

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

**THIS CONTRACT**, hereinafter referred to as “Contract” for purposes of identification hereby numbered MA-080-21010588, 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**

Fountainhead Consulting Corporation, 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-080-21010588 Scope of Work for On-Call Construction Services – Construction Management & Inspection Services, 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 Ivan Benavidez, 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 Contract of A-E and the Director, County of Orange, OC Public Works or his designee, hereinafter referred to as “Director”.

**1.1.5.** A-E's employment of independent consultants/contractors shall not relieve A-E from the performance of its own responsibilities pursuant to this Contract. However, all consultants/contractors independently contracting with County shall be independently liable to County for the performance of the work pursuant to their agreements, and A-E shall have no liability for work by 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**

- 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**

The term of this Contract is for three (3) years, commencing upon Board of Supervisor approval, with a maximum allowable compensation of six hundred thousand dollars (\$600,000), with the option to renew for two (2) additional years, with Board approval; except as permitted in Paragraph 1.5 below.

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

- 1.5.1.** For the Projects/Services authorized under this Contract, A-E shall be compensated in accordance with the following:
- 1.5.2.** For completion and approval of all Projects/Services where "Extra Work" (defined as changes in approved portions of the Project/Services required by and ordered in writing by Director which changes constitute a change in or departure from said approved portions of Projects/Services) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.
- 1.5.3.** Where extra work is authorized for Projects/Services:
- a) The amount for Extra Work shall be determined using Attachment 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. Increases in the Contract amount for services within the existing scope of work may be granted by the Director where the amount does not exceed 25 percent of the existing Contract price or \$200,000, whichever is less.
  - b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.
- 1.5.4.** For partial completion of work of Projects/Services followed by default on part of A-E:
- a) For failure to complete and secure approval of the first required submittal, there shall be no compensation.
  - b) For failure to complete and secure approval of other authorized phases, A-E shall, upon completion of Projects/Services by others, be entitled to receive compensation based on approved work of Projects/Services not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by County of

the non-approved work; provided, however, that if the cost to County to complete the contract exceeds the amount specified herein, A-E shall be liable to County for such excess costs attributable to A-E's breach of the Contract.

## **2. LABOR**

### **2.1. Non-Employment of County Personnel**

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

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

### **2.2. Non-Discrimination**

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

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

### **2.3. Employee Eligibility Verification**

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**

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. Requirements and Endorsements**

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

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

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

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

- 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.

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

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including converge for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claims made or per occurrence \$2,000,000 aggregate
Environmental/Pollution Liability* <i>*(Optional coverage to be required only when hazardous materials are involved. If required, A-E will be notified by County).</i>	\$1,000,000 per claims made or occurrence

B. Required Coverage Forms

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

C. Required Endorsements

- 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. *(Optional coverage to be required only when hazardous materials are involved. If required A-E will be notified by County).* The Pollution Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:
- a. An Additional Insured endorsement naming the **County of Orange, Orange County Flood Control District, and their respective elected and appointed officials, officers, employees and agents** as Additional Insureds.
  - b. A primary non-contributing endorsement evidencing that A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
3. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **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**.
4. All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
5. A-E shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium 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.
6. 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.
7. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
8. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
9. If the A-E fails to provide the insurance certificates and endorsements within seven

(7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

10. County expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.
11. County shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to A-E, and County shall be entitled to all legal remedies.
12. The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage and limits available from the insurer.

#### 4. INDEMNITY/COMPLIANCE

##### 4.1. Indemnification

**4.1.1. A-E shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, Orange County Flood Control District and their agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.**

**4.1.2. All Projects/Services submitted by A-E shall be complete and shall be carefully checked prior to submission. A-E understands that County's checking is discretionary, and A-E shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving A-E's Projects/Services, the Projects/Services will be returned to A-E for correction. Should COUNTY or others discover errors or omissions in the work submitted by A-E after County's approval thereof, County's approval of A-E's Projects/Services shall not be used as a defense by A-E.**

**4.1.3. A-E agrees to, indemnify, defend with counsel approved in writing by County, and hold County, Orange County Flood Control District and their elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and County by a court of competent jurisdiction because of the concurrent active negligence of A-E and County or County Indemnitees, A-E and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this Contract.**

##### 4.2. Bills and Liens



**4.2.1.** A-E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, **but if any does so attach, A-E shall promptly procure its release 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.**

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

**4.3.1.** A-E represents and agrees that services to be provided under this Contract shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the Projects/Services at the time Projects/Services are provided to and accepted by County.

**4.3.2.** A-E acknowledges that County is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A-E agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

### **5. TERMINATION**

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

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

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

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

#### **5.2. Termination for Convenience**

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

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

**5.2.3.** County shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this Contract.

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

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

condition in any lower tier subcontracts.

### 5.3. Breach of Contract

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

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

### 5.4. Default

- 5.4.1. In the event any equipment or service furnished by the A-E in the performance of this Contract should fail to conform to the specifications therein within one (1) calendar year from the County's acceptance of the equipment or service, or any performance period specifically specified within the specifications or Contract, whichever is greater, the County may reject same, 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. **Orderly Termination:** Upon termination of this Contract for any reason, each Party shall assist the other PARTY in transferring all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party, including all data and any unfinished, preliminary or draft documents. Each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of performance of this Contract.
- 5.4.6. The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

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

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

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

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

**6.3. Amendments**

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

**6.4. Successors and Assigns**

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

**6.5. Entirety**

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

**6.6. Severability**

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

**6.7. Binding Obligation**

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

**6.8. Governing Law and Venue****6.8.1.** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent

jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

**6.8.2.** The Parties specifically agree that by soliciting 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. Intentionally Omitted**

**6.10. Ownership of Documents**

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

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

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

**6.11. Confidentiality**

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

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

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

**6.12. Publication**

**6.12.1.** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All

press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

**6.12.2.** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with 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 spokesperson for County projects without first obtaining permission from the County Project Manager.

**6.13. Records and Audit/Inspections**

**6.13.1.** A-E shall keep an accurate record of time expended by A-E and/or consultants employed by A-E in the performance of this Contract.

**6.13.2.** Within ten (10) days of County's written request, A-E shall allow County or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, timecards or other records relating to this Contract.

**6.13.3.** A-E shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the Contract or until resolution of any claim or dispute between the Parties, whichever is later.

**6.13.4.** Should A-E cease to exist as a legal entity, records pertaining to this Contract shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to COUNTY.

**6.14. Notices**

**6.14.1.** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the Projects/Services.

**6.14.2.** Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

**6.14.3.** All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For A-E:           Fountainhead Consulting Corporation  
2400 East Katella Avenue, Suite 800  
Anaheim, CA 92806  
Attn: Ivan Benavidez  
Phone: 909-512-2815  
E-mail: [ibenavidez@fountainheadcorp.com](mailto:ibenavidez@fountainheadcorp.com)

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For COUNTY: OC Public Works, OC Infrastructure  
601 N. Ross St.,  
Santa Ana, CA 92701  
Attn: Allyssa Montoya  
Phone: 714-667-3214  
E-mail: [Allyssa.Montoya@ocpw.ocgov.com](mailto:Allyssa.Montoya@ocpw.ocgov.com)

cc: OC Public Works Procurement Services  
601 N. Ross St.,  
Santa Ana, CA 92701  
Attn: Christina Rojas  
Phone: 714-667-9765  
E-mail: [Christina.Rojas@ocpw.ocgov.com](mailto:Christina.Rojas@ocpw.ocgov.com)

### **6.15. Attorney's Fees**

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

### **6.16. Interpretation**

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

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

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

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

**6.16.5.** The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.

### **6.17. Headings**

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

### **6.18. Acceptance**

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

**6.19. Changes**

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

**6.20. Assignment**

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

**6.21. Changes in Ownership**

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

**6.22. Force Majeure**

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

**6.23. Calendar Days**

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

**6.24. Title to Data**

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

**6.24.2.** All materials, documents, data or information, including copies furnished by County and loaned to A-E for his temporary use, must be returned to the County at the end of this Contract unless otherwise specified by the Director.

**6.25. Availability of Funds**

The obligation of County is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the County to expend or as involving the

County in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

#### **6.26. Contingency of Funding**

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

#### **6.27. Contract Construction**

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

#### **6.28. Conflicts of Interest**

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

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

#### **6.29. Usage**

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

#### **6.30. Cooperative Agreement**

**6.30.1.** The provisions and pricing of this Contract will be extended to other California local or state governmental entities. Governmental entities wishing to use this Contract will be responsible for issuing their own purchase documents/price agreements, providing for their own acceptance, and making any subsequent payments. Contractor shall be required to include in any Contract entered into with another agency or entity that is entered into as an extension of this Contract a Contract clause that will hold harmless the County of Orange from all claims, demands, actions or causes of actions of every kind resulting directly or indirectly, arising out of, or in any way connected with the use of this contract. Failure to do so will be considered a material breach of this Contract and grounds for immediate Contract termination. The cooperative entities are responsible for obtaining all certificates of insurance and bonds required. The Contractor is responsible for providing each cooperative entity a copy of the Contract upon request by the cooperative entity. The County of Orange makes no guarantee of usage by other users of this Contract.



**6.30.2.** The Contractor shall be required to maintain a list of the cooperative entities using this Contract. The list shall report dollar volumes spent annually and shall be provided on an annual basis to the County, at the County's request.

**6.31. Wage Rates**

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

**6.32. Apprenticeship Requirements**

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

**6.33. Registration of Contractor**

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

**6.34. Payroll Records**

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

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

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

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

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

b. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and

1815 for any work performed by his or her employees in connection with the Contract.

- 6.34.4.** The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
- 6.34.5.** Contractor shall inform County of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of any change of location and address of the records.
- 6.34.6.** Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- 6.34.7.** Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq., and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

**6.35. Work Hour Penalty**

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

**6.36. Apprentices**

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

- 6.36.2.** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated

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above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

- 6.36.3.** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.
- 6.36.4.** The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

County of Orange, OC Public Works  
Fountainhead Consulting Corporation

MA-080-21010588

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

**FOUNTAINHEAD CONSULTING CORPORATION,**  
a California Corporation,

Date: 9/28/2020

By: Michael Varipapa  
Signature

MICHAEL VARIPAPA, Chairman of the Board  
Print Name & Title

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

Date: 9/28/2020

By: Rosalie Acosta  
Signature

ROSALIE ACOSTA, Secretary  
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: Mark Sanchez 9/29/2020

Deputy

Print Name: MARK N. SANCHEZ

**ATTACHMENT A  
SCOPE OF WORK****I. INTRODUCTION**

OC Public Works on behalf of the County of Orange (County) requires supplemental professional services to meet workload demands and project scheduling commitments in relation to Architect/Engineer (A-E) Design, Project Administration and Management Services for various projects. A-E is defined as an Architect or Engineer for design and/or engineering of a project. To supplement existing resources, County intends to issue "On-Call Construction Services – Construction Management & Inspection Services" for use by Orange County on an "as-needed" basis. No specified amount of work is guaranteed to A-E. However, the amount of negotiated contracted work that will be required on an "as-needed" basis shall not exceed (TBD).

**II. GENERAL DESCRIPTION OF SERVICES**

The A-E will be contacted by a County Project Manager on an "as-needed" basis as projects arise that require A-E professional services. Requirements will be discussed by both Parties and A-E shall prepare a written *Scope Statement* that will include the specific work to be performed, including the costs and time required to complete the project/task. The County Project Manager will then review the A-E's *Scope Statement*, proceed with negotiation of task costs and when satisfied, issue a Contract Task Order (CTO) against this Contract.

The A-E may be responsible for the preparation of comprehensive facility assessments, designs, drawings, specifications, cost estimates, and reports within the scope of the Contract Task Order (CTO). The A-E may also be responsible for:

- A. Obtaining data by reviewing record drawings, visiting the site of the construction and by conferences with the User/Client and facility maintenance staff or by other actions as necessary to develop the design;
- B. Checking of shop drawings, submittals, materials and other data submitted by the Construction Contractor for approval;
- C. Furnishing consultation and advice to County to clarify the intent of the drawings and specifications and on questions that may arise during the construction of the project;
- D. Space planning, programming and code compliance review and upgrades;
- E. The meeting of submittal dates included in the *Scope Statement* of the Contract Task Order, including the work of consultants;
- F. Coordination with various agencies having authority of jurisdiction for planning services, entitlement, fire life safety, CEQA, ADA, etc.;
- G. Construction administration services, testing and commissioning;
- H. Close out services, as-built plans, material lists, project acceptance, etc.
- I. The coordination of the various elements of the design to assure compatibility of architectural, structural, electrical, mechanical/plumbing, and other design features;
- J. Labor Compliance services for state and federally funded projects;

- K. Other services as specifically included in the Contract Task Order related to project Initiation, Planning/Design, Bid/Award, Construction and Closeout.

The A-E shall restrict themselves to the *Scope Statement* of the Contract Task Order. Any changes in the *Scope Statement* shall require prior written authorization by County.

### III. CONTRACT TASK ORDER

A-E shall be assigned work via a task order by COUNTY which shall subsequently be referred to as the "Contract Task Order" (hereinafter "CTO"). A CTO for each project shall be developed by A-E in conjunction with COUNTY Project Management staff. The County Project Manager shall manage all A-E's work including monitoring the CTO work schedule, quality of deliverables, review of invoiced amounts, adherence to set budget, and internal review of submittal packages. A-E shall follow all requirements as outlined in the CTO; this general Scope of Work, the project specific *Scope Statement*, and the Architect-Engineer Guide (Rev July 2018).

The CTO shall include a detailed *Scope Statement*, describing tasks to be performed with a specific list of deliverables for each task, schedule of work and cost to complete the work. The schedule of work shall allow enough time for meetings with County Management staff to review the work progress, provide technical and policy direction, resolve problems and ensure adherence to the work completion schedule. The CTO shall include a cover sheet provided by County Project Management staff with the appropriate signature blocks and contract information. Once both Parties agree, and all Parties have signed the CTO, County Management staff shall provide A-E with a Notice to Proceed (NTP) to begin work. A-E shall submit all plans, reports and other documents produced under the CTO to the assigned County Project Manager within the timeframe indicated in the CTO or as directed by the County Project Manager.

### IV. SCOPE OF WORK – CONSTRUCTION SERVICES – CONSTRUCTION MANAGEMENT & INSPECTION SERVICES

#### A. CONSTRUCTION SERVICES

##### ***Personnel Requirements:***

A-E will be required to provide full-time or part-time Resident Engineers and Office Engineers, licensed civil engineers in the State of California, Construction Inspectors, and Labor Compliance Specialists as required by the scope of each Task Order. The A-E shall provide the necessary personnel, inspection staff, equipment and transportation to facilitate the performance of the intended engineering and inspection services.

##### ***Description of Services (activities shall include, but not limited to):***

Consultants must have experience, knowledge, and familiarity with Public Works Construction Management Services to include **all County department projects**, but not necessarily be limited to: Public Works Construction Inspection, Public Works Construction Management, Public Works Construction Contract Administration, and OC Waste & Recycling (Landfill) Projects.

#### 1. CONSTRUCTION MANAGEMENT SERVICES

- a. A-E may be required to review and recommend approval of submittals, shop drawings, Request for Information (RFI) and/or calculations for temporary structures such as trench shoring, false work and other temporary structural forms.

- b. A-E may be required to review and advise the County Representative on the overall project schedule, including staging and completion dates, duration, milestones, and interfaces. Immediately notify Representative if the proposed work schedule does not conform to the contract documents, including the plans, specifications, and permits or that may require special inspection or testing, or work stoppage.
- c. Review on a monthly basis the project schedule and/or Critical Path Method (CPM) schedule submitted by the Construction Contractor. Make recommendations concerning the Construction Contractor's adherence thereto. Recommend possible solutions to scheduling problems so as to complete the project on time, within budget, and in accordance with the contract drawings and specifications.
- d. Review scope of work and identify potential contract change orders. Prepare independent cost estimates for any changes resulting from design revisions or change in field conditions. Prepare and recommend for approval all contract change orders.
- e. Evaluate the merit of any potential claims or requests for equitable adjustment submitted by the Construction Contractor. Prepare analysis of potential claims include recommendations regarding settlement of the claims.
- f. Assist County staff in project related issues with other Agencies, or departments, engineering and material testing support firms, CEQA consultants, utilities agencies, etc.
- g. Assist in community outreach meetings and media relations
- h. Review for acceptance/approval of Storm Water Pollution Prevention Plan (SWPPP) in accordance with the general Permit of Discharges of Storm Water Associated with Construction Activity (Construction General Permit, including dewatering/diversion plans per the State's DeMinimus Permit).

## 2. CONSTRUCTION INSPECTION SERVICES

- a. A-E may be required to coordinate pre-construction meetings, maintain submittal logs, shop drawings, material and equipment certifications.
- b. A-E may be required to maintain detailed daily documentation on weather conditions, number of Construction Contractor personnel on project site, quantities of materials used, construction equipment onsite, deliveries of materials, material shortages, tests, labor disputes and any other general observations and unusual occurrences.
- c. Conduct daily job site inspections to assure that the required equipment, materials and methods of construction are in compliance with the contract drawings, specifications, and regulatory codes.
- d. Perform Continuous on-site inspections of all construction work performed under contract, including structural excavation, safety, trench shoring, earth moving operations, pile driving, installation of trench shoring, fabrication and erection of structural steel, erection of concrete forms and falsework, erection of reinforced steel, placement of concrete into reinforced concrete drainage structures such as catch basins, culverts and junction structures. Placement of concrete street improvement structures such as curb and gutter, sidewalks, and drive approaches.

Construction of roadway improvements including fine grading preparation of subbase material, placement of aggregate base material and asphalt concrete or other paving material.

- e. Perform inspections in accordance with construction contract, project and special provisions, and the “Greenbook” Standard Specifications for Public Works Construction (newest edition).
- f. Assure materials provided and work performed is in accordance with the contract drawings and specifications by obtaining material certifications as required prior to incorporating materials into work. Ascertain that all manufacturers’ tests required by specifications are performed before materials or equipment is incorporated into the work. Promptly report any work or materials which fail to conform to the contract drawings or specifications. Recommend such actions as are necessary and adequate to obtain acceptable work and materials. Notify the Construction Contractor of any and all unacceptable work or material.
- g. Report labor relations issues immediately.
- h. In the event of interpretation of the meaning of intent of the contract drawings and specification becomes necessary during construction, the Field Inspector shall consult with the County Representative to ascertain the interpretation and transmit such information to the Construction Contractor.
- i. Advise County Representative of all complaints and inquiries from property owners, citizens, officials, or others and assist staff in the investigation and answering of such complaints and inquiries. Maintain a log showing disposition of each complaint and inquiry.
- j. Review project for final completion and provide written notice that the work is ready for final inspection. Monitor and record the Construction Contractor’s completion of all contract punch list items. Secure and transmit the required guarantees, affidavits, releases, bonds and waivers, manuals, record drawings, and final contract records to the County Representative.
- k. Measure and compute all final construction quantities for pay items in accordance with the contract specifications. Prepare notice of completion that work has been completed in accordance with the drawings and specifications and that final estimate of payment to the Construction Contractor are correct.
- l. Prepare detailed red line “As-Built” construction drawings to ensure that they show all changes or additions to the original contract documents and submit all final documents to the County Representative for acceptance within thirty (30) days of final inspection.

### 3. LABOR COMPLIANCE SERVICES

#### Pre-Construction

- a. Perform preconstruction presentation of all labor compliance requirements for the project.
- b. Prepare check list of labor law requirements and ensure that Contractor initials and signs checklist.
- c. Review and enforce posting of all required job site posters



- d. Submit photos of the all required posters that are posted in Contractor's office
- e. Ensure that the Form 16B-Subcontracting Request form is submitted before listed subcontractors start work.
- f. Compare Subcontracting Request with approved Form 15G DBE Commitment and submitted Form 12B Subcontractors List/Bidders List
- g. Review and recommend approval of the Form 16B-Subcontracting Request form.

During Construction

- h. Review, monitor, verify, and enforce the labor compliance requirements for the project in accordance with state and federal requirements.
- i. Verify all listed and unlisted subcontractors Dept. of Industrial Relations (DIR) registration.
- j. Verify that none of the subcontractors are listed in the DIR debarred list
- k. Verify that all subcontractor's agreement shall be in the form of written agreement, contains all pertinent provisions and requirements of the prime contract and includes all required federal aid contract languages and the contracts' Davis-Bacon Wage rate determination
- l. Conduct labor compliance interviews of contractor and subcontractor employees.
- m. Verify that certified payroll with Statement of Compliance or Non-Performance forms are received each week
- n. Verify all certified payroll for prime contractors and sub-contractors to confirm prevailing wage rates are met.
- o. Verify that hours and required fringe benefits are paid to all contractor and subcontractor employees. Inform RE of the any discrepancies.
- p. Verify that all submitted certified payroll are accompanied by signed (wet signature) Statement of Compliance
- q. Verify that certified payroll and Statement of Compliance submitted by the Contractor and all the subcontractors including required suppliers are acceptable and conforms to Department of Labor and DIR requirements
- r. Verify that DBE performs a Commercially Useful Function (CUF)
- s. Ensure that requirements of DIR/DOL apprenticeship are met
- t. Submit a monthly Labor Compliance status report to the RE
- u. Inform Contractor and RE of LC discrepancies/delinquencies and inadequacies found
- v. Prepare project withholding and deductions for labor compliance deficiencies/delinquencies/inadequacies and present/recommend approval to project's Resident Engineer.
- w. Review and enforce any project labor agreements.
- x. Review of monthly and annual reports including but not limited to:
  - i. Form 103 – "Monthly DBE Commitment and Attainment..."
  - ii. Form 9F – DBE Running Tally of Payment
  - iii. Form 16Z1 – DBE Monthly Trucking Verification
  - iv. Form 16O – Federal-Aid Highway Construction Contractor's Annual EEO Report (FHWA 1391)

- y. Review subcontractor's substitution (DBE and non-DBE) and recommend approval/rejection

#### Project Close-out/Completion

- i. Ensure that Contractor and all Subcontractor submit the "FINAL" certified payroll and Statement of Compliance report
- ii. Ensure that Form 17F- Final Report Utilization of DBE and Form 17O – Changes DBE Status are submitted and accurate
- iii. Review Forms 17F and 17O and recommend approval
- iv. Submit all labor compliance documents to the County

#### 4. TIME OF PERFORMANCE

The County, as applicable, makes no representation as to the when a construction project will be performed and completed and the time of the performance of an actual construction of the contract, regardless of changes in schedule thereof, and whether or not such changes are within control of the County, as applicable.

As between the A-E and County, as applicable, the A-E assumes the risk of suspensions of or delays in performance of the Agreement, with the following exceptions:

- a. The Construction Contractor fails to finish on the schedule completion date as a result of failure by the County, as applicable, to act within a reasonable time to provide necessary information, prompt reviews, decisions and other matters essential to the project, and the County, as applicable grants for extension of time to the construction contract for these reasons.
- b. The Construction Contractor fails to finish on the scheduled completion date as a result of acts of God, strikes, or inability to obtain materials on time through no fault of the Construction Contractor, and the County, as applicable, grants an extension of time for these reasons.
- c. The Construction Contractor fails to finish on the scheduled completion date for reasons under control of the Construction Contractor and the County, as applicable, requires the A-E to provide inspection and coordination of construction services beyond the scheduled completion date.

#### 5. LIMITATION OF AUTHORITY

A-E shall not assume any of the following responsibilities:

- a. To authorize deviations from the Contract Documents
- b. To authorize change orders

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

- I. COMPENSATION:** This is a **time and materials** usage Contract between County and A-E for On-Call Construction Services – Construction Management & Inspection Services 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:**

FOUNTAINHEAD CONSULTING CORPORATION	
<u>Classification Titles</u>	<u>Hourly Rate</u>
Public Works Inspector	\$140.00
Project Manager, P.E.	\$198.45
Resident Engineer, P.E.	\$178.61
Assistant Resident Engineer	\$152.15
Bridge Inspector, PE (Structure Rep)	\$165.38
Office Engineer	\$99.23
Construction Inspector (Prevailing Wage)	\$140.00
Labor Compliance Specialist	\$112.46
Estimator	\$165.38
Scheduler	\$152.15
Landscape Architecture	\$152.15

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

**B. Total Contract Amount Shall Not Exceed: \$600,000**

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this Contract. All price decreases will automatically be extended to County.

- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-

E agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.

- V. **A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VI. **REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by County:
- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the County Project Manager.
  - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the County Project Manager.
  - 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by A-E in performance of this Contract.
  - 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
    - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and County location, as well as mileage within County property will not be reimbursed.
  - 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
  - 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
  - 7) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the County. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.
- VII. **PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, as applicable. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with A-E. Incomplete or incorrect invoices are not acceptable and will be returned to the A-E for correction.

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

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

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

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

Invoices and support documentation are to be forwarded to:

**TBA – Per Task Order**

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	Years with Current Firm	Licenses/Certifications (include license number)
Ivan Benavidez	Project Manager	28	7	CA, Civil Engineer License # 52076
Victor Valdovinos	Resident Engineer	28	4	CA, Civil Engineer License # 54687
Jaime Engler	Resident Engineer	20	1	CA, Civil Engineer License # 69858
Javid Sharifi	Bridge Inspector (Structure Representative)	21	2	CA, Civil Engineer License # 60926
Jessica Harvey	Office Engineer	10	7	CA, EIT License # 155273
Salvador Valdovinos	Assistant Resident Engineer (Public Works Inspector)	20	4	
Rosalie Acosta	Labor Compliance Specialist	10	1	CA Publics Works Compliance Admin Cert
Fausto Reyes	Landscape Architect	29	5	CA, Landscape Architect License # 4175
Javid Sharifi	Estimator	21	2	CA, Civil Engineer License # 60926
Arezo Ghiam	Scheduler	7	3	CA, Civil Engineer License # 86359
Salvador Valdovinos	Assistant Resident Engineer (Public Works Inspector)	20	4	

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.

<b>Company Name &amp; Address</b>	<b>Contact Name and Telephone Number</b>	<b>Project Function</b>
<b>N/A</b>	<b>N/A</b>	<b>N/A</b>