITY OF DATA

- A. All financial, statistical, personal, technical, or other data and information relative to

COUNTY's operations, which are designated confidential by COUNTY and made available to A-E in order to carry out this CONTRACT, shall be protected by A-E from unauthorized use and disclosure.

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

7.24 NATIONAL LABOR RELATIONS BOARD CERTIFICATION

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

7.25 EVALUATION OF A-E

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

7.26 RETENTION OF FUNDS

No retainage will be withheld by COUNTY from progress payments due the A-E. Retainage by the A-E or subcontractors is prohibited, and no retainage will be held by the A-E from progress due subcontractors. Any violation of this provision shall subject the violating A-E or subcontractors to the penalties, sanctions, and other remedies specified in Business and Professions Code §7108.5. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the A-E or subcontractor in the event of a dispute involving late payment or nonpayment by the A-E or deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE A-E and subcontractors

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

MARK THOMAS & COMPANY, INC.,
a California Corporation,

Date: _____

By: _____
Signature

Print Name & Title

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

Date: _____

By: _____
Signature

Print Name & Title

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

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

Date: _____

By: _____

Print
Name: _____

Title: _____

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

By: _____
Deputy

Print Name

ATTACHMENT A SCOPE OF WORK

Purpose and Scope of Work

The PROJECT bikeway is located in the cities of Placentia, Brea and Yorba Linda connecting Bastanchury Road and Imperial Highway. The Project will address bikeway discontinuity between the El Cajon Regional Riding and Hiking Trail (City of Yorba Linda) and the La Floresta Trail (City of Brea) by constructing a bikeway along the west side of Carbon Canyon Channel from Bastanchury Road to Imperial Highway and along the south side of Imperial Highway from Carbon Canyon Channel to La Floresta Drive. Portions of work are in Caltrans right-of-way, USCOE right-of-way, city rights-of-way, public utility rights-of-way and on private property. The Golden Avenue Bridge over Carbon Creek Channel will be replaced by the City of Placentia prior to construction of this project.

The proposed Project consists of:

- A paved 12'-15' wide Class I bikeway section of approximately 2/3rds of a mile along existing street public rights-of-way and the channel right-of-way with access to Imperial, Golden and Bastanchury.
- A proposed 12' x 12', 160-foot-long, box culvert tunnel running simultaneously beneath Bastanchury Road and above the Carbon Canyon Flood Control Channel. (This will likely be constructed in a phased approach with precast concrete sections in open cut trench, to avoid complete closure of Bastanchury Road.)
- Ancillary facilities include, but are not limited to; structural retaining walls, drainage conveyance work, lighting, fencing, landscaping, hardscape, irrigation, handicapped access, pedestrian traffic beacon, street crossing work, maintenance road access and signage.

I. DESIGN SERVICES

A. Requirements

The work shall comply with the requirements of all of the following without limitation, and shall apply to this CONTRACT and any subsequent contract as though incorporated herein by reference:

1. Federal laws
2. State laws
3. Local laws
4. Rules and regulations of governing utility districts
5. Rules and regulations of other authorities with jurisdiction over the procurement of products

B. Services

In general, Professional Architect-Engineer (A-E) design services are needed to:

1. Prepare Plans, Specifications, & Estimate (PS&E) for the Bikeway, BOX CULVERT structural design and all ancillary facilities.
2. Determine how best to construct phased BOX CULVERT sections beneath Bastanchury, above the Carbon Canyon flood control channel, including, but not limited to; traffic impacts, geotechnical including material survey, and structural considerations as well as other existing utilities continuity of service/rerouting.
3. Other design related tasks as needed.

LAPM Exhibit 10-R, A & E Sample Contract Language, Article III-Consultant shall submit progress reports at least once a month. The report should be sufficiently detailed for the County Contract Administrator to determine, if consultant is performing to expectations or is on schedule; to provide communications of interim findings, and to sufficiently address any difficulties or special problems encountered, so remedies can be developed.

Consultant's Project Manager shall meet with County's contract Administrator, as needed, to discuss progress on the contract. Consultant may need to conference, visit site or conduct inspections with State or federal officials at no additional cost beyond fee.

Work assumed is as follows:

1. Project Meetings
2. Summary Design Memorandum – serves as the Basis of Design, which includes project background, cost data, guidelines and criteria used for Design
3. Prepare final construction documents (Plans, Special Provisions, and Estimates);
4. Provide bid phase & construction support;
5. Provide public outreach support.

All reports, drawings, and calculations shall be in English units, with deliverables in AutoCAD 2018 format.

Task 1 – Project Meetings & Public Outreach

A-E shall attend and conduct project status meetings as directed by COUNTY staff to discuss status and/or other details of PROJECT. Minutes of all meetings shall be prepared by A-E and submitted to meeting attendees within five (5) working days following each meeting.

At the request of COUNTY, A-E shall attend other meetings or presentations as needed to complete the terms of this scope. This task assumes that as a minimum, the project manager will attend with appropriate staff.

A-E shall conduct one in-house design concept presentation at the 35% stage. A-E shall provide support for one public outreach meeting and provide necessary materials for the public presentations. A-E shall provide proposed required right-of-way limits of work for permanent and temporary construction easements in CADD format sourced from County provided topographic CADD survey showing property interests for use in beginning easement acquisitions.

A-E shall assist COUNTY staff with permit applications, federal and other grant fund requirements and submittals requiring project manager's input. The project manager shall also be prepared to answer questions or clarify the scope of the project when requested by various regulatory or utility agencies.

Task 2 – Review of Reports & Background information and 35% Presentation

A-E shall review all available studies and reports related to the PROJECT and incorporate recommendations in the design. The reports will be used by the A-E for design of the proposed Project. Considerable County concept documents have already been prepared as noted in the Preliminary Project Report and Environmental documentation, but A-E is expected to prepare suitable 35% concept documentation to obtain direction for beginning the final construction documents.

Task 3 – Prepare final construction documents (Plans, Special Provisions, and Estimates)

A-E shall not begin preparing final construction documents until after written direction from the COUNTY is provided. In compliance with the appropriate design criteria, A-E shall be responsible for all direct and related work with the design of the bridge and roadway approach construction. Said design shall include: box culvert tunnel construction conditions/direction, traffic control plans depicting detours; temporary signing and striping; location of removable temporary barrier rails; crash cushions; and other items necessary for the construction project.

A-E shall prepare plans and special provisions for the construction of the bikeway, box culvert tunnel and street right-of-way construction associated with said work, and traffic control plans. Where applicable, engineering design of all PROJECT improvements shall be compatible and in accordance with the following:

1. CEQA and/or NEPA Determination;
2. Regulatory permits;
3. Orange County Highway Design Manual;
4. Orange County Traffic Manual;
5. Orange County Flood Control District Hydrology & Design Manuals;
6. County of Orange Standard Plans;
7. Caltrans Standard Specifications;
8. Cities Standard Plans
9. Standard Specification for Public Works Construction; and
10. County supplements to APWA Standard Specification for Public Works construction.

A-E shall accommodate utility impacts and make modifications to the design, plans and/or special provisions as directed by COUNTY and mutually agreed to by A-E and COUNTY. COUNTY will provide first and second utility notice with all affected utility agencies within the limits of A-E's work. For utilities identified, special provisions for PROJECT shall incorporate utility relocation windows as necessary. COUNTY will issue a Notice-to-Relocate to affected utility agencies requiring such.

Plans for the bikeway, box culvert tunnel, street right-of-way, architectural, and traffic control shall be prepared in accordance with COUNTY and CALTRANS recommended practice for detailing and documentation in this Scope of Work. COUNTY Standard Plans shall be utilized where applicable and shall be called out on the plans as a reference. Plans shall be computer drafted on standard 22" x 34" sheets using Autodesk AutoCAD. Street right-of-way PS&E shall be prepared in accordance with the COUNTY CAD Manual.

A-E shall prepare a draft set of Special Provisions per COUNTY format (one (1) hard copy and its electronic file on MS Word) for all items of work. All Special Provisions shall be based on the Standard Specifications for Public Works Construction ("Green Book") and acceptable to Caltrans.

A-E shall investigate and prepare traffic, structural, geotechnical and, if necessary, hydrological calculations for the construction of the box culvert tunnel, bikeway, road right-of-way and traffic control plans. Calculations performed shall be signed and stamped by the appropriate Registered Engineer for these specialties who is duly licensed by the State of California. All calculations shall be neat and orderly; and reference appropriate important formulas, assumptions and procedures used.

In addition, A-E shall obtain a third party independent structural check of the box culvert tunnel from a registered structural engineer. This is a County Engineer requirement for all bridges and tunnels.

Upon completion of the PS&E (65% Complete), A-E shall distribute copies of plans, special provisions, and calculations thereof to reviewing parties and/or agencies identified by COUNTY. Reviewing party's and/or agency's request or direction regarding modifications or revisions to the PS&E (65% Complete) will be relayed to the A-E through COUNTY for incorporation. A-E shall respond to requests or direction as directed by COUNTY.

Other items required for the PS&E (65% Complete) are:

1. Letter to the Resident Engineer (RE), including:
 - a. Issues requiring the RE's attention ("Pending File")
2. Certification of review of relevant background and supporting information.
3. Review plans for completeness and consistency with the design scope and intent.
4. Provide PROJECT Special Provisions to ensure all items of work are adequately addressed.
5. Provide an initial cost estimate for project.

Upon receipt of comments and recommended revisions to the PS&E (65% Complete) from the COUNTY, A-E shall proceed with revising the plan set, special provisions, and design.

A-E is also responsible for preparing a set of Quantity Calculations. All bid items used in the construction cost estimate shall be described in the quantity calculations. Calculations shall be neat, orderly, and show required sketches, diagrams, and dimensions. The cover sheet of the Quantity Calculations shall be signed and stamped by a Registered Civil Engineer who is duly licensed in the State of California and in responsible charge of PROJECT.

Other items required for the PS&E (95% Complete) are:

1. Letter to the Resident Engineer (RE), including:
 - a. Issues requiring the RE's attention ("Pending File")
2. Review plans for completeness and consistency with the design.
3. Check the corrected plans for conformance with prior comments.
4. Review PROJECT Special Provisions to ensure all items of work are adequately addressed.
5. Provide box culvert tunnel structural steel details/shop drawings.
6. Provide third party independent structural check of the box culvert tunnel.
7. Prepare final independent quantity calculations and cost estimate.
8. Quality Assurance/Quality Control (QA/QC) Statement & Plan: Prepare and furnish to COUNTY and CITY, one (1) copy each of a QA/QC Statement and Plan as noted in SECTION XII. B.
9. Provide Constructability Review on estimate by A-E in-house Construction team, or construction management sub consultant.

The A-E shall prepare Cost Estimates using CALTRANS marginal estimate format, which includes all bid items described within the Special Provisions as noted above. The estimate shall use the same nomenclature and units of pay as indicated in the Special Provisions. The estimate shall reflect current Cost Data prices as described in publications used by COUNTY and CALTRANS. COUNTY understands that A-E has no control of the actual cost of construction or the successful bidder's method of pricing. A-E's cost estimate is made solely on the basis of the A-E's qualifications and experience as a design professional. The A-E professional, registered Civil Engineer in responsible charge of Project, shall sign the cover sheet of the Cost Estimate.

Upon completion of the PS&E (95% Complete) and all calculations, A-E shall distribute half-size copies thereof to reviewing parties and/or agencies identified by COUNTY. Reviewing parties and/or agencies request or direction regarding modifications or revisions to the PS&E (95% Complete) and structural calculations will be relayed to the A-E through COUNTY for incorporation. A-E shall respond to requests or direction of COUNTY.

Upon receipt of comments and recommended revisions to the PS&E (95% Complete) from COUNTY and until after written direction from COUNTY, A-E shall proceed with revising the plan set, special provisions, design, and calculations.

Other items required for the PS&E (Final) are:

Construction Package/Pending File: The package and transmittal memo describing PROJECT, procedures, and documents attached will be used by field personnel during construction.

Upon completion of the PS&E (Final) and structural calculations, A-E shall distribute copies thereof to parties and/or agencies identified by COUNTY.

Task 4 – Construction Support Services

A-E is retained on a Time and Materials (T&M) basis to provide construction support services, including:

1. A-E shall review and take appropriate action upon COUNTY supplied Contract Change Orders (CCO's). A-E's review and action shall be for conformance with the design concept of the PROJECT and with appropriate construction specifications and details.
2. A-E shall review and take appropriate action upon COUNTY supplied Contractor submittals such as shop drawings, samples of construction material, and product data as required in the construction documents. A-E's review and action shall only be for conformance with the design concept of the PROJECT and with the information given in the construction documents. A-E's review of any Contractor prepared drawings shall not relieve the Contractor from their sole responsibility for dimensions, quantities, calculations, weights, fabrication processes, construction means and methods, and coordination of trades or safety factors related to construction.
3. Review and approve box culvert tunnel structural steel shop drawing alterations or utility placement adjustments, if required.
4. Provide adjustments and revisions to design, based upon unanticipated and/or unknown field conditions encountered during the course of construction.

In the event that any items requiring interpretation of the final PS&E prepared by the A-E are discovered during the period in which PROJECT is being advertised for bids, said items shall be analyzed by the A-E for decision by COUNTY as to the proper corrective procedure required. Corrective action taken will either be in the form of an addendum or bulletin prepared by the A-E and issued by COUNTY or by a Change Order after the award of the construction contract. (Note: While PROJECT is being advertised for bids, all questions concerning intent or interpretation shall be referred to COUNTY for resolution.)

A-E or its sub-consultant shall not perform any work related to this task without prior direction from COUNTY.

Task 5 – Project Administration

As a grant funded project, A-E will need to meet all formats and requirements of the federal and other grant agencies. A-E shall complete and distribute the PS&E (65% Complete) to reviewing parties and/or agencies identified by COUNTY. The submittal shall consist of plans, special provisions, and electronic files of each, in accordance with this Scope of Work. The submittal shall consist of an approximate level of 65% completion of the plans and special provisions.

Deliverables:	No Copies
1. 35% concept Powerpoint presentation	
2. 65% Plans (11x17 size).....	6
3. 65% Plans (22x34 size).....	2
4. Draft special provisions (hidden text shown)	2
5. Draft special provisions (no hidden text shown.....	2
6. Draft special provisions electronic on CD (Word format).....	1
7. Draft Initial Cost Estimate	4
8. Engineer calculations (structural, geotechnical, traffic control).....	2

A-E shall collect and transmit a copy of review comments received back to COUNTY for information and direction.

PS&E (95% Complete)

This submittal shall consist of plans, special provisions, structural calculations, quantity calculations, cost estimate, and electronic files in accordance with the provisions of this Scope of Work. This submittal shall be equivalent to 95% completion of the plans, special provisions, and estimates. A-E shall complete and distribute to the reviewing parties and/or agencies identified by COUNTY copies of this package.

Deliverables:	No Copies
1. 95% Plans (11x17 size).....	10
2. 95% Plans (22x34 size).....	2
3. 95% special provisions (hidden text shown)	3
4. 95% special provisions (no hidden text shown.....	2
5. 95% special provisions electronic on CD (Word format).....	1
6. 95% Design & Check Calculations.....	2
7. 95% Quantity Calculations	2
8. 95% Cost Estimate.....	4
9. 95% Quality Assurance/Quality Control (QA/QC) Statement & Plan.....	3
10. Constructability Review.....	4
11. Stamped third party independent structural check of box culvert tunnel... ..	1

A-E shall collect and transmit a copy of review comments received back to the COUNTY for information and direction.

PS&E (Final)

This submittal shall consist of final plans on bond (photo type), Special Provisions, quantity calculations, cost estimate, electronic files, and design calculations in accordance with the provisions of this Scope of Work. This submittal shall be equivalent to 100% completion to this Scope, excluding SECTION III. Task 8. A-E shall complete and distribute to the parties and/or agencies identified by the COUNTY copies of this package.

Deliverables:	No Copies
1. Final Plans (11x17 size).....	6
2. Final Plans (22x34 size copies).....	3
3. Final Plans (22x34 size Mylar).....	1
4. Final special provisions	3
5. Final special provisions electronic on CD (Word format).....	1
6. Final Design & Check Calculations.....	2
7. Final Quantity Calculations	2
8. Final Engineers Estimate	4
9. CAD design files (AutoCAD 2018)	1

C. Quality Assurance/Quality Control (QA/QC) Plan

A QA/QC program may vary depending on the size and complexity of PROJECT. The comprehensiveness and structure of a corporate QA/QC plan may vary significantly by individual firm. Therefore, development of a QA/QC plan is the responsibility of A-E, subject to their plan meeting, Caltrans requirements, and the general minimum specifications that follow:

1. The QA/QC plans shall be submitted to COUNTY for approval. The submittal shall be an early item of work and is item-identified on the PROGRESS WORK SCHEDULE in Exhibit “ ”.
2. The QA/QC plan shall be specific to the project and may include organizational elements already in place within A-E’s organization.
3. The QA/QC plan shall define design guidelines and identify standard criteria to be used.
4. The QA/QC plan shall include regular meeting and their frequency (as defined in the agreement) with County staff and minutes of the meetings shall be prepared by A-E.
5. The QA/QC plan shall identify PROJECT milestones, and approval process for each milestone, where A-E’s work must go through the QA/QC process before proceeding to the next milestone. (For example, on a bridge PS&E contract: select bridge type, etc.)
6. The QA/QC plan shall assure a high degree of involvement of the A-E and shall assure that the engineer signing the plans meets the definition of “responsible charge” in the Professional Engineer Act.
7. The QA/QC plan shall name a Registered Civil Engineer and/or Registered Structural Engineer, who is duly licensed by the State of California, responsible for QA/QC
8. The QA/QC plan shall assure that submittals are checked and shall name a person responsible for checking. Checking shall include the following:
 - a. Verification that criteria and manuals have in fact been followed and the identification of any deviations and any resolutions
 - b. Identification of all proposed deviations from COUNTY and CALTRANS criteria and manuals and their resolution
 - c. Check of structural calculations and geometric calculations (separate from the independent check otherwise specified herein)
 - d. Verification that quantities are accurate.

QA/QC is integral to all the tasks of this Scope of Work. In delivering a quality product on schedule and within budget, it is presumed each task is included in the overall QA/QC process. Therefore, the fee for each task within this Scope of Work shall include QA/QC and there shall be no separate pay item for QA/QC.

Deliverables:

No Copies

- 1. QA/QC Plan 3

Corrections to the Plans, Specifications, Special Provisions, Quantity Calculations, Engineer’s Estimate and Design are anticipated and shall be considered as part of the normal design process. No extension of time or fees shall be allowed for corrections as described herein above.

II. ENVIRONMENTAL SERVICES

A. Environmental Requirements

In compliance with Federal & State environmental regulations, A-E and its sub-consultants shall be responsible for all direct and related work in preparing the WQMP and resolving design issues to comply with the County provided NEPA, CEQA, regulatory permit applications, environmental technical documents and other environmental agency requirements. USEPA Green Street guidelines shall be utilized where possible as well.

The County of Orange is the lead agency for the CEQA documentation and Caltrans is the lead agency pursuant to NEPA under Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act-Legacy for Users (SAFTEA-LU). For Caltrans, the project is processed through the Local Assistance Office.

Task 1 - Project Coordination Meetings for Environmental Approvals

The Environmental Task Manager is expected to attend at least one (1) in-person meeting and three (3) teleconference meetings to report on the progress, budget, and schedule performance related to the WQMP approval. A-E shall provide technical information and respond to questions and comments raised by the COUNTY or Caltrans staff. A-E must also be available to discuss and explain issues or recommendations made at meetings and hearings.

Task 2 - Prepare and Submit WQMP

A-E shall prepare a draft and final documents for review and approval.

Deliverables:

- 1. Draft WQMP – electronic copy & 2 hard copies
- 2. Final WQMP – electronic copy & 2 hard copies

**ATTACHMENT B
COST/COMPENSATION**

- I. COMPENSATION:** This is a **Specific Rates of Compensation** CONTRACT between COUNTY and A-E for Design Services for Carbon Canyon Channel Class 1 Bikeway (OC Loop Segment D) and Box Culvert as set forth in Attachment A, "Scope of Work".

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

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

A. Classification Rates:

Mark Thomas & Company, Inc. <i>(ICR 160.27%; Fee 10%; 4% increase/year)</i>					
<u>Classification Titles</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>	<u>Year 5</u>
Sr. Principal	\$401.96	\$418.04	\$434.76	\$452.15	\$470.24
Principal/Project Manager	\$240.00	\$249.60	\$259.59	\$269.97	\$280.77
Sr. Engineering Manager	\$314.13	\$326.69	\$339.76	\$353.35	\$367.48
Engineering Manager	\$267.97	\$278.69	\$289.84	\$301.43	\$313.49
Practice Area Leader	\$267.97	\$278.69	\$289.84	\$301.43	\$313.49
Sr. Project Manager	\$224.80	\$233.79	\$243.14	\$252.87	\$262.98
Sr. Technical Lead	\$224.80	\$233.79	\$243.14	\$252.87	\$262.98
Deputy Project Manager	\$190.56	\$198.18	\$206.11	\$214.35	\$222.93
Project Manager	\$183.86	\$191.21	\$198.86	\$206.82	\$215.09
Technical Lead	\$183.86	\$191.21	\$198.86	\$206.82	\$215.09
Sr. Project Engineer	\$158.21	\$164.54	\$171.12	\$177.96	\$185.08
Sr. Technical Engineer	\$158.21	\$164.54	\$171.12	\$177.96	\$185.08
Project Engineer	\$138.11	\$143.63	\$149.38	\$155.35	\$161.57
Design Engineer II	\$120.99	\$125.83	\$130.86	\$136.10	\$141.54
Design Engineer I	\$97.17	\$101.06	\$105.10	\$109.30	\$113.67
Sr. Technician	\$116.12	\$120.77	\$125.60	\$130.62	\$135.85
Technician	\$113.52	\$118.06	\$122.78	\$127.69	\$132.80

Sr. Survey Manager	\$210.66	\$219.08	\$227.85	\$236.96	\$246.44
Survey Manager	\$179.39	\$186.57	\$194.03	\$201.79	\$209.87
Sr. Project Surveyor	\$162.27	\$168.76	\$175.51	\$182.54	\$189.84
Project Surveyor	\$146.64	\$152.51	\$158.61	\$164.95	\$171.55
Sr. Surveyor	\$153.68	\$159.83	\$166.22	\$172.87	\$179.79
Surveyor	\$103.47	\$107.61	\$111.91	\$116.39	\$121.04
Lead Survey Technician	\$133.99	\$139.35	\$144.92	\$150.72	\$156.75
Sr. Survey Technician	\$111.66	\$116.12	\$120.77	\$125.60	\$130.62
Survey Technician	\$80.39	\$83.61	\$86.95	\$90.43	\$94.05
Certified Party Chief* <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$131.90	\$137.17	\$142.66	\$148.37	\$154.30
Party Chief* <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$128.92	\$134.08	\$139.44	\$145.02	\$150.82
Instrumentman* <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$120.07	\$124.88	\$129.87	\$135.07	\$140.47
Chainman/Rodman* <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$111.83	\$116.30	\$120.95	\$125.79	\$130.82
Apprentice (4th Period) <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$100.63	\$104.66	\$108.85	\$113.20	\$117.73
Apprentice (3rd Period) <i>(Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)</i>	\$89.47	\$93.05	\$96.77	\$100.64	\$104.66
Apprentice (2nd Period)* <i>(Prevailing wage is based on our union contract which sets the</i>	\$78.27	\$81.40	\$84.66	\$88.05	\$91.57

wage. For proposal purposes, we have estimated escalation date and rate)					
Apprentice (1st Period)* (Prevailing wage is based on our union contract which sets the wage. For proposal purposes, we have estimated escalation date and rate)	\$55.91	\$58.15	\$60.48	\$62.90	\$65.41
Sr. LAUD Division Manager	\$238.20	\$247.73	\$257.64	\$267.94	\$278.66
LAUD Division Manager	\$217.36	\$226.05	\$235.09	\$244.50	\$254.28
Sr. LAUD Project Manager	\$189.07	\$196.63	\$204.50	\$212.68	\$221.19
LAUD Project Manager	\$168.23	\$174.96	\$181.96	\$189.23	\$196.80
Landscape Architect II	\$136.96	\$142.44	\$148.14	\$154.07	\$160.23
Landscape Architect I	\$101.23	\$105.28	\$109.50	\$113.88	\$118.43
Landscape Designer III	\$113.14	\$117.67	\$122.38	\$127.27	\$132.36
Landscape Designer II	\$92.30	\$95.99	\$99.83	\$103.83	\$107.98
Landscape Designer I	\$68.48	\$71.22	\$74.07	\$77.03	\$80.11
Deputy District Manager	\$233.73	\$243.08	\$252.81	\$262.92	\$273.43
Sr. Inspector	\$117.61	\$122.32	\$127.21	\$132.30	\$137.59
Inspector	\$84.86	\$88.25	\$91.78	\$95.45	\$99.27
Project Coordinator	\$92.30	\$95.99	\$99.83	\$103.83	\$107.98
Sr. Graphic Designer	\$110.17	\$114.57	\$119.16	\$123.92	\$128.88
Graphic Designer	\$78.90	\$82.06	\$85.34	\$88.76	\$92.31
Other Direct Costs					
Description of Item	Qty	Unit	Unit Cost	Total	
Reproductions (Half Size)	3200	Sheets	\$0.35	\$1,120.00	
Reproductions (Full Size)	1500	Sheets	\$1.00	\$1,500.00	
Subconsultant 1: Civil Works Engineering				\$83,357.39	
Subconsultant 2: Diaz Yourman & Associates				\$99,394.06	

Civil Works Engineer (Subcontractor) (ICR 94.56%; Fee 10%; 3% increase/year)			
<u>Classification Titles</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Principal Civil Engineer	\$154.09	\$158.71	\$163.48
Senior Drainage Engineer	\$149.81	\$154.31	\$158.93
Senior Traffic Engineer	\$124.13	\$127.85	\$131.69
Drainage & WQMP Engineer	\$96.31	\$99.20	\$102.17
Junior Engineer	\$66.34	\$68.34	\$70.39

Technical Editor		\$64.20	\$66.13	\$68.11
Other Direct Costs				
<u>Description of Item</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>
Printing, Delivery, Mileage, Parking Costs	1	Each	Cost	\$1,000
Electrical - Bastanchury Lighting	1	Each	\$10,605	\$10,605
Electrical - Golden Lighting	1	Each	\$4,500	\$4,500

Diaz Yourman & Associates (Subcontractor) <i>(ICR 199.46%; Fee 10%; 3-5% increase/year)</i>				
<u>Classification Titles</u>	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
Associate Engineer I: Project Manager	\$193.69	\$199.50	\$209.48	\$219.95
Principal Engineer: Reporting/ QA/QC	\$271.13	\$279.27	\$293.23	\$307.89
Associate Engineer II: Engineering Analyses. Reporting	\$211.58	\$217.92	\$228.82	\$240.26
Associate Engineer I: Engineering Analyses. Reporting	\$193.69	\$199.50	\$209.48	\$219.95
Senior Engineer: Field Exploration Management, Reporting	\$178.97	\$184.34	\$193.55	\$203.23
Project Engineer I: Engineering Analyses. Reporting	\$125.11	\$128.86	\$135.30	\$142.07
Staff Engineer II: Data Review, Field Exploration, ISA, Engineering Analyses, Reporting	\$114.50	\$117.94	\$123.83	\$130.03
Staff Engineer/Geologist I: Data Review, Field Exploration, Analyses	\$96.61	\$99.51	\$104.49	\$109.71
Technician*: Construction Observation	\$181.17	\$186.61	\$195.94	\$205.74
CADD/Word Processor	\$80.70	\$83.13	\$87.28	\$91.65
Technical Editor	\$124.81	\$128.56	\$134.98	\$141.73
Other Direct Costs				
<u>Description of Item</u>	<u>Qty</u>	<u>Unit</u>	<u>Unit Cost</u>	<u>Total</u>
Equipment Rental (Traffic Control)	2	EA	\$891.25	\$1,782.50
Permit Fees	1	EA	\$7,600.00	\$7,600.00
Supplies (Infiltration Test)	1	EA	\$500.00	\$500.00
Vehicle	64	Hours	\$18.00	\$1,152.00
Geophysics	1	LS	\$4,416.00	\$4,416.00
Drilling	1	LS	\$15,941.00	\$15,941.00
IDW Disposal	1	LS	\$949.00	\$949.00
Laboratory Testing	1	LS	\$13,559.00	\$13,559.00

~~B. Total CONTRACT Amount Shall Not Exceed: \$858,419.74~~

~~B. Total CONTRACT Amount Shall Not Exceed: \$909,489.74~~

Amendment No. 2
Contract Increase

Amendment No. 3
Contract Increase**B. Total CONTRACT Amount Shall Not Exceed: \$958,419.74**Amendment No. 4
Contract Increase**B. Total CONTRACT Amount Shall Not Exceed: \$1,108,419.74**

- C. **PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY.
- D. **FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.
- E. **A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on COUNTY sites during the performance of work and services under this CONTRACT.
- F. **REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by COUNTY:
- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY Project Manager.
 - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY Project Manager.
 - 3) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY Project Manager and actually incurred by A-E in performance of this Contract.
 - 4) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY Project Manager and are subject to the following restrictions:
 - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and COUNTY location, as well as mileage within COUNTY property will not be reimbursed.
 - 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
 - 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
 - 7) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the COUNTY. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

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

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

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

- H. **INVOICING INSTRUCTIONS:** The A-E will provide an invoice on the A-E's letterhead. Each invoice will have a unique number and will include the following information:
- a. A-E's name and address
 - b. A-E's remittance address, if different from (A), above
 - c. Name of COUNTY agency/department
 - d. Delivery/service address
 - e. CONTRACT number
 - f. Service Date
 - g. Description of Services
 - h. Total
 - i. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works
Attn: Accounts Payable
300 N. Flower St., 6th Floor
Santa Ana, CA 92703

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

ATTACHMENT C
STAFFING PLAN1. A-E KEY PERSONNEL

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
Robert Himes	Principal/Project Manager	33	CA PE C45787
Ravi Shah	Deputy Project Manager	12	CA PE C79183
Trisha Keith	Technical Lead (Civil Lead)	14	CA PE C62490

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

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

2. 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 Project Manager.

Company Name & Address	Contact Name and Telephone Number	Project Function
Civil Works Engineers 3151 Airway Avenue, Suite T-1 Costa Mesa, CA 92626	Marie Marston (714) 966-9060	Water Quality Management Plan, Traffic Signal Design, Electrical Design, and Construction Support
Diaz Yourman & Associates 1616 East 17 th Street Santa Ana, CA 92705	Clint Isa (714) 245-2920	Geotechnical Design and Construction Support Services

EXHIBIT NO. 01 – Cost Proposal



Amendment No. 1
Addition of Exhibit
No. 1 and No. 2

EXHIBIT NO. 02 – 10-O2 Consultant Contract DBE Commitment

EXHIBIT NO. 03 – Supplemental Scope of Work



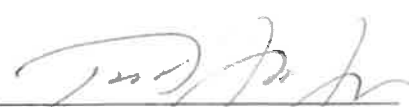

Amendment No. 2
Addition of Exhibit
No. 3

COST PROPOSAL FOR PROJECT SCOPE: Class 1 Bikeway (OC Loop Segment D) and Box Culvert along Carbon Canyon Channel - FINAL Proposal 07/19/19

MARK THOMAS	Mark Thomas										Subconsultants		TOTAL COST							
	Principal/Project Manager	Deputy Project Manager	Technical Lead	Sr. Project Engineer	Design Engineer II	Sr. Technician	Structures Lead (Sr. Technical Lead)	Sr. Structures Eng (Sr. Proj Eng)	Structures Engineer	Structures Design Engineer II	Structures Architect II	AUD Division Manager		Project Coordinator	% Graphic Designer	Total Hours	Total MT Cost	CIVIL WORKS	DVA	DBE
1.0 PROJECT MEETINGS & PUBLIC OUTREACH	\$240.00	\$190.56	\$183.85	\$158.20	\$120.98	\$116.12	\$224.80	\$158.20	\$138.10	\$120.98	\$113.52	\$217.35	\$92.50	\$10.15						
1.1 Project Initiation and Kick Off Meeting (1)	4	4	4		4										12	\$2,206.15				
1.2 Project Focus Meeting (3)	6	6	6		6										16	\$3,097.27	7,500.00			\$5,567.27
1.3 Project Status Meetings (6 meetings)	4	18	12		12										114	\$13,225.08	4,800.00			\$18,025.08
1.4 Public Outreach Meeting (1) & Summit	4	4	4		4										24	\$5,830.20				\$5,830.20
1.5 35% Design Concept Presentation (Design Seminar)	4	4	4		4										24	\$5,990.98				\$5,990.98
Subtotal Phase 1	22	36	0	0	32	0	0	0	0	0	0	0	0	48	\$30,320.58	7,300.00	\$0.00			\$37,620.58
2.0 REVIEW OF REPORTS/BACKGROUND INFO/85% PRESENTATION																				
2.1 Review Reports and Background Data		12													12	\$2,286.72	\$2,888.00	\$0.00		\$5,174.72
2.2 Geotechnical Analysis and Reports		4		4					4						16	\$2,580.22	\$0.00	\$48,310.00		\$51,890.22
2.3 Develop 3D Model		4			112										116	\$14,509.54	\$0.00	\$0.00		\$14,509.54
2.4 Geometric Alternatives and Development		4			36	80									0	\$0.00	\$0.00	\$0.00		\$0.00
2.5 35% Geometric Drawings		4			16										136	\$17,654.03	\$0.00	\$0.00		\$17,654.03
Subtotal Phase 2		32	0	4	148	80	0	4	4	0	0	0	0	0	280	\$37,030.48	\$2,888.00	\$48,310.00		\$89,228.48
3.0 PREPARE FINAL CONSTRUCTION DOCS (P&BE)																				
3.1 Utility Coordination															0	\$0.00				\$0.00
3.1.1 Portline Plan and Penching		2		4											6	\$1,013.91				\$1,013.91
3.1.2 Utility Base Mapping		2		4	36	8									50	\$5,298.10				\$5,298.10
3.1.3 Identify Utility Conflicts		2		4	36										42	\$5,369.12				\$5,369.12
3.1.4 Utility Coordination for Relocations		2		8											10	\$1,646.70				\$1,646.70
3.2 O&M Plan		16													32	\$6,781.51				\$6,781.51
3.3 85% P&BE															0	\$0.00				\$0.00
3.3.1 Title, Notes, Key Maps, Typical Sections		16		8	70	20									98	\$12,056.50				\$12,056.50
3.3.2 Plan and Profile, Grading, Drainage		16		16	148	120									304	\$38,379.62				\$38,379.62
3.3.3 Construction Details		8		8	16	80									112	\$14,015.54				\$14,015.54
3.3.4 Erosion Control		2		2	18										32	\$4,405.48				\$4,405.48
3.3.5 Utility Disposition		2		2	18										26	\$3,443.18				\$3,443.18
3.3.6 Utility Modification Plans (Waterline Relocation)		40		40	18	80									138	\$17,795.31				\$17,795.31
3.3.7 Detour, Stage Construction and Traffic Handling		8		8	66	40									114	\$13,855.64				\$13,855.64
3.3.8 Signing and Striping		4		4	16	15									36	\$4,426.40				\$4,426.40
3.3.9 Landscaping and Irrigation		4		4	16	15									98	\$13,007.26				\$13,007.26
3.3.10 Retaining Walls		2		2	12	208									508	\$68,295.07				\$68,295.07
3.3.11 Box Culvert Plans		2		2	12										252	\$33,400.00				\$33,400.00
3.3.12 Traffic Signal		4		4	22										6	\$1,113.91				\$1,113.91
3.3.13 Cross Sections		4		4	40										22	\$2,661.31				\$2,661.31
3.3.14 Specifications		2		2	8	50									72	\$10,655.92				\$10,655.92
3.3.15 Estimate		2		2	8	50									60	\$7,695.04				\$7,695.04
3.4 95% P&BE															0	\$0.00				\$0.00
3.4.1 Title, Notes, Key Maps, Typical Sections		8		8	40	15									64	\$7,962.60				\$7,962.60
3.4.2 Plan and Profile, Grading, Drainage		8		16	110	60									194	\$24,330.58				\$24,330.58
3.4.3 Construction Details		8		8	16	40									72	\$9,370.67				\$9,370.67
3.4.4 Erosion Control		2		2	16										26	\$3,615.88				\$3,615.88
3.4.5 Utility Disposition		2		2	16										24	\$3,201.21				\$3,201.21
3.4.6 Utility Modification Plans (Waterline Relocation)		16		16	24	40									80	\$10,079.54				\$10,079.54
3.4.7 Detour, Stage Construction and Traffic Handling		8		8	24	8									40	\$5,098.03				\$5,098.03
3.4.8 Signing and Striping		2		2	10	8									20	\$2,455.16				\$2,455.16
3.4.9 Landscaping and Irrigation		2		2	20										62	\$8,332.48				\$8,332.48
3.4.10 Retaining Walls (Independent Check)		2		2	10	8									512	\$65,864.30				\$65,864.30
3.4.11 Box Culvert Plans (Independent Check)		2		2	10	8									280	\$37,604.04				\$37,604.04
3.4.12 Traffic Signal		2		2	12										18	\$2,177.60				\$2,177.60
3.4.13 Cross Sections		2		2	18										70	\$8,755.50				\$8,755.50
3.4.14 Specifications		2		2	4	24									20	\$2,419.56				\$2,419.56
3.4.15 Estimate		2		2	4	24									0	\$0.00				\$0.00
3.4.16 Independent Quantity Calculations and Cost Estimate		2		2	4	24									0	\$0.00				\$0.00
3.4.17 Constructability Review		2		2	4	24									0	\$0.00				\$0.00
3.5 Final P&BE															196	\$26,349.13				\$26,349.13
3.5.1 Final Plans		2		2	32	20									44	\$5,447.11				\$5,447.11

EXHIBIT 10-02 CONSULTANT CONTRACT DBE COMMITMENT

1. Local Agency: Orange County Public Works 2. Contract DBE Goal: 18%
 3. Project Description: Carbon Canyon Channel Class I Bikeway (OC Loop Segment D)
 4. Project Location: Orange County, CA
 5. Consultant's Name: Mark Thomas & Company, Inc. 6. Prime Certified DBE: 7. Total Contract Award Amount: \$858,419.74
 8. Total Dollar Amount for ALL Subconsultants: \$182,751.45 9. Total Number of ALL Subconsultants: 2

10. Description of Work, Service, or Materials Supplied	11. DBE Certification Number	12. DBE Contact Information	13. DBE Dollar Amount
Geotechnical Engineering	35719	Civil Works Engineers 3151 Airway Avenue Suite T-1 Costa Mesa, CA 92626 (714) 966-9060	\$83,357.39
Electrical & Drainage Engineering	20160	Diaz Yourman & Associates 1616 East 17 th Street Santa Ana, CA 92705 (714) 245-2920	\$99,394.06
Local Agency to Complete this Section			
20. Local Agency Contract Number: <u>MA 080 19011921</u>		14. TOTAL CLAIMED DBE PARTICIPATION	\$182,751.45
21. Federal-Aid Project Number: <u>5955(092)/1215000120L-N</u>			21.2%
22. Contract Execution Date: <u>28 AUGUST 2019</u>			
Local Agency certifies that all DBE certifications are valid and information on this form is complete and accurate.		IMPORTANT: Identify all DBE firms being claimed for credit, regardless of tier. Written confirmation of each listed DBE is required.	
 23. Local Agency Representative's Signature		 15. Preparer's Signature	
24. Date: <u>10 OCT 2019</u>		16. Date: <u>10/10/2019</u>	
25. Local Agency Representative's Name: <u>TIM NGUYEN</u>		17. Preparer's Name: <u>Robert Himes</u>	
26. Phone: <u>714-245-4517</u>		18. Phone: <u>(949) 477-9000</u>	
27. Local Agency Representative's Title: <u>SENIOR CIVIL ENGINEER</u>		19. Preparer's Title: <u>President</u>	

DISTRIBUTION: 1. Original – Local Agency
 2. Copy – Caltrans District Local Assistance Engineer (DLAE). Failure to submit to DLAE within 30 days of contract execution may result in de-obligation of federal funds on contract.



SCOPE OF WORK

As a supplement to our scope for the Orange County Loop Segment D project, Mark Thomas provided some additional work to support to Orange County Public Works (County) in the development and completion of PS&E for this project and as a supplement to the original scope of work. The additional effort and scope of work documented below assisted in keeping the project moving forward through 65% PS&E, approvals of USACE 408 Permits and Caltrans Encroachment Permits, while our evaluation of the structural retaining walls and going through an informal type selection process assisted the County in significant cost savings relative to the original design and scope of work. During the development of the process, County maintenance was involved during the 95% PS&E, an additional maintenance path access and turnaround was provided just south of the Bastanchury Road undercrossing prior to the conform at El Cajon Trail,

Task 1. Additional Effort Required

1.1. Maintenance Path and Added Retaining Walls

Prior to 65% PS&E Mark Thomas received comments from OCPW Maintenance which required the addition of a maintenance path down to the channel. Prior to the submission of the 95% PS&E, a larger maintenance turnaround around was requested at the maintenance path which resulted in revisions to the design and the addition of a new retaining wall. Mark Thomas made the adjustments to the layouts to accommodate the largest possible vehicle without requiring a retaining wall greater than six feet. Additional survey was requested by the County and the additional retaining wall is being included as part of the 100% PS&E. This design change resulted in additional efforts including adding the maintenance path and a new retaining wall which requires additional retaining wall sheets, development of quantities and modified grading.

1.2. Structures Type Selection

The original scope of work included the design of standard retaining walls, however, during value engineering/design development, it was determined standard walls would not be constructible/cost prohibitive due to constraints and site conditions. The Mark Thomas team evaluated several retaining wall alternatives and methods and determined sheet pile retaining walls utilizing Giken silent piler would be the most cost effective and constructible solution. Mark Thomas met with NuCor/Skyline Steel vendor on site to ensure the constructability of the retaining walls and developed structures plans accordingly. This required additional efforts on behalf of the Mark Thomas team included the evaluation of retaining walls (type selection) including development of cost comparisons, multiple meetings, and constructability review to ensure the retaining walls are constructible.

1.3. Separate USACE/Caltrans Encroachment Permit Submittals

Mark Thomas was required to prepare separate USACE and Caltrans submittal packages as a result of project delays with R/W acquisitions. Mark Thomas prepared four (4) USACE submittals including a memorandum with each submittal and addressing comments that resulted in the approval of the 408 permit. The original scope of work was to submit the same PS&E plans to USACE as part of our normal PS&E development process, however, due to the delays in R/W and the timeline required to turnaround USACE submittals (60 days) and address comments, Mark Thomas incurred additional efforts in the development of separate USACE submittal packages. Mark Thomas was also required to do the same in order to obtain Caltrans Encroachment Permit approval for this project.

1.4. Impacts Due to Schedule Delay for R/W

Due to impacts due to R/W acquisitions, the project resulted in over twenty (20) months of delay. This delay resulted in additional efforts for Mark Thomas including familiarizing new staff with the project due to staff turnover and additional time spent on accounting and project coordination and overall project management.

Exhibit No. 3 - Supplemental Scope of Work

COST PROPOSAL FOR PROJECT SCOPE: OCPW - OC Loop Segment D

	MARK THOMAS												Total Hours	Total MT Cost
	Principal	Sr. Project Manager	Sr. Technical Lead	Project Manager	Technical Lead	Sr. Project Engineer	Project Engineer	Design Engineer II	Design Engineer I	Sr. Technician	Technician	Project Coordinator		
	\$260	\$243	\$243	\$199	\$199	\$171	\$149	\$131	\$105	\$126	\$123	\$100		
1.0 Additional Effort Required														
1.1 Maintenance Path and Added Retaining Walls	4			8			16	24		12			64	\$9,667
1.2 Structures Type Selection	8			4	40		20						72	\$13,814
1.3 Separate USACE/Caltrans EP Submittals	4			8		8		60		40			120	\$16,874
1.4 Schedule Delay for R/W	4			12		6		36		6		8	72	\$10,715
Subtotal Phase 1	20	0	0	32	40	14	36	120	0	58	0	8	328	\$51,070
TOTAL HOURS	20	0	0	32	40	14	36	120	0	58	0	8	328	
Anticipated Salary Increases														\$0
OTHER DIRECT COSTS														\$0
TOTAL COST	\$5,192	\$0	\$0	\$6,364	\$7,954	\$2,396	\$5,378	\$15,703	\$0	\$7,285	\$0	\$799		\$51,070