

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

**JOHN WAYNE AIRPORT
AGREEMENT FOR
ARCHITECT-ENGINEER SERVICES**

PROJECT: LIGHTING SYSTEM UPGRADES

PROJECT NO: 281-281-4200-P402

THIS AGREEMENT (“Agreement”), is made and entered into on the _____ day of _____, 2014, between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “COUNTY” or “JWA,” and TTG Engineers hereinafter referred to as “A-E”. This Agreement will be administered by the Director of John Wayne Airport or his designee, herein after referred to as “JWA”.

WITNESSETH:

IT IS MUTUALLY AGREED between the parties hereto that:

1. TERM OF AGREEMENT

The "Term" of this Agreement shall commence upon the date of award as evidenced by the County of Orange Board of Supervisors Minute Order awarding this Agreement (Contract Award Date). The A-E shall not commence services under this Agreement until it has obtained all insurance required and such insurance has been approved by COUNTY. The A-E shall have 7 days from the Contract Award Date to submit complete insurance documents, and COUNTY may take up to 14 days to approve said insurance. Also, A-E may not work on the site until its Safety Plan is approved by the COUNTY.

2. A-E SCOPE OF SERVICES

A-E shall diligently perform in a competent and professional manner those tasks and duties set forth in Appendix 1 - Scope of Services, attached hereto, in the time set forth in the Article titled “Time for Performance” below. The attached Appendix 1 – Scope of Services is hereby incorporated into this Agreement by reference. COUNTY, at its discretion, may reduce, limit or amend the Scope of Services and the corresponding costs upon written notification to A-E as described in the Article titled “Changes in Scope of Services” of this Agreement.

3. LIMITATIONS OF AUTHORITY

A-E shall not become involved in areas of responsibility outside of the Scope of Services unless specific exceptions are established by JWA in writing. A-E shall not:

- a) Exceed, or authorize deviation from JWA’s Construction Budget

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

- b) Exceed, or authorize deviation from JWA's Construction Schedule
- c) Authorize deviations from the Construction Documents
- d) Authorize any work that may involve cost or schedule impacts to the COUNTY
- e) Authorize change orders
- f) Provide superintendence of the construction work
- g) Provide expediting services for the Contractor
- h) Provide advice to the Contractor regarding construction techniques or sequences of construction unless specifically outlined in the Construction Documents

Additionally, A-E has no authority to amend any contract between COUNTY and any other party.

4. TIME FOR PERFORMANCE

The A-E shall submit for the COUNTY's approval a cost-loaded Project Design Schedule for the performance of the A-E's Design Phase Basic Services per the Scope of Services attached. The Project Design Schedule shall be submitted within 14 days of the Contract Award Date. The Project Design Schedule shall be prepared using Primavera 6 or Microsoft Project. The Project Design Schedule shall include allowances for periods of time required for the COUNTY's review and for approval by authorities having jurisdiction over the Project. A-E shall comply with the time limits and milestones established in the Project Design Schedule approved by the COUNTY.

Should it become necessary to revise the Project Design Schedule, A-E shall request approval of such revision in writing. If such design schedule revision is approved by JWA, then the revised schedule will be referred to as the Revised Project Design Schedule.

5. COORDINATION OF DRAWINGS

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

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

A-E represents and agrees that it has inspected and fully informed itself as to the state of any existing drawings and studies for the Project, that A-E has visited the job site and examined the actual job conditions and limitations of the Project, and that A-E has obtained information sufficient to allow A-E to proceed with the Scope of Services described herein. A-E is and will be relying strictly and solely upon its own such inspections and examinations and the advice and counsel of its agents and officers. Except as expressly set forth in this Agreement, COUNTY is not making and has not made any warranty or representation with respect to site conditions or limitations.

6. RECORD DRAWINGS

A-E shall provide Record Drawings, to the satisfaction of JWA, showing the as-constructed condition of the Project on archive quality mylar sheets (30" x 42"), and in digital format, including PDF and Microstation. Record Drawings shall incorporate all changes in the work made during construction, based on marked-up prints, as-built drawings provided by the Contractor, shop drawings and other data known by the A-E, and shall accurately reflect the final construction of the work. Record Drawings shall include without limitation the following systems: architectural, structural, civil, mechanical electrical, plumbing, fire protection, fire alarm, security and landscape. A-E shall provide the Record Drawings to COUNTY promptly after the completion of construction. A-E shall upload Record Drawings in PDF format into the "Oracle Primavera Unifier Project Document Management System" (Unifier).

7. COMPENSATION FOR SERVICES

A. Not-To-Exceed Compensation and Reimbursable Expenses

COUNTY shall pay to A-E for performance of this Agreement the not-to-exceed amount of \$103,482 for A-E's approved work in accordance with the Scope of Services. A-E shall only be entitled to payment for work as directed by COUNTY and completed by A-E within its Scope of Services as set forth in Appendix 1. In no event shall A-E be entitled to compensation and reimbursement that would result in the total payment by the COUNTY under this Agreement exceeding \$103,482 unless change order(s) or amendment(s) to this Agreement have been approved by COUNTY, pursuant to the Article titled "Changes in Scope of Services".

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

Compensation for services by phase is summarized in the following schedule of fees:

| | |
|--|-------------------|
| Basic Design Phase Services (Site Investigation/Analysis Report & Construction Documents) - Lump Sum | \$ 90,228 |
| Construction Administration (Bid & Award, Construction, and Closeout Phases Services) Time and Material - Not-to-Exceed | \$ 13,254 |
| TOTAL NOT-TO-EXCEED ALL PHASES | \$ 103,482 |

B. Rates for A-E's Personnel

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

C. Labor Cost Projections and Cost Control

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

On a regular basis, and as frequently as COUNTY may consider appropriate, A-E shall submit to JWA its personnel's labor hours and cost expenditures for hourly-based time and material phases of the scope of services for prior service periods and projections for upcoming service periods, and shall report potential variances, if any, in expenditures and productivity which may result in the exhaustion of funds in the Agreement prior to its full term. A-E shall promptly submit a request for change order or amendment for JWA's review if A-E becomes aware of conditions or circumstances that may warrant a change in any of the Scope of Services, or which may cause labor productivity and/or expenditures to vary measurably.

D. Reimbursable Expenses

Other than as provided below, reproduction expenses incurred by A-E for A-E's own in-house reproduction will not be reimbursed by COUNTY. No reproduction or other expenses will be reimbursed by COUNTY without prior written authorization. The A-E's invoice shall not include, or be given any consideration for, any items deemed by the COUNTY as overhead expenses. A-E expenses beyond the schedule of fees will not be considered. This includes, but is not limited to, travel, mileage or other

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

expenses deemed by the COUNTY as overhead. A-E shall invoice hourly-based service fees monthly in accordance with Appendix 2, in proportion to the work completed and to the extent that outside consultants, subcontractors, and approved direct project expenses are allowed, as approved in writing by JWA. Other reimbursable expenses that may be required are subject to prior written approval by JWA.

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

- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by JWA. All special equipment purchased by A-E under this subsection shall become the property of JWA at the termination of this Agreement.
- 2) The actual cost of third-party tools and software recommended by A-E and approved in writing by JWA. Third-party tools and software costs to include, but not limited to, purchase, lease, maintenance, external web hosting when appropriate, and server applications for multiple users to be specified by JWA.
- 3) Reproduction expenses paid to outside vendors, to the extent such vendors and reproduction rates have been approved by JWA.
- 4) Other actual costs and/or payments specifically approved and authorized in writing by JWA and actually incurred by A-E in performance of this Agreement.
- 5) Air travel and lodging costs shall be reimbursed only if approved in advance and in writing by JWA and are subject to the following restrictions:
 - a) Alcohol of any type will not be reimbursed
 - b) Dry cleaning will not be reimbursed
 - c) Hotel movies will not be reimbursed
 - d) Valet parking is reimbursable only if no other parking option is available.
 - e) Meals will be reimbursed for personnel on authorized business travel only at a flat per diem rate of \$60 per day.
 - f) Air travel is reimbursed at the fare for "Coach Class" seating. "Business Class" or "First Class" fares will not be reimbursed.
 - g) Lodging reimbursement shall be based on actual, reasonable, and necessary costs. Hotel rates associated with authorized business travel exceeding \$200.00 per day must be approved in writing by JWA. This written approval must be submitted with the billing for reimbursable expenses.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

- h) Phone charges during hotel stays associated with business support of the Scope of Services must be identified. Personal phone charges will not be reimbursed.
- i) Car rental is reimbursable at the cost for mid-size or lower size vehicle. Larger size vehicle rentals must be approved in advance in writing by JWA. This written approval must be submitted with the billing for reimbursable expenses. Luxury or Sports car rentals of any type will not be reimbursed.
- j) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Agreement shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and JWA, as well as mileage within JWA's property, will not be reimbursed.
- k) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- l) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

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

E. Request for Payment

Services under this Agreement shall be billed no more frequently than once every month using JWA's "Progress Payment Request" form provided by JWA and/or other electronic format of "Progress Payment Request" approved and made available by JWA, via Unifier. Approved and authorized reimbursable expenses shall be included in the payment request. A-E will not be entitled to any mark-up on reimbursable expenses. A-E will not be entitled to reimbursement for any expense incurred in performance of this Agreement or in connection with the Scope of Services that is not specified in Appendix 1.

A-E shall submit the invoice as a record into Unifier with the following documents attached as electronic backup. Payment documentation shall include customary information including, but not limited to:

- 1) Signed payment request cover sheet.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

- 2) Timesheets including; employee name, hours worked, service dates for hourly fee services certified by A-E's authorized designee.
- 3) Up-to-date running account of hours and cost for the project.
- 4) Authorization letters and receipts for approved Reimbursable Expenses.
- 5) Progress Report: Each activity of A-E and staff must be defined by their job title and description of work completed.
- 6) List of employees who worked on the Scope of Services during the month covered by the Request for Payment, including their names, job titles, hourly rates, and assignments.

COUNTY will pay A-E a fee on an hourly basis subject to the respective not-to-exceed limits for services performed based on the hourly rates set forth. Fees for Architect-Engineer Services shall be in accord with the hourly rates set forth in Appendix 2 except as provided in the Article titled "Changes in Scope of Services". COUNTY will not pay hourly labor charges, fees, or test charges without back-up documentation. A-E is responsible for submitting invoicing in a format that is acceptable to JWA.

In the event that A-E anticipates the cost for Architect-Engineer Services in excess of the authorized amounts, the COUNTY shall be notified immediately in writing. COUNTY shall not be required to pay for Architect-Engineer Services in excess of these amounts unless the COUNTY otherwise agrees by Change Order.

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

8. CHANGES IN SCOPE OF SERVICES

The COUNTY may at any time direct any amendments or changes in work in the Scope of Services under this Agreement, including any reductions in the Scope of Services. The cost for work and reimbursable expenses that are part of changes in scope of services shall be billed in accordance with the Article titled Compensation for Services above. If COUNTY desires a change in the services, a written change order shall be issued by COUNTY. The written change order shall set forth the nature of the change. If changes in Scope of Services cause an increase in costs and/or time, compensation shall, at COUNTY's discretion, be based either on a negotiated fixed fee or an hourly rate basis with a not-to-exceed amount using the hourly rates set forth in Appendix 2.

If A-E believes that a change in the Scope of Services is appropriate, it may submit a written request to the COUNTY to issue a change order or amendment. A-E shall present to COUNTY a detailed request for change in Scope of Services or compensation or other conditions from what is set forth in this Agreement. COUNTY shall be provided

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

sufficient time for the review, analysis, processing, and issuance of written change order(s) or amendments(s). COUNTY may reject A-E's request for change, propose a revision to the requested change, or approve such change as requested by the A-E. If changes in Scope of Services cause an increase in costs and/or time, compensation shall, at COUNTY's discretion, be based either on a negotiated fixed fee or an hourly rate basis with a not-to-exceed amount using the hourly rates set forth in Appendix 2.

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

9. A-E'S PERSONNEL

A. Assigning Personnel

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

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

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

B. Assigned Personnel

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

C. Removal of Personnel at COUNTY's Discretion

COUNTY may, at its sole discretion, require A-E to remove from the Project any of its personnel assigned to the performance of the Scope of Services. A-E shall remove such person(s) from the Project promptly after request from JWA. The A-E shall

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

make its best efforts to replace any person so removed within 7 days with a person of like qualifications acceptable to COUNTY. Alterations to A-E's staff at COUNTY's request do not constitute changes to the Scope of Services.

D. Qualifications/Licensing

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

A-E and each of its subcontractors at any tier, if any, shall maintain in full force and effect at all times during the term of this Agreement such licenses, registrations or permits as may be required by the State of California or any other local, regional, County, State or Federal governmental entities. A-E shall promptly inform COUNTY of any lapse of license, investigation, or disciplinary action against A-E, its employees, or its subcontractors on this project.

E. Organization/Assignments

Within 30 days of the execution of this Agreement, A-E shall prepare and submit to JWA an organizational chart detailing A-E's Project activities by employee name, job title, and organizational unit, and showing lines of command and responsibility. A-E shall update the organizational chart to show any proposed changes at least 30 days, or sooner if JWA deems necessary, prior to the change taking effect, and shall submit the updated chart to JWA.

F. List of Employees

A-E shall provide JWA with a list of employees on the Project prior to A-E's first billing, including employee names, job titles, assignments, and rates of pay. A-E shall submit this list with each monthly pay request. COUNTY reserves the right to withhold payment from A-E's pay requests until such information is submitted. If any of A-E's staff change, A-E shall submit a revised list of employees.

G. Compliance with Employment Laws

A-E shall be solely responsible for complying with all laws pertaining to the employment of all of A-E's personnel, including but not limited to, compliance with all applicable laws and regulations concerning workers' compensation, social security, minimum wage, unemployment insurance, hours of labor, services, working conditions, equality in employment, and like subjects affecting employers engaged in public projects.

10. SUBCONSULTANTS

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

The retention by the A-E of any sub-consultant that is different from those noted in Appendix 2 shall be approved in writing by the COUNTY. A-E shall ensure that the contract for each of its sub-consultants providing services on this Project contain the requirements set forth in the following articles of this Agreement: "Accounting Records/Audit"; "Nondiscrimination"; and "County of Orange Child Support Enforcement".

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

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

11. NON-EMPLOYMENT OF COUNTY EMPLOYEES BY A-E

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

12. EMPLOYMENT ELIGIBILITY VERIFICATION

The A-E warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The A-E shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The A-E shall retain all such documentation for all covered employees for the period prescribed by the law. The A-E shall indemnify, defend with counsel approved in writing by COUNTY, and hold harmless, the COUNTY, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the A-E or the COUNTY or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

13. OWNERSHIP OF DOCUMENTS

All documents, drawings, designs, plans, specifications, models, schedules, estimates, and other A-E work or materials in all forms and media pertaining to A-E's Scope of Services furnished hereunder shall be and remain the property of COUNTY, and may be used by COUNTY as it may require without limitation, without any additional cost to COUNTY. However, A-E does not accept responsibility for COUNTY's use of A-E's work under this Agreement for other projects.

A-E will provide all such work and materials to COUNTY upon request, including copies of all work or materials prepared in electronic or digital format on computer disk or other applicable media. The rights and obligations of this Article shall survive the termination or completion of this Agreement.

14. CONFIDENTIALITY

All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this Agreement shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of COUNTY, be used for any purposes other than the performance of the Project described in Appendix 1, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the Project.

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

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

15. PUBLICATION

No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Agreement, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the COUNTY, except as necessary for the performance of the services of this Agreement. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after COUNTY approval.

A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Agreement or any subsequent amendment of, or

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

effort under this Agreement. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the COUNTY. A-E is not authorized to serve as a media spokesperson for COUNTY projects without the prior specific written consent of JWA.

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

16. RIGHT TO OFFSET

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

17. AVAILABILITY OF FUNDS

Each payment or obligation of COUNTY is contingent upon the availability of local, State, or Federal government funds which are appropriated or allocated for the payment of such an obligation. If the funds are not allocated and available for the continuance of the services performed, then this Agreement may be terminated or suspended by COUNTY at its convenience. COUNTY shall notify A-E promptly of any product or service that will be affected by a shortage of funds and shall make its best efforts to notify A-E prior to the A-E's commitment or expenditure of funds. No penalty shall accrue to COUNTY in the event this provision is exercised, and COUNTY shall not be obligated or liable for any future payments due or for any damages as a result of suspension or termination under this Article.

18. TERMINATION FOR CONVENIENCE

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

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

special damages, or any other damages as a result of a termination or partial termination of this Agreement.

19. TERMINATION FOR DEFAULT

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

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

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

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

In the event COUNTY does not insist upon strict performance by A-E, or waives one or more of A-E's defaults, such event(s) shall not be deemed or construed as a waiver or a relinquishment to any extent of any right of COUNTY to insist on strict performance or to assert a default on any future occasion, nor will such be deemed to amend or modify the terms of this Agreement. Nothing in this Article shall be construed or deemed to be a waiver of any remedy in law or in equity that COUNTY may have.

20. OBLIGATIONS UPON TERMINATION

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

to the extent specified in a notice of termination, and shall require all subcontractors at any tier to insert the same in any lower tier contracts.

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

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

21. RESPONSIBILITY FOR DAMAGES OR INJURY

COUNTY and its officers and employees shall not be answerable or accountable in any manner for any loss or damages that may happen to the work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the work; for injury to or death of any person, either workers or the public; or for damage to property from any cause which might have been prevented by A-E, its subcontractors at any tier, or any of their workers, agents or anyone employed or otherwise retained by them or for which they may be deemed responsible.

22. DAMAGES

COUNTY's rights under this Agreement shall be cumulative and in addition to, and not in limitation of, all other legal or equitable rights or remedies available to COUNTY.

23. SUSPENSION OF SERVICES

A. COUNTY's Options

The COUNTY, at its sole discretion, may at any time by written notice to A-E suspend further performance of all or any portion of the services by A-E. Said notice of suspension shall specify the date of suspension and the estimated duration of the suspension. Upon receiving any such notice of suspension, A-E shall promptly

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

suspend further performance of the services to the extent specified, and during the period of such suspension shall properly care for and protect all services in progress and information, materials, supplies, and equipment A-E has on hand for performance of the services.

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

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

B. No Agreement Modification

No suspension or withdrawal of suspension shall entitle A-E to any prospective profits or other losses or damages of any kind resulting from such suspension or withdrawal of suspension.

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

24. A-E'S REVIEW OF PROJECT DOCUMENTS AND FIELD CONDITIONS

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

25. ACCOUNTING RECORDS/AUDIT

Pursuant to and in accordance with Section 8546.7 of the California Government Code, in the event that this Agreement involves expenditures of public funds aggregating in excess of Ten Thousand Dollars (\$10,000), the parties shall be subject to examination

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

and audit by the California State Auditor for a period of 3 years after final payment under this Agreement.

A-E's records shall upon reasonable notice be open to inspection and subject to audit and/or reproduction during normal business working hours. COUNTY's representatives or agents shall have reasonable access to A-E's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this Agreement and shall be provided adequate and appropriate workspace, including use of a copier, in order to conduct audits in compliance with this Article. The COUNTY or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of 3 years after final payment or longer if required by law. COUNTY representatives or agents may (without limitation) conduct verifications such as verifying information and amounts through interviews and written confirmations with A-E employees, field and agency labor, subcontractors, and vendors.

A-E's records shall include any and all information, materials, data of every kind and character, including without limitation, records, books, papers, documents, notes, receipts, vouchers, drawings, and any and all other agreements, sources of information and matters that may in COUNTY'S judgment have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by any contract document.

Such records shall include hard copy, as well as computer readable data, written policies and procedures, accounting records of time and expenditures, time sheets, payroll registers, payroll records, cancelled payroll checks, subcontract files, change order files, back charge logs, invoices, and any other A-E records which may have a bearing on matters of interest to the COUNTY in connection with the A-E's dealings with the COUNTY to the extent necessary to adequately permit an evaluation and verification of any or all of the following: (1) compliance with Agreement requirements; (2) compliance with COUNTY business ethics/conflict of interest expectations; (3) compliance with Agreement provisions regarding the pricing of change orders; (4) accuracy of A-E representations regarding pricing of invoices; (5) accuracy of A-E representations related to claims submitted by A-E or any A-E payees.

A-E represents and agrees that failure by A-E to maintain such records in compliance with this Article precludes A-E from maintaining any request or claim for compensation from or against COUNTY for any time periods for which such records were not kept, and constitutes a waiver by A-E of any such claim(s) against COUNTY for such time period(s).

A-E shall also include a clause in its agreements with subcontractors, and shall require subcontractors to include a clause in its agreements with sub-subcontractors which reserves the right for a COUNTY representative to audit any cost, payment or settlement resulting from any items set forth in this Agreement, during the performance of this Agreement and for a period of not less than 3 years after final payment is made or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved,

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

whichever is later. This clause shall also require subcontractors to retain all necessary records for a period of not less than 3 years after final payment is made or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved, whichever is later.

If an audit or examination in accordance with this Article discloses overpricing or overcharges (of any nature) by the A-E to the COUNTY in excess of 1% of the total contract billings, in addition to making adjustments for the overcharges, the A-E shall reimburse the reasonable actual cost of the COUNTY's audit to the COUNTY. Any adjustments and/or payments which must be made as a result of such audit or examination shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of COUNTY's findings to A-E. Notwithstanding this requirement, the COUNTY may exercise its right to offset, as described in the Article titled "Right to Offset" of this Agreement, for collection of any reimbursements due to the COUNTY as provided for in this Article.

26. ASSIGNMENT

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

27. SOLE AND ONLY AGREEMENT

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

28. NO ALTERATION OF AGREEMENT TERMS

A-E has no authority to alter, modify, amend, or change the terms of this Agreement or any agreement entered into with COUNTY or any agreement for any work to be performed on or relating to this Project, except as provided in the Article titled "Changes in Scope of Services".

29. NO WAIVER BY COUNTY

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

30. INDEMNITY

To the fullest extent permitted by law, the A-E shall defend, indemnify, and hold harmless the COUNTY, its officers and employees (collectively referred to as “indemnitees” or individually as “indemnitee”) from and against any and all claims, lawsuits, orders, judgments, damages, penalties, fines, costs, liabilities, losses or actions of every kind and description arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. In the event an indemnitee(s) is/are named as a defendant(s) in any such lawsuit, the A-E shall, at the request of the COUNTY, represent the indemnitee(s) with qualified counsel approved in writing by the COUNTY.

A-E’s indemnity obligation shall not apply in the event of any loss, damage, or expense arising from the sole and /or active negligence or willful misconduct of the COUNTY or its agents, servants or independent contractors. If judgment is entered against A-E and the COUNTY by a court of competent jurisdiction because of the concurrent negligence of the COUNTY, its officers and employees, and the A-E, then the A-E and the COUNTY agree that such liability will be apportioned as determined by the trier of fact.

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

31. PATENT INDEMNITY

The A-E shall indemnify and hold harmless the COUNTY, its agents, officers, and employees from and against any and all liability, including costs for infringement or dilution of any United States letters, patent, trademark, or any other intellectual property contained in the A-E’s drawings and specifications or other documents that are created or provided under this Agreement.

32. ERRORS AND OMISSIONS AND NEGLIGENT PERFORMANCE

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

33. DELAY

A. Excuse

If A-E is delayed in performing any obligation under this Agreement by acts of civil or military authority, fires, floods, or earthquakes beyond the reasonable control of A-E, such delay shall be excused and the period of such delay shall be added to the time for performance of the obligation delayed.

B. Obligations

In the event any delay due to the foregoing causes or events set forth in this Article occurs or is anticipated, A-E shall promptly notify the COUNTY in writing of such delay or anticipated delay and the cause and estimated duration of such delay. In the event of any delay, whether such delay is excused or not, A-E shall exercise due diligence to shorten and avoid the delay and shall keep the COUNTY advised as to the continuance of the delay and steps taken to shorten or terminate the delay, and any costs associated therewith.

C. Partial Failure of Performance

Partial failure of performance due to any delay shall not terminate the Agreement or excuse a failure by A-E to resume performance of its obligations hereunder as promptly as possible upon termination of delay.

D. Recovery Plan

Immediately upon learning of any event that may lead to a delay in the progress of the Scope of Services, A-E shall prepare a plan for recovery to the original Project Design Schedule, including any associated costs, impacts or related effects thereof. Upon receipt of such plan, COUNTY may direct A-E to execute the plan described, or a modification thereof.

34. INSURANCE

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

All self-insured retentions (SIRs) or deductibles shall be clearly stated on the Certificate of Insurance. If no deductibles or SIRs apply, indicate this on the Certificate of Insurance with a "0" by the appropriate line of coverage. Any deductible or SIR 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. A-E shall be responsible for reimbursement of any deductible to the insurer.

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

Qualified Insurer

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

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

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

| <u>Coverage</u> | <u>Minimum Limits</u> |
|---|---|
| Commercial General Liability | \$1,000,000 per occurrence \$2,000,000 aggregate |
| Automobile Liability including 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 | \$1,000,000 per claims made or per occurrence |

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

Required Coverage Forms

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

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage as broad.

Required Endorsements

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

1. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the County of Orange, its elected and appointed officials, officers, employees, agents as Additional Insureds.
2. A Primary Non-Contributory endorsement evidencing that the A-E's insurance is primary and any 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.

A-E shall notify COUNTY in writing within 30 days of any policy cancellation and 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 Agreement.

If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain Professional Liability coverage for 3 years following completion of Agreement.

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

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

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

COUNTY shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable certificates of insurance and endorsements with COUNTY incorporating such changes within 30 days of receipt of such notice, this Agreement may be in breach without further notice to A-E, and COUNTY shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

35. ACCIDENTS

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

36. INDEPENDENT CONTRACTOR

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

37. SAFETY PLAN

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

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

38. COMPLIANCE WITH LAWS

A-E shall comply with and give all notices required by all laws, ordinances, rules, regulations, and lawful orders of government authorities applicable to the A-E's performance of the Scope of Services and all other provisions of this Agreement. A-E shall promptly notify COUNTY in writing if A-E has reason to believe that any part of A-E's work is at variance with any law, ordinance, code, rule, or regulation of public authority. If the A-E or its subcontractors perform any work that is contrary to laws, statutes, ordinances, building codes, and rules and regulations applicable to the Project, the A-E shall assume full responsibility for such work and shall indemnify and hold COUNTY harmless for all costs, losses or damages attributable thereto.

39. BUSINESS ETHICS

A-E employees, agents, subcontractors, vendors (or their representatives) shall not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to (1) COUNTY representatives, employees, or their relatives, or (2) representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with this project.

A-E employees (or their relatives), agents, or subcontractors shall not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with this project.

A-E agrees to notify a designated COUNTY representative within 48 hours of any instance where the A-E becomes aware of a failure to comply with the provisions of this Article.

40. NONDISCRIMINATION

A. Compliance with Regulations

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

B. Nondiscrimination

The A-E, with regard to the services performed by it during the Agreement, shall not discriminate on the grounds of race, color, disability, or national origin in the

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

selection and retention of subcontractors, including procurement of materials and leases of equipment. A-E shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

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

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

D. Information and Reports

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

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

E. Sanctions for Noncompliance

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

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

F. Incorporation of Provisions

The A-E shall include the provisions of subsections A through E of this Article in all of its subcontracts and other agreements pertaining to the services under this Agreement, including procurement of materials and leases of equipment, unless exempt by the regulations or directives issued thereto. The A-E shall take such action with respect to any subcontract or procurement as the COUNTY or the FAA may direct as a means of enforcing such provisions, including sanctions for

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

noncompliance. Provided, however, in the event A-E becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, A-E may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, A-E may request the United States to enter into such litigation to protect the interests of the United States.

41. DISADVANTAGED BUSINESS ENTERPRISE (FEDERALLY-FUNDED PROJECTS)

A. Policy

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

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

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

B. DBE Obligation

The A-E agrees to ensure that disadvantaged business enterprises, as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

under this Agreement. In this regard, all contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts.

C. Assurances

The A-E, contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

42. COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT

In order to enhance the child support collection efforts of the County of Orange Family Support Enforcement, A-E is required to provide the following information as listed on the attached form:

- If the A-E is an individual contractor: Name, date of birth, social security number, and residence address.
- If A-E is doing business in a form other than as an individual: Name, date of birth, social security number, and residence address of *each* individual who owns an interest of 10 percent or more in the contracting entity.

In addition, the A-E must provide:

- A certification that the A-E has fully complied with all applicable Federal and State reporting requirements regarding its employees, and
- A certification that the A-E has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment and will continue to so comply.

Information provided shall be transmitted to the COUNTY's Child Support Office, which has been charged with the establishment and enforcement of child support orders. Copies shall not be retained by the requesting agency.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

Failure of the A-E to submit the data and/or certifications required above or to comply with all Federal and State 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 this Agreement.

(JWA Child Support Enforcement documents found at the end of this Agreement)

43. JWA INFORMATION TECHNOLOGY REQUIREMENTS

- A. The COUNTY shall provide connection to its Information Technology network in support of A-E's required access to JWA's Electronic Project Management System, Oracle Primavera Unifier (Unifier).
- B. The A-E shall submit to the COUNTY a JWA User Access Request Form within 7 days of the Contract Award Date. The JWA User Access Request Form is required for each employee requiring access to Project documentation, including, but not limited to correspondence, monthly reports, schedules, RFIs, daily reports, payment requests, deliverables/submittals, change documentation, plans and drawings, and all other communication.
- C. For each user, JWA will create a user ID with approved access rights and provide an initial password to the user in a secure manner. As remote users, the A-E's employees shall acknowledge and comply with JWA's Portal Usage Policy as herein provided.
- D. Such internet connection will allow the A-E secured access to JWA's Electronic Project Document Management System.
- E. The A-E shall utilize Unifier as the predominant means of communication with JWA and its representatives for all Project documentation.
- F. JWA Process for Gaining Access and Using Unifier and Other Allowable Information Technology Domains.

- 1) Process for Gaining Access to JWA Systems.

A-E shall complete and submit the following forms to obtain equipment, software, and/or access to JWA systems:

- IT Usage Policy Acknowledgement
- User Access Request Form – Non-County Employees

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

User shall fill out the User Information section, Sections 2, 3, 4 if applicable and then sign within Section 5. The User Access Request Form will not be processed without user's company manager's signature in Section 6. User then submits the form to the JWA Project Manager. The JWA Project Manager will then obtain the JWA Manager's signature in Section 6 to begin processing the request through JWA IT Section.

For Unifier access, new companies may take as long as a week to process; existing companies with new access requests should only require one to three business days to process. Once processed, the requestor will receive two separate e-mails from the JWA IT Section. The first will have the user's user name and the other will have the password, respectively. The first time the user logs on the web-based application user will be required to reset the password and configure settings.

2) Help Desk.

If user experience any errors or have difficulties with any of the equipment/software, a request must be submitted to the Help Desk at (949) 852-4004. User will need to provide name, e-mail, phone number, location, and a brief description of the problem. Once the information is entered into the system, a call ticket will be created and sent to a JWA IT representative, who will contact user within one to three business days.

G. JWA will provide Unifier training upon receipt of the JWA User Access Request Form(s).

1) Unifier Training.

For Unifier training, A-E shall coordinate with the Project Manager to schedule a time and date.

User's account will be deactivated if user does not log on within a 30 day period. To reactive the account, user shall submit a help desk request for Unifier reactivation. Also, after 4 failed attempts to log on user will be locked out of Unifier. To unlock the account and re-set password the user must call in a help desk request.

2) Access to Unifier Document Manager.

If access is needed to a folder in Unifier Document Manager, A-E shall contact the Project Manager.

(JWA Information Technology Usage Policy is found at the end of this Agreement)

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

44. AIRPORT SECURITY

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

A. Badge Acquisition:

Prior to issuance of a security badge(s), designated A-E personnel who will be working onsite at the JWA terminal or other secure areas and engaged in the performance of work under this Agreement must pass JWA's screening requirements, which include an F.B.I. background investigation and finger printing (the estimated fee is \$29.00 per person. A-E shall verify actual fees with JWA's badging office). All actual fees shall be borne by A-E. A-E's designated personnel are required to attend a 4-hour SIDA training class at JWA, and pass the written test (the estimated fee is \$8.00 per person.) The A-E shall be responsible for all costs associated with the background checks, and abide by all of the security requirements set forth by the FAA and JWA.

B. Badge Holder Requirements and Responsibilities:

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

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

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

The JWA security badge is nontransferable.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

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

45. GOVERNING LAW AND VENUE

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

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

46. ATTORNEY'S FEES

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

47. WAIVER OF JURY TRIAL

Each Party acknowledges that it is aware of and has had the opportunity to seek advice 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 Agreement and/or any other claim of injury or damage.

48. INTERPRETATION

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

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

counsel despite having the opportunity to do so.

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

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

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

49. SEVERABILITY

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

50. HEADINGS

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

51. NOTICES

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

For County of Orange
JOHN WAYNE AIRPORT
Attn: Mr. Larry Serafini, Deputy Airport Director
3160 Airway Avenue
Costa Mesa, CA 92626

For Architect-Engineer
TTG Engineers
Attn: Rey Sanguenza
100 S. Anaheim Blvd, Ste 150
Anaheim, CA 92805

SIGNATURE PAGE TO FOLLOW

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402
TTG ENGINEERS**

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(JWA Information Technology Usage Policy and
Child Support Enforcement Documents to Follow)**

1 INTRODUCTION:

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

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

2 TERMS YOU NEED TO KNOW:

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

USER IDs AND PASSWORDS

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

HARDWARE AND SOFTWARE

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

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

PROHIBITED ACTIVITY

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

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

5 ACKNOWLEDGEMENT

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

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

Workforce Member Name (please print): _____

Workforce Member Signature: _____

Agency/Department: _____

Date: _____

**COUNTY OF ORANGE CHILD SUPPORT ENFORCEMENT
CERTIFICATION REQUIREMENTS**

- A. In the case of an individual contractor, his/her name, date of birth, Social Security number, and residence address:

Name: _____
D.O.B.: _____
Social Security No: _____
Residence Address: _____

- B. For contractor doing business in a form other than as an individual: The name, date of birth, social security number, and residence address of each individual who owns an interest of 10 percent or more in the contracting entity (if no individual owns 10 percent or more, write "N/A"):

Name: _____
D.O.B.: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B.: _____
Social Security No: _____
Residence Address: _____

Name: _____
D.O.B.: _____
Social Security No: _____
Residence Address: _____

(Additional sheets may be used if necessary)

CHILD SUPPORT ENFORCEMENT CERTIFICATE

“I certify that _____ is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of Contract _____ with the County of Orange. I understand that failure to comply shall constitute a material breach of the contract and that failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the contract.

*Signature ** *Please Print Name*

Title *Date*

*Signature ** *Please Print Name*

Title *Date*

Company Name

Project Number

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

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

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

APPENDIX 1

**SCOPE OF SERVICES
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

A. GENERAL

The scope of services includes replacing existing T-12 fluorescent fixtures with T-8 fluorescent fixtures at Terminals A & B, providing lighting design at the East Parking Structure (A2/B2) Level “0” with the goal to improve lighting quality to effectively serve the rental car vendors at that level, and providing power to 100 120V, 20 amp rated receptacles throughout the parking structures for electric vehicle charging.

B. SERVICES AND RESPONSIBILITIES

The following is a list of the identified scope of services:

1. Provide a design to replace existing T-12 fluorescent lamps with T-8 fluorescent lamps at Terminals A and B. Fixture gut replacement (lamps and ballasts) is intended. JWA has indicated that a thorough field investigation has occurred, with organized documentation of where all the T-12 lamps will be located. General surveys will be conducted to verify and determine other possible locations of T-12 lamps. The hiring of a contractor to perform the act of opening light fixtures to verify lamps is not expected. It is expected this work will have to be submitted for county plan to ensure compliance with Title 24. It is assumed this project will be submitted into plan check after July 1st, thus having our retrofit project comply with 2013 Title 24 requirements.
2. Provide a lighting design at East Parking Structure (A2/B2) Level “0” to provide adequate lighting to allow for the vendors to perform their daily business tasks. The current complaint is basically dark spots and inadequate amount of lights to perform vehicle inspections and other daily routines. T-8 fluorescent lighting will be utilized in Level “0”. It will not be necessary to conduct life cycle cost analysis or formal evaluations of other lighting technologies.
3. Provide lighting upgrade design of the loading dock and the tunnel area. Currently, the loading dock area is served by HID lighting and there are dark spots at cat walks and the loading dock. The tunnel is served by T-12s, but due to the blockage by pipes and potentially inadequate amount of lighting, relocated and added light fixtures in addition to replacing T-12s with T-8s is a strong possibility.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

4. Provide a design to provide standard 120V, 20amp, ganged receptacle for each group of parking spaces that will be designated for Electric Vehicles (EV). The total number of spaces requiring the receptacle is 100. The four parking structures will have 10 each, and Parking Structure A2 will take the remaining 60 on Level 2 north side (in addition to the initial 10 in A2). It is assumed the main power distribution does not need to be upgraded, but additional panel boards may be required. Actual car charging station pedestals are not required, only receptacle pedestal (i.e. even perhaps a unistrut mounting system) is required.
5. Assist in obtaining plan check approval.
6. Coordinate with JWA during bidding and construction to interpret the construction documents. Provide assistance to implement the construction documents. Attend 20 construction meetings during the construction phase. JWA will have a Project Construction Manager who will be responsible for leading and conducting construction meetings.
7. Review or take appropriate action upon Contractors submittals such as shop drawings, product data, schedule, change orders and RFIs.

C. ASSUMPTION AND EXCLUSIONS

1. Site investigation is required for verification of existing as-builts. Site investigation is limited to non-destructive verification of existing electrical, mechanical and plumbing conditions. Temporary relocation of furniture, equipment and casework to verify site conditions is not included in this scope or fee.
2. The existing 12 KV power distribution systems are assumed to have capacity to service the area included in the scope of this work. 12 KV equipment and distribution systems upgrade is not included in the scope and fee.
3. Any cost of recordings of power is not included in scope or fee.
4. Multiple bid packages are not included in the scope and fee.
5. JWA acknowledges that TTG assumes no responsibility relating to any existing toxic materials, including asbestos, and assumes no responsibility relating to its existence or removal.
6. All drawings shall be produced utilizing CADD. Drawings and electronic files for Schematic, Design Development and Construction Document Phases (2 full size sets plus 1 half-size set per phase plus electronic file copy) will be provided to JWA.
7. It is assumed CADD backgrounds are available for our use. If CADD backgrounds are not available, JWA has accepted the use of scanning old floor plans as-builts as backgrounds and inserting as a PDF into the AutoCad file. In other words, creation of AutoCad backgrounds is not required.

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

APPENDIX 2

**SCHEDULE OF FEES & COST MANAGEMENT REQUIREMENTS
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

This Appendix includes the total project fees for the project phase. A-E hourly billing rates, which will be used during the Time-and-Material phases of this project, are provided with explanation of reimbursed expenses. An explanation of the items covered as reimbursed expenses is also included.

Total Project Fees:

| Phase | Fee Type | Fee |
|---|------------------|-------------------|
| Basic Design Phase Services (Site Investigation/Analysis Report & Construction Documents – All Packages) | Fixed Fee | \$ 90,228 |
| Construction Administration (Bid & Award, Construction, and Closeout Phases Services) | Time & Materials | \$ 13,254 |
| Total | | \$ 103,482 |

A-E Hourly Labor Rates (Fixed for duration of project):

| Title | Rate |
|------------------------------------|-------------|
| Principal Engineer | \$185/hour |
| Project Manager | \$170/hour |
| Project/Senior Engineer | \$170/hour |
| Engineer | \$145/hour |
| Designer | \$128/hour |
| Construction Administrator | \$145/hour |
| Construction Cost Estimator | \$125/hour |
| CADD Operator | \$92/hour |
| Work Processor/Clerical | \$72/hour |

**JOHN WAYNE AIRPORT
LIGHTING SYSTEM UPGRADES
PROJECT NO. 281-281-4200-P402**

A. OVERTIME

Overtime, if required in the interest of the project, will be charged at the above rates for professional personnel and at 1.5 times the above rates for other personnel. Overtime will apply to time in excess of forty hours per week and all time on Saturdays, Sundays, and holidays.

B. HOLIDAYS

New Year's Day
Memorial Day
Independence Day
Labor Day
Thanksgiving Day
Day After or Before Thanksgiving
½ Day Christmas Eve
Christmas Day

C. REIMBURSABLES

Reimbursables will be billed at cost except unless otherwise approved by JWA. If additional plotting beyond two (2) full-size sets and one (1) half-size set for each design phase is requested, the additional service fee will be at the rate of \$3.50 per sheet.