

**Contract MA-280-17012195  
Between  
County of Orange, John Wayne Airport  
and  
Financial Consultant**

This Agreement, 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 Frasca & Associates, LLC, with a place of business at 521 Madison Avenue, 7<sup>th</sup> Floor New York, NY 10022, hereinafter referred to as “CONSULTANT”, which are sometimes individually referred to as “PARTY” or collectively referred to as “PARTIES.”

**RECITALS**

**WHEREAS**, CONSULTANT responded to a Request for Proposals (RFP) to provide **Financial Analysis and Planning Services for General Aviation Improvement Program**, as further set forth herein; and

**WHEREAS**, CONSULTANT responded and represented that its proposed services shall meet or exceed the requirements and specifications of the RFP; and

**WHEREAS**, CONSULTANT agrees to provide services as more specifically described in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

**WHEREAS**, COUNTY agrees to pay CONSULTANT the fees as further set forth in CONSULTANT’s Pricing, attached hereto as Attachment B and incorporated herein;

**NOW, THEREFORE**, PARTIES mutually agree as follows:

**ARTICLES**

**General Terms and Conditions:**

**A. 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.

**B. Entire Contract**

This CONTRACT, when accepted by the CONSULTANT 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 by COUNTY’S Purchasing Agent or his designee, hereinafter “PURCHASING AGENT.”

**C. 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.

**D. Taxes**

Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax.

**E. 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 descriptions or services that do not conform to the prescribed statement 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 CONSULTANT'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.

**F. 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 after satisfactory acceptance

**G. Warranty**

CONSULTANT 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 CONSULTANT'S part to indemnify, defend and hold COUNTY and its indemnitees as identified in paragraph HH" below, and as more fully described in paragraph "HH," 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.

**H. Patent/Copyright Materials/Proprietary Infringement**

Unless otherwise expressly provided in this CONTRACT, CONSULTANT shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this CONTRACT. CONSULTANT 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. CONSULTANT agrees that, in accordance with the more specific requirement contained in paragraph "HH" below, it shall indemnify, defend and hold COUNTY and COUNTY INDEMNITEES 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.

**I. Assignment or Sub-Contracting**

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 CONSULTANT without the express written consent of COUNTY. Any attempt by CONSULTANT 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.

**J. Non-Discrimination**

In the performance of this CONTRACT, CONSULTANT 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.

CONSULTANT acknowledges that a violation of this provision shall subject CONSULTANT to all the penalties imposed for a violation of Section 1720 et seq. of the California Labor Code.

**K. Termination**

In addition to any other remedies or rights it may have by law, 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 CONSULTANT. Exercise by COUNTY of its right to terminate the CONTRACT shall relieve COUNTY of all further obligation.

**L. 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.

**M. 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.

**N. Independent Contractor**

CONSULTANT shall be considered an independent consultant and neither CONSULTANT, its employees, nor anyone working under CONSULTANT shall be considered an agent or an employee of COUNTY. Neither CONSULTANT, its employees nor anyone working under CONSULTANT shall qualify for workers' compensation or other fringe benefits of any kind through COUNTY.

**O. Performance**

CONSULTANT shall perform all work under this CONTRACT, taking necessary steps and precautions to perform the work to COUNTY'S satisfaction. CONSULTANT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the CONSULTANT under this CONTRACT. CONSULTANT 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.

**P. Insurance Provisions**

Prior to the provision of services under this Contract, the CONTRACTOR agrees to purchase all required insurance at CONTRACTOR's expense, including all endorsements required herein, necessary to satisfy the COUNTY that the insurance provisions of this Contract have been complied with. CONTRACTOR agrees to keep such insurance coverage, Certificates of Insurance, and endorsements 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.

CONTRACTOR shall ensure that all SUBCONTRACTORS performing work on behalf of CONTRACTOR pursuant to this Contract shall be covered under CONTRACTOR's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for CONTRACTOR. CONTRACTOR shall not allow SUBCONTRACTORS to work if SUBCONTRACTORS have less than the level of coverage required by COUNTY from CONTRACTOR under this Contract. It is the obligation of CONTRACTOR 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 CONTRACTOR through the entirety of this Contract for inspection by COUNTY representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the COUNTY's Risk Manager, or designee, upon review of CONTRACTOR's current audited financial report. If CONTRACTOR's SIR is approved, CONTRACTOR, 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 CONTRACTOR's, its agents, employee's or SUBCONTRACTOR's performance of this Contract, CONTRACTOR shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) CONTRACTOR'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 CONTRACTOR's SIR provision shall be interpreted as though the CONTRACTOR was an insurer and the COUNTY was the insured.

**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**

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 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	\$1,000,000 per claims-made \$1,000,000 aggregate

**Required Coverage Forms**

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage 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 20 26 04 13 or a form at least as broad naming the **COUNTY of Orange its elected and appointed officials, officers, agents and employees** as Additional Insureds, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad 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.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **COUNTY of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

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

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

If CONTRACTOR's Professional Liability is a "Claims-Made" policy, CONTRACTOR shall agree to maintain coverage for two (2) years following the completion of the Contract.

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

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the CONTRACTOR 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.

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 (30) 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.

**Q. Bills and Liens**

CONSULTANT shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. CONSULTANT shall not permit any lien or charge to attach to the work or the

premises, but if any does so attach, CONSULTANT shall promptly procure its release and, in accordance with the requirements of paragraph “HH” 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.

**R. Changes**

CONSULTANT shall make no changes in the work or perform any additional work without the COUNTY’S specific written approval.

**S. Change of Ownership**

CONSULTANT agrees that if there is a change or transfer in ownership of CONSULTANT’S business prior to completion of this CONTRACT, the new owners shall be required under terms of sale or other transfer to assume CONSULTANT’S duties and obligations contained in this CONTRACT and complete them to the satisfaction of COUNTY.

**T. Force Majeure**

CONSULTANT 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 CONSULTANT gives written notice of the cause of the delay to COUNTY within 36 hours of the start of the delay and CONSULTANT avails himself of any available remedies.

**U. Confidentiality**

CONSULTANT agrees to maintain the confidentiality of all 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 CONSULTANT and CONSULTANT’S staff, agents and employees.

**V. Compliance with Laws**

CONSULTANT represents and warrants that services to be provided under this CONTRACT shall fully comply, at CONSULTANT’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. CONSULTANT acknowledges that COUNTY is relying on CONSULTANT to ensure such compliance, and pursuant to the requirements of paragraph “HH” below, CONSULTANT 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.

**W. Freight (F.O.B. Destination)**

CONSULTANT 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.

**X. Pricing**

The CONTRACT bid price shall include full compensation for providing all required goods, in accordance with required specifications, or services, as specified herein or when applicable, in the scope of services attached to this CONTRACT, and no additional compensation will be allowed therefore, unless otherwise provided for in this CONTRACT.

**Y. Intentionally omitted**

**Z. Terms and Conditions**

CONSULTANT acknowledges that it has read and agrees to all terms and conditions included in this CONTRACT.

**AA. 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.

**BB. 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.

**CC. Calendar Days**

Any reference to the word “day” or “days” herein shall mean calendar day or calendar days, respectively, unless otherwise expressly provided.

**DD. Attorney 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.

**EE. 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 had 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 or 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.

**FF. 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.

**GG. Employee Eligibility Verification**

The Consultant 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 Consultant 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 Consultant shall retain all such documentation for all covered employees for the period prescribed by the law. The Consultant 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 Consultant 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.

**HH. Indemnification**

Indemnification Provisions

CONSULTANT 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 CONSULTANT pursuant to this CONTRACT. If judgment is entered against CONSULTANT and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, CONSULTANT and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

## **II. Audits/Inspections**

Consultant 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 consultant 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.

The County reserves the right to audit and verify the consultant's records before final payment is made.

Consultant agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law. Consultant agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, consultant agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this contract.

Should the consultant cease to exist as a legal entity, the consultant's records pertaining to this Contract shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County's project manager.

### **Additional Terms and Conditions:**

1. **Scope of Services:** This CONTRACT, including Attachments, specifies the contractual terms and conditions by which CONSULTANT shall provide the services, as described in Attachment A - Scope of Work, under a time and materials CONTRACT, as set forth herein.
2. **CONTRACT Term:** This CONTRACT shall be effective August 1, 2017 through and including July 31, 2020 in the amount not to exceed \$175,000.00 and renewable for two (2) additional one year periods, unless otherwise terminated by COUNTY.
3. **Faithful Performance Bond:** CONSULTANT will provide to COUNTY a Faithful Performance Bond in an amount equal to 25 percent the annual CONTRACT amount. Bonds must be submitted to COUNTY on COUNTY provided forms within seven (7) calendar days of award notification and prior to the official CONTRACT award. Prior to the provisions of services under this CONTRACT, CONSULTANT agrees to purchase the required bond at CONSULTANT's expense and to deposit with COUNTY the required bond necessary to satisfy COUNTY requirements and to keep such bond on deposit with COUNTY during the entire term of this CONTRACT. Said bond shall be secured from an admitted surety company authorized to conduct surety insurance in California and satisfactory to the COUNTY Offices of County Counsel and Risk Management and in accordance with the General Conditions.

If any surety upon any bond furnished in connection with this CONTRACT becomes unacceptable to COUNTY, or if any such surety fails to furnish reports as to its financial condition from time to time as requested by COUNTY, CONSULTANT shall promptly furnish such additional security as may be



required by COUNTY from time to time to protect the interests of the COUNTY and of persons supplying labor or materials in the prosecution of the work contemplated by this CONTRACT.

COUNTY shall return bonds to CONSULTANT after successful completion of all CONSULTANT's obligations and services required under the CONTRACT.

4. **Child Support Enforcement Requirements:** CONSULTANT is required to comply with the child support enforcement requirements of COUNTY. Failure of CONSULTANT 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 COUNTY shall constitute grounds for termination of the CONTRACT.
5. **Civil Rights:** CONSULTANT attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
6. **Conditions Affecting Work:** CONSULTANT shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this CONTRACT and to know the general conditions which can affect the work or the cost thereof. Any failure by CONSULTANT to do so will not relieve CONSULTANT from responsibility for successfully performing the work without additional cost to the COUNTY. COUNTY assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this CONTRACT, unless such understanding or representations by COUNTY are expressly stated in the CONTRACT.
7. **Conflict of Interest – CONSULTANT's Personnel:** CONSULTANT shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of COUNTY. This obligation shall apply to CONSULTANT; CONSULTANT's employees, agents, and relatives; sub-tier CONSULTANTS; and third Parties associated with accomplishing work and services hereunder. CONSULTANT'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 COUNTY.
8. **Conflict of Interest – COUNTY Personnel:** COUNTY's Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. CONSULTANT shall not, during the period of this CONTRACT, employ any COUNTY employee for any purpose.
9. **Contingency of Funds:** CONSULTANT acknowledges that funding or portions of funding for this CONTRACT is included 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.
10. **Contingent Fees:** CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees of CONSULTANT or bona fide established commercial or selling agencies maintained by CONSULTANT for the purpose of securing business.

For breach or violation of this warranty, COUNTY shall have the right to terminate this CONTRACT in accordance with the termination clause and at its sole discretion to deduct from the CONTRACT price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee from CONSULTANT.

11. **CONTRACT Disputes:** 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 CONSULTANT and COUNTY's Project Coordinator, such matter shall be brought to the attention of the COUNTY's Purchasing Agent by way of the following process:
  - a. CONSULTANT shall submit to JWA assigned 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 COUNTY, on its own initiative, has already rendered such a final decision.
  - b. CONSULTANT's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the CONTRACT, CONSULTANT 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 CONSULTANT believes the COUNTY is liable.
  - c. Pending the final resolution of any dispute arising under, related to, or involving this CONTRACT, CONSULTANT agrees to diligently proceed with the performance of this CONTRACT, including the delivery of goods and/or provision of services. CONSULTANT's failure to diligently proceed shall be considered a material breach of this CONTRACT. Any final decision of COUNTY shall be expressly identified as such, shall be in writing, and shall be signed by COUNTY's Purchasing Agent or his designee. If COUNTY fails to render a decision within 90 days after receipt of CONSULTANT's demand, it shall be deemed a final decision adverse to CONSULTANT's contentions. COUNTY's final decision shall be conclusive and binding regarding the dispute unless CONSULTANT commences action in a court of competent jurisdiction to contest such decision within 90 days following the date of COUNTY's final decision or one year following the accrual of the cause of action, whichever is later.
12. **CONSULTANT's Expense:** CONSULTANT will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on COUNTY sites during performance of work and services under this CONTRACT. COUNTY will not provide free parking for any service on COUNTY property, except as noted in Article HH.
13. **CONSULTANT's Personnel:** CONSULTANT warrants that all persons employed to provide service under this CONTRACT have satisfactory past work records indicating their ability to accept the kind of responsibility anticipated under this CONTRACT and possess sufficient experience and/or education to perform the services requested by COUNTY. CONSULTANT's employees assigned to this project must meet character standards as demonstrated by background investigation and reference checks, coordinated by COUNTY.
14. **CONSULTANT's Project Manager and Key Personnel:** CONSULTANT shall appoint a Project Manager to direct CONSULTANT's efforts in fulfilling CONSULTANT's obligations under this CONTRACT. This Project Manager shall be subject to approval by COUNTY and shall not be changed without the written consent of COUNTY's Project Coordinator, which consent shall not be unreasonably withheld.

CONSULTANT's Project Manager and CONSULTANT personnel shall be assigned to this project for the duration of this CONTRACT and shall diligently pursue all work and services to meet the project time lines. COUNTY's Project Coordinator shall have the right to require the removal and replacement of CONSULTANT's Project Manager from providing services to COUNTY under this CONTRACT.

COUNTY's Project Coordinator shall notify CONSULTANT in writing of such action. CONSULTANT shall accomplish the removal within three (3) business days after written notice by COUNTY's Project Coordinator. COUNTY's Project Coordinator shall review and approve the appointment of the replacement for CONSULTANT's Project Manager. COUNTY is not required to provide any additional information, reason or rationale in the event it elects to request the removal of CONSULTANT's Project Manager from providing services to COUNTY under this CONTRACT.

15. **CONSULTANT's Power and Authority:** CONSULTANT warrants that it has the full power and authority to grant the rights herein granted and will hold COUNTY hereunder harmless from and against any loss, cost, liability and expense, including reasonable attorney fees, arising out of any breach of this warranty. Further, CONSULTANT avers that it will not enter into any arrangement with any third party which might abridge any rights of COUNTY under this CONTRACT.
16. **CONSULTANT's Responsibility:** CONSULTANT shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other commodities/services furnished by CONSULTANT under this CONTRACT. CONSULTANT shall perform such professional services as may be necessary to accomplish the work required to be performed under and in accordance with this CONTRACT.

CONSULTANT shall supply all licenses and permits required to perform this work in accordance with local restrictions and shall pay all fees resulting there from.

17. **COUNTY's Project Coordinator:** COUNTY shall appoint a Project Coordinator, as specified in Article 39 - Notices, to act as liaison between COUNTY and CONSULTANT during the term of this CONTRACT. COUNTY's Project Coordinator shall coordinate the activities of COUNTY staff assigned to work with CONSULTANT.
18. **Default – Reprocurement Costs:** In case of default by CONSULTANT, COUNTY may procure services from other sources. If the cost for those services is higher than under this CONTRACT, CONSULTANT will be responsible for paying COUNTY the difference between CONTRACT cost and price paid, and COUNTY may deduct this cost from any unpaid balance due CONSULTANT. The price paid by COUNTY shall be the prevailing market price at the time such purchase is made. This is in addition to any other remedies available under this CONTRACT and under law.
19. **Duty to Inform:** CONSULTANT shall inform all its employees assigned to work at the Airport and all bargaining units representing said employees, that CONSULTANT is the sole employer. In addition, CONSULTANT shall notify all employees and their bargaining units that COUNTY is not an employer of CONSULTANT and has only contracted with CONSULTANT to provide Financial Analysis and Planning Services for General Aviation Improvement Program at the Airport. Employees of CONSULTANT should not expect employment at the Airport beyond the term of this CONTRACT.
20. **Equal Employment Opportunity:** CONSULTANT shall comply with U.S. Executive Order 11426 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable State of California regulations as may now exist or be amended in the future. CONSULTANT shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, CONSULTANT will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. CONSULTANT agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation,

and selection for training, including apprenticeship. CONSULTANT agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, CONSULTANT agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

21. **Errors and Omissions:** All reports, files and other documents prepared and submitted by CONSULTANT shall be complete and shall be carefully checked by the professional(s) identified by CONSULTANT and CONSULTANT personnel attached hereto, prior to submission to COUNTY. CONSULTANT agrees that COUNTY review is discretionary and CONSULTANT shall not assume that COUNTY will discover errors and/or omissions. If COUNTY discovers any errors or omissions prior to approving CONSULTANT's reports, files and other written documents, the reports, files or documents will be returned to CONSULTANT for correction. Should COUNTY or others discover errors or omissions in the reports, files or other written documents submitted by CONSULTANT after COUNTY approval thereof, COUNTY approval of CONSULTANT's reports, files or documents shall not be used as a defense by CONSULTANT in any action between the COUNTY and CONSULTANT, and the reports, files or documents will be returned to CONSULTANT for correction.
22. **Existing Site Conditions:** Information respecting this site of work given in Scope of Work, drawings, and/or specifications has been obtained by COUNTY's representatives and it's believed to be reasonably correct, but COUNTY does not warrant either the completeness or accuracy of such information, and it is the responsibility of CONSULTANT to verify all such information.
23. **Gratuities:** CONSULTANT warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by CONSULTANT or any agent or representative of CONSULTANT to any officer or employee of COUNTY with a view toward securing the CONTRACT or securing favorable treatment with respect to any determinations concerning the performance of the CONTRACT. For breach or violation of this warranty, COUNTY shall have the right to terminate CONTRACT, either in whole or in part, and any loss or damage sustained by COUNTY in procuring on the open market any services which CONSULTANT agreed to supply shall be borne and paid for by CONSULTANT. The rights and remedies of COUNTY provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the CONTRACT.
24. **Headings Not Controlling:** Headings used in the CONTRACT are for reference purposes only and shall not be considered in construing this CONTRACT.
25. **Inspections:** COUNTY or its authorized representative shall have the right at all reasonable times to inspect the operation to determine if the provisions of this CONTRACT are being complied with.
26. **Interpretation of CONTRACT:** In the event of a conflict or question involving the provisions of any part of this CONTRACT, interpretation and clarification as necessary shall be determined by COUNTY's assigned buyer. If disagreement exists between CONSULTANT and COUNTY's assigned buyer in interpreting the provision(s), final interpretation and clarification shall be determined by COUNTY's Purchasing Agent or his designee.
27. **Meet and Confer.** COUNTY and CONSULTANT hereby agree to meet and confer in good faith in order to resolve any difference affecting the work that may arise during the course of this CONTRACT.
28. **Ownership of Documents:** COUNTY has permanent ownership of all directly connected and derivative materials produced under this CONTRACT by CONSULTANT. All documents, reports and

other incidental or derivative work or materials furnished hereunder shall become, and remain, the sole property of COUNTY, may be used by COUNTY as it may require without additional cost to COUNTY, and shall be turned over to COUNTY upon demand. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by CONSULTANT for any other purpose without the express written consent of COUNTY.

29. **Precedence:** CONTRACT documents consist of this CONTRACT and attachments. In the event of a conflict between or among the CONTRACT documents, the order of precedence shall be the provisions of the main body of this CONTRACT, i.e., those provisions set forth in the recitals and articles of this CONTRACT, and then the Attachments.
30. **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 CONSULTANT and/or anyone acting under the supervision of CONSULTANT 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 releases, including graphic display information to be published in newspapers, magazines, etc., are to be administered only by COUNTY unless otherwise agreed to by both PARTIES.
31. **Relationship of PARTIES:** The relationship of the PARTIES hereto is that of COUNTY and CONSULTANT, and it is expressly understood and agreed that COUNTY does not in any way or for any purpose become a partner of CONSULTANT in the conduct of CONSULTANT's business or otherwise, and the provisions of this CONTRACT and the contracts relating to fees payable hereunder are included solely for the purpose of providing a method by which fee payments are to be measured and ascertained. This CONTRACT is intended for the sole benefit of the PARTIES hereto and their successors, and, unless otherwise provided herein, or by law, no rights are created, or are intended to be created, for the benefit of, or enforceable by, any third parties.
32. **Reports/Meetings:** CONSULTANT shall develop reports and any other relevant documents necessary to complete the services and requirements as set forth in this CONTRACT. COUNTY's Project Coordinator and CONSULTANT will meet on reasonable notice to discuss CONSULTANT's performance and progress under this CONTRACT. If requested, CONSULTANT project personnel shall attend all meetings. CONSULTANT shall provide such information that is requested by COUNTY for the purpose of monitoring progress under this CONTRACT.
33. **Right to Audit/Records:**
- a. **Defined:** "CONSULTANT's records" as referred to in this CONTRACT shall include any and all information, materials, and data of every kind and character in any format, including, but not limited to: records, accounts, financial transactions, books, papers, documents, recordings, notes, daily logs, supervisor reports, receipts, vouchers, memoranda, time sheets, time cards or other employee time tracking methods, payroll registers, payroll records, cancelled payroll checks, employee schedules (or other means of informing employees of their work schedules), any and all other agreements, sources of information and matters that may in COUNTY's sole discretion have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by the CONTRACT, and any other of CONSULTANT's records which may have a bearing on matters of interest to COUNTY in connection with CONSULTANT's dealings with COUNTY to the extent necessary to adequately permit evaluation and verification of any or all of the following:
    - i. Accuracy of amounts billed to COUNTY for services provided by CONSULTANT.
    - ii. Compliance with any requirement in this CONTRACT.

- b. Availability: CONSULTANT's records shall upon reasonable notice be open to inspection and subject to audit, review, and/or reproduction during normal business working hours at one location within the limits of the County of Orange in the State of California. Such audits may be performed by COUNTY or an outside representative engaged by COUNTY.

COUNTY Project Coordinator, upon request of CONSULTANT and at said COUNTY Project Coordinator sole discretion, may authorize records to be kept in a single location outside the limits of the County of Orange in the State of California, provided CONSULTANT shall agree to pay all expenses including, but not limited to, transportation, food, and lodging necessary for COUNTY Project Coordinator or designee to audit or review CONSULTANT's records. Said right shall not be exercised by COUNTY Project Coordinator more than once per calendar year.

Upon the request of COUNTY Project Coordinator, CONSULTANT shall promptly provide, at CONSULTANT's expense, necessary data to enable COUNTY to fully comply with any and every requirement of the State of California or the United States of America for information or reports relating to this CONTRACT and to CONSULTANT's use of the Airport. Such data shall include, if required, a detailed breakdown of CONSULTANT's operations.

CONSULTANT agrees to include a similar right for COUNTY to audit records and interview staff of any subcontractors related to performance of this CONTRACT.

- c. Period: COUNTY or its designee may conduct such audits or inspections throughout the term of this CONTRACT and for a period of three (3) years after final payment or longer if permitted by law.
- d. Methodology: COUNTY or designee may, without limitation by CONSULTANT, conduct verifications including, but not limited to, inspection of records, observation of CONSULTANT's employees in or about the Airport Premises, and verification of information and amounts through interview and/or written communications with CONSULTANT's employees or subcontractors.
- e. Maintenance: CONSULTANT shall, at all times during the term of this CONTRACT, keep or cause to be kept true, complete records and accounts of all financial transactions in the operation of all business activities, of whatever nature, conducted in pursuance of the rights granted by the CONTRACT.
- f. Retention: All records shall be retained by CONSULTANT for a period of the balance of the fiscal year in which the record was created, recorded, or otherwise prepared, plus five (5) years regardless of when this CONTRACT expires or CONTRACT terminated.

Should CONSULTANT cease to exist as a legal entity, CONSULTANT's records pertaining to this CONTRACT shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to COUNTY.

- g. Accounting Year: Accounting year shall be 12 full calendar months. Accounting year may be established by CONSULTANT, provided CONSULTANT notifies COUNTY Auditor-Controller in writing of the accounting year to be used. Said accounting year shall be deemed to be approved by COUNTY Auditor-Controller unless Auditor-Controller has objected to CONSULTANT's selection in writing within 60 days of CONSULTANT's written notification.

In the event CONSULTANT fails to establish an accounting year of its choice, regardless of the cause, the accounting year shall be synonymous with the 12-month period contained in the first one-year term of the CONTRACT.

Any portion of a year that is not reconciled, should the accounting year and the anniversary year of the CONTRACT commencement is not is same, shall be accounted for as if it were a complete accounting year.

Once an accounting year is established, it shall be continued through the term of the CONTRACT unless COUNTY Auditor-Controller specifically approves in writing a different accounting year. COUNTY Auditor-Controller shall only approve a change in accounting years in the event of undue hardship being placed on CONSULTANT, and not because of mere convenience or inconvenience.

- h. Audit or Review Costs: The full cost of any audit or review, as determined by COUNTY, shall be borne by COUNTY. CONSULTANT shall bear the full cost of any audit or review, in addition to any fee deductions applied from Attachment D – Schedule of Deductions, if any of the following conditions are found to exist as a result of the audit or review:
- i. With respect to fees due to CONSULTANT, an overpayment of more than a one percent difference between (a) the amount due CONSULTANT as calculated by the audit or review and (b) the amount paid by COUNTY to CONSULTANT for the identical period determined solely by COUNTY.
  - ii. CONSULTANT has failed to maintain adequate and complete records and accounts in accordance with this article. COUNTY Project Coordinator or designee shall determine the adequacy of such records.
- i. Failure to Maintain Adequate Records: In addition to all other remedies available to COUNTY at law or in equity or under this CONTRACT, in the event that CONSULTANT fails to maintain and keep records and accounts of its business operations conducted on or from the Airport and/or source documents relating thereto, or to make the same available to the Airport for audit or review, or to provide other information to the Airport regarding fees paid to CONSULTANT, COUNTY Project Coordinator, at COUNTY Project Coordinator's sole discretion, may:
- i. Perform such inspections, audits, or reviews itself or through agents or employees as COUNTY and/or its auditors may deem appropriate to confirm the amount of fees paid to CONSULTANT, and any and all costs and/or expenses incurred by COUNTY in connection therewith shall be promptly reimbursed to COUNTY by CONSULTANT upon demand.
  - ii. Provide accounting services and/or a system for recording all operations by CONSULTANT upon or from COUNTY, and, at COUNTY's option, maintain personnel on the Airport to observe and/or record such operations during CONSULTANT's business hours.

Costs payable by CONSULTANT pursuant to this article shall include reimbursement to COUNTY provided services at such rates as COUNTY may, from time to time, in good faith, establish for such services. In the case of services provided by COUNTY's employees, such rates shall be sufficient to reimburse COUNTY for employees' salaries, including employee taxes and benefits and COUNTY's overhead or, at COUNTY's option, may be the rate for such services that would be charged by a qualified third party or parties, approved by COUNTY Project Coordinator, if engaged by COUNTY to perform such services.

34. **Rules and Regulations**: COUNTY may adopt and enforce rules and regulations which CONSULTANT agrees to observe and obey, with respect to the use of the Airport and its appurtenances, facilities, improvements, equipment and services; provided that such rules and regulations shall not be inconsistent with safety and with rules, regulations and orders of the FAA and TSA with respect to all operations of the Airport.

**CONSULTANT shall comply with all Airport rules and regulations and shall observe, obey, comply with and not otherwise hinder or obstruct any and all rules, regulations, laws, ordinances, statutes or orders of any governmental authority, whether Federal, State, or local, lawfully exercising authority over the Airport or the activities thereon, including compliance with FAA, TSA and Airport security rules, regulations and plans, Cal OSHA, the California Regional Water Quality Control Board – Santa Ana Region, and the SCAQMD.**

To the fullest extent authorized by law, CONSULTANT shall be liable to COUNTY for any and all claims, demands, damages, fines or penalties of any nature whatsoever which may be imposed upon COUNTY due to CONSULTANT's violation of any governmental rules, regulations or standards as now or may hereafter be promulgated or enacted, including, but not limited to, the payment of any fines or penalties for any breach of security, arising from the unauthorized entry of any person or vehicle onto the Airport or from any other violations caused directly or indirectly by the act, omission, negligence, abuse or carelessness on the part of CONSULTANT, its employees, subtenants, agents or suppliers.

COUNTY shall not be liable to CONSULTANT for any diminution or deprivation of possession, or of its rights hereunder, on account of the exercise of such right or authority as in this section provided, nor shall CONSULTANT be entitled to terminate the whole or any portion of the rights granted herein by reason of the exercise of such right or authority, unless the exercise thereof shall so interfere with CONSULTANT's use and occupancy of the Project Site so as to constitute a termination in whole or in part of this CONTRACT by operation of law in accordance with the laws of the State of California.

CONSULTANT shall immediately notify the Airport Police Services Control Center at 949-252-5000 of any fire, emergency, accident or reportable spill or release of fuel or Hazardous Substances. Reportable spills or releases are those that require notification to a government entity by any fire code or Environmental law as defined herein in Article "28" – Hazardous Conditions.

35. **Stop Work:** COUNTY may, at any time, by written stop work order to CONSULTANT, require CONSULTANT to stop all or any part of the work called for by this CONTRACT for a period of 90 working days after the stop work order is delivered to CONSULTANT and for any further period to which PARTIES may agree. The stop work order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the stop order, CONSULTANT shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within a period of 90 working days after a stop work order is delivered to CONSULTANT or within any extension of that period to which PARTIES shall have agreed, COUNTY shall either:
- a. Cancel the stop work order; or
  - b. Terminate CONTRACT immediately in whole or in part in writing as soon as feasible. COUNTY is not required to provide 30 days' notice of the termination of the CONTRACT to CONSULTANT if a stop work has been issued.
36. **Title to Data:** All materials, documents, data or information obtained from COUNTY data files or any COUNTY medium furnished to CONSULTANT in the performance of this CONTRACT will at all times remain the property of COUNTY. Such data or information may not be used or copied for direct or indirect use by CONSULTANT after completion or termination of this CONTRACT without the express written consent of COUNTY. All materials, documents, data or information, including copies, must be returned to COUNTY at the end of this CONTRACT.
37. **Validity:** 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.
38. **Waiver of Rights:** The failure of COUNTY or CONSULTANT to insist upon strict performance of any of the terms, covenants or conditions of this CONTRACT shall not be deemed a waiver of any right or remedy that COUNTY or CONSULTANT may have, and shall not be deemed a waiver of the right to require strict performance of all the terms, covenants and conditions of the CONTRACT thereafter, nor a waiver of any remedy for the subsequent breach or default of any term, covenant or condition of this CONTRACT. Any waiver, in order to be effective, must be signed by the PARTY whose right or remedy is being waived.



39. **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 COUNTY's Project Coordinator and CONSULTANT's Project Manager 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 (4) 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: JWA Deputy Airport Director, Business  
Development  
Attn: David Pfeiffer  
3160 Airway Avenue  
Costa Mesa, CA 92626  
949-252-5291  
dpfeiffer@ocair.com

cc: JWA/Purchasing  
Attn: Mr. Gene Duenas, DPA  
3160 Airway Avenue  
Costa Mesa, CA 92626  
949-252-5125  
GDUENAS@ocair.com

CONSULTANT: Frasca & Associates, LLC  
Attn: Ken Cushine  
521 Madison Avenue, 7<sup>th</sup> Floor  
New York, NY 10022  
212-355-4050  
kcushine@frascallc.com

IN WITNESS WHEREOF, PARTIES hereto have executed this CONTRACT on the dates shown below their respective signatures below.

**FRASCA & ASSOCIATES, LLC\***

Signature	Print Name	Title	Date

Signature	Print Name	Title	Date

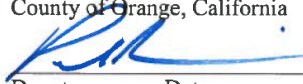
*\* If CONSULTANT is a corporation, signatures of two specific corporate officers are required as further set forth.*

- The first corporate officer signature must be one of the following: 1) Chairman of the Board; 2) President; or 3) any Vice President.*
- The second corporate officer signature must be one of the following: a) Secretary; b) Assistant Secretary; c) Chief Financial Officer; or d) Assistant Treasurer.*
- In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signature to bind the company.*

**COUNTY AUTHORIZED SIGNATURE:**

Signature	Print Name	Title	Date

Approved as to Form  
Office of the County Counsel  
County of Orange, California

 6/27/2017  
Deputy                      Date

Approved by Board of Supervisors on: Date \_\_\_\_\_

**ATTACHMENT A**  
**SCOPE OF WORK**

**Introduction**

John Wayne Airport (JWA or Airport) is seeking a consultant to identify and provide financial analysis of potential business models/frameworks for the future development and operation of general aviation (GA) facilities and services at the Airport. This Scope of Work outlines the proposed tasks that JWA envisions to be part of the financial analysis and planning that will support the General Aviation Improvement Program (GAIP). Ultimately, the analysis conducted by the selected consultant will be provided to the Orange County Airport Commission and Board of Supervisors for their consideration in Q1 of 2018.

**Background**

JWA is owned and operated by the County of Orange and is the only commercial service airport in Orange County, California. It is located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Irvine, and Newport Beach. The service area includes more than three million people within the 34 cities and unincorporated areas of Orange County.

JWA is the only airport in Orange County that provides commercial passenger and air-cargo service and is the primary provider of general aviation services and facilities in the county. In 2016, JWA served nearly 10.5 million commercial passengers and recorded over 280,000 total operations.

The Airport is home base for nearly 500 private general aviation aircraft. These aircraft run the gamut from vintage biplanes and helicopters to corporate jets. Two full-service FBOs and two limited-service FBOs currently operate at the Airport. In addition, JWA also hosts a variety of hangar, charter, flight school, maintenance and other general aviation service providers. General aviation facilities occupy approximately 73 acres at the Airport and account for nearly 200,000 of JWA's total operations.

**General Aviation Improvement Program**

It has been nearly 30 years since JWA conducted comprehensive planning for general aviation facilities and services. During that time, there have been substantial changes in the type of aircraft being manufactured and operational patterns of GA users. In addition, most of the Airport's general aviation-related leases have expired. To address the changing general aviation landscape, and the opportunities presented by the expiration of multiple GA-related leases, the Airport has initiated a process to develop a long-range plan for the development, management, and operation of general aviation facilities and services at JWA.

The planning goals and objectives for the GAIP are:

- Provide safe and secure operations
- Utilize limited land area efficiently and economically
- Preserve compatibility between general and commercial aviation operations
- Embrace flexibility to allow for technological advances and market trends
- Maximize economical, self-sustaining, revenue producing facilities
- Assess the ability of existing infrastructure to support general aviation facilities

A series of more detailed planning assumptions have also been identified. They are:

- Provide for compliance with applicable FAA regulations (obstructions, aircraft movement, etc.)
- Design for up to three (3) full-service FBOs
- Maintain, where possible, a comparable number and type of general aviation based aircraft facilities (hangars & tiedowns) compared to existing
- Provide, where possible, facilities for the Orange County Sheriff's Department Air Support Unit, independent charter operators and flight schools

- Evaluate feasibility of providing a General Aviation Facility (GAF) for U.S. Customs & Border Protection inspection services for international general aviation operations and general aviation-specific terminal facilities
- Retain existing general aviation fuel farm (SE corner of airfield)
- Provide self-service fueling facilities for smaller, independent general aviation operators
- Where possible, segregate vehicle service road and taxiway

As part of the GAIP process, the Airport has met with a number of general aviation stakeholders to solicit their input with respect to future GA facilities and services. The Airport has also retained two consultants to support the planning process: (1) an Architect-Engineer (AECOM) to conduct forecasting, preliminary engineering and design services; and (2) an environmental firm (Landrum & Brown) to prepare analysis required under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). Based on the input received from stakeholders and preliminary analysis conducted by AECOM, the Airport has identified the following project alternatives that will be evaluated in the context of the GAIP process and, ultimately, considered by the Orange County Board of Supervisors.

Proposed Project	Two (2) full-service FBOs (east and west)
Alternative 1	Three (3) full-service FBOs (two east and one west)
Alternative 2	Two (2) full-service FBOs (both east)
Alternative 3	Two (2) full-service FBOs (in existing locations, but improved to better comply with FAA regulations)
Alternative 4	“No project”

The Airport has identified a series of financial goals for the GAIP:

- Develop a self-sustaining, revenue-augmented GA Operating Division, enhancing GA’s contribution to the Airport
- Minimize financial risk and optimize Airport’s revenue and return on investment
- Strengthen the Airport’s overall financial position, optimize JWA cash investment and return, and improve the Airport’s competitive operating cost structure
- Minimize Airport debt funding.

The selected consultant will be asked to complete the following tasks:

**Task 1 – Review Existing Leases and Available Airport Data**

1. Review existing tenant and facility lease terms (including expired leases)
  - a. Annual rent, fees, and charges
  - b. Prior lease terms and renewals
  - c. Tenant investment requirements

2. Review existing facility valuations/appraisals
3. Review information on GA competitive market area, competing airports market share, GA services and facilities data, GAF facilities (if provided), and other market data compiled and provided by AECOM.
4. Review and consider GA operational forecast and any other available forecast of competitive market area, and demand for GA facilities prepared by AECOM.
5. Provide summary table of data collected and compiled with text descriptions identifying key considerations. Data shall be provided in a manner to facilitate development of the GA financial review.

**Task 2 –Benchmarking Analysis**

1. Identify key comparative metrics, relevant aviation facilities and services, and comparable airports to be included in the benchmarking analysis (e.g., regional competing airports and comparable medium hub airports with substantial general aviation activities) as follows:
  - a. Identify comparable airports to be evaluated
  - b. Define key comparative metrics and relevant facilities and services to be assessed
  - c. Identify facilities and offered services at comparable/competitor airports
  - d. Collect fee and rate structures at comparable/competitor airports
2. Facility information that will be gathered and reviewed as part of the benchmarking process include:
  - a. Airport acreage
  - b. Runway facilities (number, dimensions, approach capabilities, etc.)
  - c. FBO facilities (number of operators, aircraft storage areas, aircraft parking areas)
  - d. Based aircraft by type
  - e. Annual GA aircraft operations by type
  - f. Aircraft storage facilities by type and size
  - g. Non-aeronautical tenants on airport
  - h. On-site fuel storage facilities and operational capacity
3. Service information that will be part of the benchmarking process include:
  - a. Aeronautical services provided by airport operator
  - b. Aeronautical services provided by FBO operator(s)
  - c. Other services offered/available to itinerant aircraft operators
4. Rate and charges information that will be gathered as part of the benchmarking process include, but is not limited to:
  - a. GA leasing arrangements/approaches
  - b. Aircraft landing fees, if any, including rates charged and operators subject to fee
  - c. Fuel flowage fees, including rates charged, methodology for applying and collecting fees, and operators subject to fee
  - d. Aircraft hangar rental rates
  - e. Land lease rates, terms of lease
  - f. FBO rental and other fees, including concession fees if applicable
  - g. GA-FIS facility and fee schedule (if GA international arrival facilities and processing are available)

- h. Tenant investments
  - i. Other airport investments in FBO (Type of arrangement, Investment %, terms, revenue share and etc.)
5. Prepare matrix summarizing comparable benchmark data

**Task 3 – Review GA Facility Development and Leasing Alternatives**

This task will examine a number of development and leasing alternatives used by airports throughout the U.S. to develop and operate their GA facilities. Potential development frameworks span a wide spectrum from Airport-funded developments that are ultimately owned and operated by the Airport, to third-party funded and managed development. These factors will determine, among other things, the capital funding requirements that the Airport may bear in pursuing the development, and the potential revenue stream and/or expenses resulting from the development.

Alternative development and leasing strategies and their respective benefits (pros) and weaknesses (cons) will be considered in this task. Evaluate construction/project cost estimates for GA facilities. Develop and analyze a minimum of three (3) financial, management and operating structures for each planning alternative (Proposed Project, Alternative 1, Alternative 2, Alternative 3 and No Project Alternative). Note that Alternative 3 and No Project Alternatives are very similar, and will not need exhaustive evaluation. At a minimum, the consultant will evaluate the following structures for each planning alternative:

1. Airport Development and Private Management – GA facility development is funded, constructed, and owned by JWA, and operated by a third party through Management Contracts.
2. Lessee Development and Lessee Management – GA facility development is funded, constructed and operated by Lessee(s) with traditional facility/ground leases.
3. Airport & Lessee Development and Lessee Management – GA facility development is co-funded by Airport and Lessee, constructed by Lessee, owned by the Airport and operated by Lessee with a sharing of revenues (between Airport and Lessee).
4. Other “best practice” adopted by other airports for GA facility investment and leasing

**Task 4 – Review and Summarize Alternative Facility Development and Leasing Strategy Benefits and Weaknesses**

1. Develop a matrix of the advantages and disadvantages, financial benefits and weaknesses of the GA facility development structure and leasing alternatives identified in the previous task. Identify and discuss the most beneficial development framework to utilize in pursuing future aviation-related and non-aviation related development at the Airport, including, but not limited to, the following:
  - a. Capital requirements of each potential facility/development
  - b. Alternatives for funding the capital requirements
  - c. Financial risk borne by the Airport as a result of the development and the Airport’s ability to manage that risk
  - d. The Airport’s ability and available resources to efficiently construct, manage, and operate the proposed facility
  - e. Operations and maintenance expenses resulting from the proposed facility
  - f. Evaluate revenue potential of each financial or leasing strategy to support the development and operation of GA facilities and services in a financially sustainable and competitive manner.
2. Prepare a thorough evaluation using information above to determine the best development framework under which potential new GA/FBO facilities can be structured and managed and/or operated at the Airport and provide supporting information and documentation.

3. Prepare presentation materials for the Airport.

**Task 5 – Develop Financial Plan for Each GA Facility/Development**

The comprehensive analysis and development of financial strategies envisioned in Task 5 will focus primarily on the “Proposed Project” identified above. Evaluate and annotate potential differences in financial results when compared to the other Project Options.

1. Based on the alternative development and leasing strategies identified in the previous steps, develop a financial plan for each proposed GA facility and/or development area, including:
  - a. Identification of funding options for facility development costs, including scheduling/timing, borrowing costs, and financing alternatives and structures
  - b. Revenue opportunities based on development/leasing model
  - c. Revenue and operating expense projections for JWA for each proposed alternative funding option identified in Task 3.
  - d. Pro-forma analysis 10-20 years
  - e. Detail cash flow analysis identifying phased capital expenditures, operational costs, various revenue sources, and Return on Investment for JWA
  - f. All assumptions used in the analysis will be identified and quantified, including associated risks, to support the above revenue, expense, Airport’s investments and ROI projections and pro-forma financial position.
2. As part of the above analysis, develop a funding plan that identifies total capital costs and estimated funding sources for each GA facility. Depending on the development/leasing strategy employed, the amount of capital funding needed by JWA and/or a tenant/third-party will also be identified.
3. The analysis will also consider revenue impacts of each leasing strategy, as well as the impacts associated with increases in operating expenses. Based on estimated expenses and revenues, generate a pro-forma cash flow analysis for the identified GA facility/development. In order to estimate the revenue impacts associated with each facility, rates and charges for other comparable facilities, as well as information obtained from JWA will be used. Revenue sources to be evaluated will include:
  - a. FBO/Terminal rental
  - b. Hangar rentals
  - c. Other building rentals
  - d. Ground rentals
  - e. Fuel flowage fees
  - f. Concessions (restaurant, advertising, telephone, etc.)
  - g. Ground transportation (rental car, taxi/limousine, parking)
  - h. Other
4. Where applicable, the return on investment for facility investments made by JWA will be calculated.

**Task 6 – Final Report**

The tables, text, and matrices developed in the preceding tasks will be compiled into a stand-alone document describing the analyses conducted, data collected and reviewed, methodologies utilized, development/leasing strategies reviewed, financial plan results, and key findings. The final report will provide a comprehensive and actionable description of the following:

1. Summary of Findings – Key findings with respect to each of the preceding tasks will be presented to summarize the existing financial conditions of JWA, key comparative metrics identified in benchmarking process, and results of the financial plan developed for each GA facility/development.

2. Identification of Preferred Financial Options – Based on the analyses conducted, identify preferred options for funding, operating, and leasing the proposed GA facilities.
3. Recommended Action Plan – Identify specific steps and a suggested timeline for pursuing the preferred options.
4. **Deliverables:** The Financial Analysis and Financial Plan shall be documented in a working paper consisting of financial models, tables, charts, graphs, assumptions, narratives, including a discussion of findings and conclusions of the above tasks to be delivered in electronic format (Excel worksheet and Word format) and presented to the Airport for review and comment. Upon receipt of Airport comments, a final report incorporating necessary modifications will be prepared for the Airport. In addition, a financial planning plan will be delivered to the Airport for future use. The Analysis and Financial Plan with recommendations is scheduled to be presented to the Orange County Airport Commission and Board of Supervisors for their consideration in January 2018.

**Task 7 – Other Services**

Provide other advisory services to Airport management. Revise, update and prepare presentation materials. The Airport, at its discretion, may request the Consultant be available to present the report in meetings, which may include Airport Commission and Board of Supervisors presentations.



**ATTACHMENT B  
 CONSULTANT's Pricing**

I. **Compensation:** This will be a Time and Materials and Fixed Price by Task with a Not-to-Exceed Amount Contract between the County and the Consultant for Financial Analysis and Planning Services for General Aviation Improvement Program for John Wayne Airport (JWA) as defined in Attachment A - Scope of Work. CONSULTANT agrees to accept the specified compensation as set forth in this CONTRACT as full remuneration for performing all services and furnishing all staffing and materials called for, labor, insurance and bonds, equipment, 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 CONSULTANT of all its duties and obligations hereunder.

CONSULTANT shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work under an authorized Task Order. COUNTY shall have no obligation to pay any sum in excess of total CONTRACT not-to-exceed amount specified herein or the not-to-exceed amount specified in the respective Task Order, unless authorized by amendment in accordance with Article "C" – Amendments – Changes/Extra Work.

II. **Payments and Invoicing:** CONSULTANT shall reference CONTRACT number on invoice. Payment will be net 30 days after receipt of an invoice in a format acceptable to COUNTY and verified and approved by COUNTY and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with CONSULTANT.

Billing shall cover services not previously invoiced. CONSULTANT shall reimburse COUNTY for any monies paid to CONSULTANT for services not provided or when services do not meet CONTRACT requirements.

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

Description	Price
Task 1 – Review Existing Leases And Available Airport Data	\$25,000.00
Task 2 – Bench Marking Analysis	\$25,000.00
Task 3 – Review GA Facility Development And Leasing Alternatives	\$10,000.00
Task 4 – Review And Summarize Alternative Facility Development And Leasing Strategy Benefits And Weaknesses	\$30,000.00
Task 5 – Develop Financial Plan For Each GA Facility/Development	\$50,000.00
Task 6 – Final Reports	\$25,000.00
Task 7 – Other Services	\$10,000.00
<b>PROJECT TOTAL</b>	<b>\$175,000.00</b>

CONSULTANT will provide an invoice on CONSULTANT's letterhead for services rendered. Each invoice will have a number and will include the following information:

- a. CONSULTANT's name and address
- b. CONSULTANT's remittance address (if different from "a" above)
- c. Name of COUNTY agency department
- d. COUNTY CONTRACT number
- e. Service date(s)
- f. Service description
- g. Employee classification(s) and hourly rate
- h. CONSULTANT's Federal Taxpayer Identification Number
- i. Name of COUNTY department (John Wayne Airport)
- j. COUNTY CONTRACT number
- k. Invoice number
- l. Hourly rate and number of hours
- m. Total Invoice Amount

Invoices and support documentation are to be forwarded to (not both):

John Wayne Airport  
Attention: Accounts Payable  
3160 Airway Avenue  
Costa Mesa, CA 92626

OR

Email to: [AccountsPayable@ocair.com](mailto:AccountsPayable@ocair.com)

**ATTACHMENT C**

**Staffing Plan**

(Add additional lines if needed)

1. Key Personnel Staff to perform CONTRACT duties

Name	Classification/Title	Hourly rates
Ken Cushine	Principal	\$300.00
Nora Richardson	Director	\$275.00
Bryan Rowan	Director	\$275.00
Matt Townsend	Director	\$275.00
Sandy Kanu	Analyst	\$150.00

2. Alternate staff (for use only if primary staff are not available)

Name	Classification/Title	Hourly rates
Larry Belinsky	Managing Director	\$300.00
Marvin Sun	Managing Director	\$300.00
Jeff Molinari	Associate	\$250.00

Substitution or addition of CONSULTANT’s key personnel in any given category or classification shall be allowed only with prior written approval of the COUNTY Project Manager.

CONSULTANT may reserve the right to involve other personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/class required. Assignment of additional key personnel shall be subject to COUNTY Project Manager approval. COUNTY reserves the right to have any of CONSULTANT personnel removed per Article 16 – CONSULTANT’s Project Manager and Key Personnel.

3. Subcontractor(s)

In accordance with Article I - “Assignment or Subcontracting”, listed below are Subcontractor(s) anticipated by CONSULTANT to perform services specified in this CONTRACT.

Company Name	Staff Name
Not applicable	Not applicable
Not applicable	Not applicable
Not applicable	Not applicable

No performance of this CONTRACT or any portion thereof may be assigned or subcontracted by the CONSULTANT without express written consent of the COUNTY. Any attempt by CONSULTANT to assign or subcontract any performance of this CONTRACT without the express written consent of COUNTY shall be invalid and shall constitute a breach of this CONTACT.

In the event that CONSULTANT is authorized by COUNTY to subcontract, this CONTRACT shall prevail and the terms of the subcontract shall incorporate by reference and not conflict with the terms of this CONTRACT. In the manner in which COUNTY expects to receive services, COUNTY shall look to CONSULTANT for performance and not deal directly with any subcontractor. All matters related to this CONTRACT shall be handled by CONULTANT for the benefit of COUNTY; COUNTY will have no direct contact with the subcontractor in matters related to the performance of this CONTRACT. All work must be approved by the COUNTY Project Manager.

**ATTACHMENT D**  
**Change Request Procedure**

CONSULTANT shall employ the change request procedures as set forth herein to be implemented for modifications to COUNTY'S Financial Analysis and Planning Services Contract. These change request procedures shall include, but not be limited to, the following:

1. **Written Request**: COUNTY's Project Coordinator shall make a written request to CONSULTANT's for modification to the Financial Analysis and Planning Services Contract.
2. **Analyzing of Request**: CONSULTANT shall analyze COUNTY's written request and shall provide a written description of the modification, its cost and scheduling impact to COUNTY's Project Coordinator.
3. **COUNTY Approval**: COUNTY's Project Coordinator will review the modification and make a determination as to whether to proceed with the modification. If COUNTY's Project Coordinator decides to proceed with the modification said Project Coordinator will provide written approval to CONSULTANT to proceed with the modification. Said approval shall be subject to the terms and conditions set forth in Article C, Changes/Extra Work/Amendments, of this CONTRACT.

**IV. EXHIBITS**

