

**CONTRACT MA-080-13010105
FOR
PROFESSIONAL PLAN CHECK AND RELATED ON-CALL SUPPORT SERVICES**

THIS Aggregate Contract MA-080-13010105 to provide Professional Plan Check and Related On-Call Support Services, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and GHD Inc. with a place of business at 400 N. Tustin Ave., Suite 230, Santa Ana, CA 92705, (hereinafter referred to as "Contractor"), with County and Contractor sometimes individually referred to as ("Party") or collectively referred to as ("Parties").

RECITALS

WHEREAS, County and Contractor are entering into this Contract for Professional Plan Check and Related On-Call Support Services, under a usage Contract; and,

WHEREAS, County solicited Contract for Professional Plan Check and Related On-Call Support Services as set forth herein, and Contractor has represented that it is qualified to provide Professional Plan Check and Related On-Call Support Services to the County as further set forth herein; and,

WHEREAS, Contractor agrees to provide Professional Plan Check and Related On-Call Support Services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and,

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Contractor's Pricing, attached hereto as Attachment B;

NOW THEREFORE, the Parties mutually agree as follows:

ARTICLES

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Professional Plan Check and Related On-Call Support Services under a usage Contract, as set forth in the Scope of Work identified as Attachment A to this Contract and incorporated herein as if fully set forth.
2. ~~**Term:** The initial term of this Contract shall be effective upon execution of all authorized signatures and shall be in effect for three (3) years from that date unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for two (2) additional years, upon mutual agreement of both Parties. The County is not obligated to give a reason if it elects not to renew. Renewal amendments may require approval of the County Board of Supervisors.~~

Amendment #1 (Renewal)

Term: Contract shall be effective August 22, 2015 and shall continue for one year from that date, unless otherwise terminated as provided herein. This Contract may be renewed upon expiration of the initial term, for one (1) additional year, upon mutual agreement of both parties. The County is not obligated to give a reason or notice if it elects not to renew. Renewal amendments may require County Board of Supervisors approval.

3. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.

4. **Conflict of Interest:** The Contractor 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 Contractor; the Contractor's employees, agents, and relatives; sub-tier Consultants; and third parties associated with accomplishing work and services hereunder. The Contractor'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.
5. **Child Support Enforcement Requirements:** Contractor is required to comply with the child support enforcement requirements of the County. 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. Failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
6. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the supervision of Contractor 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.
7. **News/Information Release:** The Contractor 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. Contractors must first obtain review and approval of said news 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. Contractors are not authorized to serve as a media spokespersons for County projects without first obtaining permission from the County Project Manager.
8. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
 - c. Terminate the Contract immediately without penalty.
9. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Supervisor and the County's project manager as specified in Article 13. "Notices" by way of the following process, such matter shall be brought to the attention of the County Deputy Purchasing Agent (DPA) by way of the following process:
 - a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the

demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

- c. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract. Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County DPA or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. The County's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of the County's final decision or one year following the accrual of the cause of action, whichever is later.

10. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.

11. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and Contractor personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.

12. **Notices:** 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 terms of the work and services. 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 calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

County: OC Public Works/OC Planning
Attn: Hadi Tabatabaee
300 N. Flower Street
Santa Ana, CA 92703
Phone: (714) 667-8843
Email: Hadi.Tabatabaee@ocpw.ocgov.com

OR

OC Public Works/OC Planning

Attn: ~~Channary Leng~~ Laree Alonso
300 N. Flower Street
Santa Ana, CA 92703
Phone: (714) 667-8849 (714) 667-9649
Email: ~~Channary.Leng@ocpw.ocgov.com~~
Laree.Alonso@ocpw.ocgov.com

cc: OC Public Works/Procurement Services
Attn: ~~Sandy Romero~~, Michael Macias County DPA
300 N. Flower Street, Suite 838
Santa Ana, CA 92703
Phone: 714-667-9641 714-667-9628
Email: ~~Sandy.Romero@ocpw.ocgov.com~~
Michael.Macias@ocpw.ocgov.com

Contractor: GHD Inc.
Attn: Ludwig Smeets, PE
400 N. Tustin Ave., Suite 230
Santa Ana, CA 92705
Phone: 714.973.2230
Email: ludwig.smeets@ghd.com

13. **Usage:** No guarantee is given by the County to the contractor regarding usage of this contract. Usage figures, if provided, are approximate, based upon the last usage. The contractor agrees to supply services and/or commodities requested, as needed by the County of Orange, at prices listed in the contract, regardless of quantity requested.
14. **Governing Law and Venue:** 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. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another County.
15. **Entire Contract:** This Contract, including attachments which are attached hereto and incorporated herein by this reference, when accepted by the Contractor either in writing or by the shipment of any article or other commencement of performance hereunder, contains the entire Contract between the Parties with respect to the matters herein and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing County's Purchasing Agent or his designee.
16. **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.
17. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.
18. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or description, or services that do not conform to the prescribed Scope of

Work. Acceptance of any part of the order for goods shall not bind County to accept future shipments, nor deprive it of the right to return goods already accepted, at Contractor's expense. Overshipments and undershipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods, or services, have actually been received and accepted in writing by County.

19. **Acceptance/Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears.
20. **Warranty:** Contractor expressly warrants that the goods/services covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in Article 47 below, and as more fully described in Article 47, harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
21. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in Article 47 below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, but not limited to, attorney's fees, costs and expenses.
22. **Assignment or Subcontracting:** 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 subcontracted by Contractor without the express written consent of County. Any attempt by Contractor 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.
23. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 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. Contractor acknowledges that a violation of this provision shall subject Contractor to all the penalties imposed for a violation of Anti-Discrimination Law or regulation, including but not limited to, Section 1720 et seq. of the California Labor Code.
24. **Termination:** In addition to any other remedies or rights it may have by law and those set forth in this Contract, County has the right to terminate this Contract without penalty immediately with cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any breach of Contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligations.
25. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

26. **Remedies Not Exclusive:** The remedies for breach set forth in this Contract are cumulative as to one another and as to any other provided by law, rather than exclusive; and the expression of certain remedies in this Contract does not preclude resort by either Party to any other remedies provided by law.
27. **Independent Contractor:** Contractor shall be considered an independent Contractor and neither the Contractor, its employees, nor anyone working for Contractor under this Contract shall be considered an agent or an employee of County. Neither the Contractor, employees nor anyone working for the Contractor under this Contract shall qualify for workers' compensation or other fringe benefits of any kind through County.
28. **Performance:** Contractor shall perform all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workman-like manner; shall furnish all labor, supervision, machinery, equipment, materials, and supplies necessary therefore; shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work; and, if permitted to subcontract, shall be fully responsible for all work performed by subcontractors.
29. **Insurance Provisions:** Prior to the provisions of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense and to deposit with the County Certificates of Insurance, including all endorsements required herein, necessary to satisfy the Country that the insurance provisions of this Contract have been complied with and to keep such insurance coverage and the certificates therefore on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

All self-insured retentions (SIRs) and deductibles shall be clearly stated on the Certificate of Insurance. If no SIRs or deductibles apply, indicate this on the Certificate of Insurance with a 0 by the appropriate line of coverage. Any self-insured retention (SIR) or deductible in an amount in excess of \$25,000 (\$5,000 for automobile liability), shall specifically be approved by the County Executive Office (CEO)/Office of Risk Management.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

Qualified Insurer: Minimum insurance company ratings as determined by the most current edition of the Best's Key Rating Guide/Property-Casualty/United States or ambest.com shall be A-(Secure A.M. Best's Rating) and VIII (Financial Size Category).

The policy or policies of insurance must be issued by an insurer licensed to do business in the state of California (California Admitted Carrier). If the carrier is a non-admitted carrier in the state of California and does not meet or exceed an A.M. Best rating of A-/VIII, CEO/Office of Risk Management retains the right to approve or reject carrier after a review of the company's performance and financial ratings. If the non-admitted carrier meets or exceeds the minimum A.M. Best rating of A-/VIII, the agency can accept the insurance.

This policy or policies of insurance maintained by the Contractor 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 Insurance or per occurrence	\$1,000,000 per claims made

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 at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

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

- 1) An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
- 2) A primary non-contributing endorsement evidencing that the contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

All insurance policies required by this contract shall waive all rights of subrogation against the County of Orange and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, and members of the Board of Supervisors, its elected and appointed officials, officers, agents and employees.

All insurance policies required by this contract shall give the County of Orange 30 days notice in the event of cancellation and 10 days for non-payment of premium. This shall be evidenced by policy provisions or an endorsement separate from the Certificate of Insurance.

If contractor's Professional Liability policy is a "claims made" policy, contractor shall agree to maintain professional liability coverage for two years following completion of contract.

The Commercial General Liability policy shall contain a severability of interest's clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to:

County of Orange, OC Public Works
ATTN: Sandy Romero

300 N. Flower, Suite 838
Santa Ana, CA 92703

If the contractor fails to provide the insurance certificates and endorsements within seven days of notification by OC Public Works purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable certificates of insurance and endorsements with County incorporating such changes within thirty days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor'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.

30. **Bills and Liens:** Contractor shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. Contractor shall not permit any lien or charge to attach to the work or the premises, but if any does so attach, Contractor shall promptly procure its release and, in accordance with the requirements of Article 47 below, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses related to or arising from or related thereto.
31. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
32. **Change of Ownership:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of County..
33. **Force Majeure:** Contractor shall not be assessed with liquidated 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 Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
34. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
35. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor'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 services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of Article 47 below, Contractor 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.

36. **Freight (F.O.B. Destination):** Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
37. **Pricing:** The Contract price, as more fully set forth in Attachment B, shall include full compensation for providing all required goods in accordance with required specifications, or services as specified herein or when applicable, in the Contractors Pricing attached to this Contract, and no additional compensation will be allowed therefore, unless otherwise provided for in this Contract.

Amendment #1 (Renewal)
Removed Waiver of Jury Trial

38. ~~**Waiver of Jury Trial:** Each Party acknowledges that it is aware of and has had the opportunity to seek advise of counsel of its choice with respect to its rights to trial by jury, and each Party, for itself and its successors, creditors, and assigns, does hereby expressly and knowingly waive and release all such rights to trial by jury in any action, proceeding or counterclaim brought by any Party hereto against the other (and/or against its officers, directors, employees, agents, or subsidiary or affiliated entities) on or with regard to any matters whatsoever arising out of or in any way connected with this Contract and /or any other claim of injury or damage.~~

Intentionally Left Blank

39. **Terms and Conditions:** Contractor acknowledges that it has read and agrees to all terms and conditions included in this Contract.
40. **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.
41. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
42. **Calendar Days:** Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.
43. **Attorneys 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.
44. **Interpretation:** This Contract has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. 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 being encouraged and given the opportunity to do so. 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. 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. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Contract.
45. **Authority:** 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.
46. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing

work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor 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.

47. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its 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 from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

Amendment #2
Added Audits/Inspection

48. **Audits/Inspections:** Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the date following their respective signatures.

GHD INC. *
a State of California Corporation

By _____

By _____

Print
Name _____

Print
Name _____

Title _____
Corporate Officer

Title _____
Corporate Officer

Date _____

Date _____

COUNTY OF ORANGE
a political subdivision of the State of California

By _____

Print
Name _____

Title _____
Corporate Officer

Date _____

* If the contracting party is a corporation, (2) two signatures are required: one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer. The signature of one person alone is sufficient to bind a corporation, as long as he or she holds corporate offices in each of the two categories described above. For County purposes, proof of such dual office holding will be satisfied by having the individual sign the instrument twice, each time indicating his or her office that qualifies under the above described provision. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

**ATTACHMENT A
SCOPE OF WORK**

I. OBJECTIVE

To provide Professional Plan Check and Related On-Call Support Services on an as needed basis as deemed necessary by OC Planning, a division of OC Public Works in the various areas outlined below.

II. SCOPE

- A. The use of plan check and related services shall be on projects selected by County, wherein County shall determine that this service is needed due to workload demand or staff shortages. These services shall include reviewing, providing corrective comments, and recommending approvals of the selected plans/reports.
- B. All plan check and related services shall be conducted in accordance with all accepted industry professional practices, and shall comply with the applicable regulations including but not limited to: the latest approved edition of the California Building Code, California Energy Code, California Green Code, California Code of Regulations Title 24, Health and Safety Code, Government Code, Education Code, Americans with Disability Act, California Plumbing Code, California Mechanical Code, California Electrical Code, current OCPW Standard Plans, the current Standard Specifications for Public Works Construction (Green Book), CEQA, the current OC Subdivision Code/Manual, the current OC Zoning and Grading Codes, the current OC General Plan, Specific Plans and Planned Communities, previous entitlements, the OC Hydrology Manual, the OC Grading Manual, the County's Landscape Irrigation Code and Implementation Guidelines, the OC Local Drainage Manual, the OC Highway Design Manual, the OC Code and Subdivision Map Act, applicable County of Orange Codified Ordinance Sections, Clean Water Act including the San Diego and Santa Ana Regional Board MS4 permits, as well as any other applicable laws and regulations.
- C. At each service request, for each specific project, County shall specify that Contractor shall furnish one or more of the following types of services.
 1. Building Plan Check and Related Service, which shall include but is not limited to a check of architectural, structural, plumbing, mechanical, and electrical drawings, energy, Cal Green, and disabled access or any combination thereof.
 2. Street Improvement Plan Check and Related Service associated with any given subdivision, which shall include reviewing, providing comments and recommending for approval of the selected projects.
 3. Drainage and Flood Control Improvement Plan Check and Related Service associated with any given subdivision or grading permit, which shall include reviewing, providing comments and recommending for approval of the selected projects.
 4. Planning Services, including but not limited to CEQA review, site planning, subdivision review, acoustic reports review, biological reports review, cultural resource reports review, and review of any other technical reports deemed necessary by County.
 5. Landscape Improvement Plan Check and Related Service associated with any given subdivision or grading permit, which shall include reviewing for compliance with the County's Landscape Irrigation Code and Implementation Guidelines along with other applicable regulations, providing comments and recommending for approval of the selected projects.

6. Grading Plan Check and Related Service and Grading Plan review, which shall include reviewing, providing comments and recommending for approval of the selected projects including onsite drainage and all offsite improvements
 7. Geotechnical Report review, associated with grading permits and special projects including capability for Phase I and II report evaluation.
 8. Discretionary Permit review and processing, that occurs prior to plan check review of the Building and Grading Permits.
 9. Water Quality Management review associated with discretionary permits, street improvement, grading, and building.
- D. All Plans and reports reviewed by Contractor for Full or Partial Plan Check and Related Services shall be checked for compliance with the applicable regulations identified in sections A & B herein.
- E. All Plans and Reports reviewed by Contractor for Street Improvement, Drainage and Flood Control Improvement, Landscape Improvement, Preliminary and/or Precise Grading, Geotechnical, Traffic, and Subdivision Plan Check and Related Services shall be checked for compliance with County adopted Standard Plans and the applicable regulations outlined above and using the checklist available on-line or as provided by staff.

III. CONTRACTOR RESPONSIBILITY

- A. Contractor shall provide all of the management, personnel, and training including ongoing professional knowledge requisite to the provision of service.
- B. All Plan Check and Related work shall be performed by civil engineers registered with the State of California to practice civil engineering or properly licensed personnel qualified to perform the specific type of plan check as required by the State of California, with a minimum of 5 (five) years of experience in plan checking.
- C. Contractor shall adhere to County established plan check timeframes of 15 (fifteen) days for first review and 10 (ten) days for rechecks and revisions.
- D. Contractor personnel shall perform plan check and related services at the County Offices during office hours or as needed.
- E. Contractor personnel shall be available to assist customers and staff at the public counter as needed and demonstrate quality customer service.
- F. Contractor personnel shall perform discretionary permit application processing services at the County Offices during office hours or as needed.
- G. Contractor personnel shall perform technical report reviews and provide comments in written form to the County.
- H. Contractor shall interface directly with the plan check or permit applicant, or with the applicant's agent(s), on each project for which service shall be performed, when contact with the applicant, or with the agent(s) is requisite to the performance of service.
- I. Contractor shall create and maintain project log and submit to County on a weekly basis. Contractor shall delineate dates of commencement and completion of the various phases of project and or service assignments.

- J. Contractor shall utilize the County Automated Permitting and Planning System (APPS) and log in all communications with the applicant and the applicant's agent(s).
- K. Contractor shall furnish approval stamp, signature and date on each sheet of the drawing for each project for which service shall be performed.
- L. Warranty
 - 1. Contractor shall warrant to perform the service in accordance with the standards of care and diligence normally practiced by established engineering firms in the performance of service of a similar nature.
 - 2. Contractor shall correct error(s) in service, with no expense to County, when County shall show that the error(s) is due to failure of Contractor to meet the standards warranted in Paragraph 1, preceding.
 - 3. Contractor shall not be responsible for error(s) in service, when Contractor shall show to County's satisfaction that the error(s) is due to the incompleteness, or the inaccuracy, of the information furnished to Contractor by County.

IV. COUNTY RESPONSIBILITY

- A. County shall provide Contractor plan check personnel workstation at the County Office at the sole discretion of the County.
- B. County shall provide initial training for the APPS Program. The cost of such training shall be covered by Contractor.

**ATTACHMENT B
CONTRACTOR'S PRICING**

- I. COMPENSATION:** This is a usage Contract between the County and Contractor for Professional Services, as set forth in Attachment A, "Scope of Work".

The Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, insurance requirements and taxes 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 the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **The County shall have no obligation to pay any sum in excess of the fixed prices specified herein unless authorized by amendment in accordance with Articles 17 and 32 of the County Contract Terms and Conditions.**

- II. FEES AND CHARGES:** County will pay the following fees in accordance with the provisions of this Contract.

A. HOURLY RATES AND PAYMENT SCHEDULE Compensation for services provided by the Contractor shall be based on an hourly rate that shall not exceed \$100.00 per hour, with the exceptions of the hourly rates for specialized environmental related services such as but not limited to biological expertise; cultural resources; and archeological and paleontological services, which shall not exceed \$125 per hour, exceptions subject to the approval of the Director, OC Planning. Furthermore, compensation shall be based on the actual amount of plan check time billed to the County.

Amendment #2

B. TOTAL NOT-TO EXCEED AGGREGATE CONTRACT AMOUNT: \$1,430,000.00 \$1,780,000

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the first period of the Contract. All price decreases will automatically be extended to the County. The County requires bona fide proof of cost increases on Contracts prior to any price adjustment. A minimum of ninety (90) days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. The County may enforce, adjust, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.

- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** Contractor 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. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.

- V. PAYMENT TERMS:** Invoices are to be submitted in arrears, after services have been completed, to the address specified below. Payment will be net 30 days after receipt of an invoice in a format acceptable to the County of Orange. Invoices shall be verified and approved by the County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to the County for payment rests with the Contractor. Incomplete or incorrect invoices are not acceptable and will be returned to the Contractor for correction. The responsibility for providing an acceptable invoice rests with the Contractor. Invoices should be submitted no later than thirty (30) days from date of service.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the contract requirements.

Payments made by the County shall not preclude the right of the 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.

VI. INVOICING INSTRUCTIONS: The Contractor will provide an invoice on the Contractor's letterhead. Each invoice will have a unique number and will include the following information:

- i. Contractor's name and address
- ii. Contractor's remittance address, if different from (i), above
- iii. Name of County agency/department
- iv. Delivery/service address
- v. Contract number
- vi. Service Date
- vii. Description of Services
- viii. Total
- ix. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works/Procurement Services
Attn: Accounts Payable
300 N Flower, 8th Fl.
Santa Ana, CA 92703

**ATTACHMENT C
STAFFING PLAN**

1. CONTRACTOR KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Licences/Certifications (include license /certification number)
Ludwig Smeets, PE	Resident Engineer/Project Manager	30	Civil/CA/C37221
Warren Repke, PE	Principal-in-Charge	38	Civil/CA/C19442
Nazir Qureshi, PE	Engineering Plans Examiner	28	Civil/CA/C31345
Bruce Blank, PE	Engineering Plans Examiner	28	Civil/CA/C26492
Iraj Manouri	Building Plans Examiner	35	Civil/CA/C48429
Bill Tarin, ICBO	Code Compliance	27	Certified Plans Examiner
Ron Tippets, RLA	City Planner	32	RLA 2004

Contractor understands that those individuals represented as assigned to the project must remain working on the project throughout the duration of the project unless otherwise requested or approved by the County. Substitution or addition of Contractor’s Key Personnel in any given classification/title shall be allowed only with prior written approval of the County Project Manager. During the term of this Contract, Contractor shall maintain a business office in Southern California.

The Contractor may reserve the right to involve other Contractor 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 written approval. County reserves the right to have any of Contractor’s 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 Contractor’s personnel.

2. SUBCONTRACTOR(S)

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

Please note that the aggregate money value of the sub-contractors work for any Contract with the County, as applicable, shall not constitute more than forty-nine percent (49%) of the total work under the Contract

Company Name & Address	Contact Name and Telephone Number	Project Function
Inland Engineering	Shawn Nikjo, 714.777.7700	Structural Plan Check
JAS Pacific	Christine Tafolla, 909.605.7777	Alternate Plan Checking for MEP/Structural
Kobata & Associates	Roger Kobata, RLA, 562.860.1021	Landscaping Plan Check
PA & Associates	Parviz Azar, 949.679.7474	Geotechnical Report Reviews
Hartzog & Crabill Traffic Engineers	Trammel Hartzog, 714.731.9455	Traffic Plans & Report Reviews
CSG Consultants	Khoa Duong, 714.568.1010	Alternate Plan Checking