

**CONTRACT MA-012-20010241****OWNER'S REPRESENTATIVE FOR THE COUNTY OF ORANGE  
FOR THE DANA POINT HARBOR REVITALIZATION PROJECT**

**THIS CONTRACT**, hereinafter referred to as "CONTRACT" for purposes of identification hereby numbered MA-012-20010241, and dated \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ is

**BY AND BETWEEN**

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

**AND**

Butier Engineering, Inc., a California Corporation, hereinafter referred to as "A-E" or "OWNERS REPRESENTATIVE",

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

**RECITALS**

**WHEREAS**, COUNTY requires professional services to accomplish projects and/or services ("PROJECTS/SERVICES") as described in MA-012-20010241 Scope of Work for Owner's Representative for the County of Orange for the Dana Point Harbor Revitalization Project, hereinafter referred to as "Attachment A," attached hereto and incorporated herein by reference; and

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

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

**1. GENERAL****1.1. Retainer**

**1.1.1.** COUNTY does hereby retain A-E to perform the PROJECTS/SERVICES as required by this CONTRACT.

**1.1.2.** A professional, duly registered in the State of California, who shall be assigned to PROJECTS/SERVICES and whose services are offered by A-E and accepted by COUNTY is **Joseph Blum**.

**1.1.3.** A-E may employ special consultants/contractors for the accomplishment of the PROJECTS/SERVICES specified; and, it is agreed that only the following firms or independent consultants/contractors are to be employed to provide these PROJECTS/SERVICES, and that the aggregate money value of their PROJECTS/SERVICES shall not constitute more than forty-nine percent (49%) of the total amount of PROJECTS/SERVICES required under this CONTRACT:

- a. Blue Mountain Development, Inc.
- b. CAA Planning, Inc.
- c. MW Construction Services, Inc.

**1.1.4.** Consultants/contractors may be substituted and/or added by mutual agreement of A-E and the

Director, County of Orange, OC Public Works or his designee, hereinafter referred to as "DIRECTOR".

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

**1.2. Projects/Services**

**1.2.1. Description of PROJECTS/SERVICES**

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

**1.2.2. Design Criteria and Standards**

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

**1.2.3. Scheduling**

- a) Concurrently with the work of the CONTRACT, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from COUNTY, A-E shall submit to COUNTY two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of PROJECTS/SERVICES assignments. A-E schedule shall include required COUNTY review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for COUNTY review of progress work schedule. In planning work A-E should anticipate and allow ten (10) working days for COUNTY review of each submittal required in Attachment A.
- c) A-E shall meet "on an "as-needed" basis as determined by DIRECTOR or at least once every four (4) weeks with COUNTY to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to COUNTY for concurrence.

- e) A-E shall complete all the work of PROJECTS/SERVICES and obtain all approvals by the COUNTY within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.
- f) In the event A-E fails to complete the work and obtain the approval of DIRECTOR in the time allowed, COUNTY shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the PROJECTS/SERVICES pursuant to this CONTRACT shall be extended for delay caused by COUNTY in completing its work pursuant to this CONTRACT which delay exceeds the agreed COUNTY review and/or approval time periods.

### **1.3. Assistance by COUNTY STAFF**

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

### **1.4. Term and Maximum Compensation**

- 1.4.1. The term of this CONTRACT is for eight (8) years, commencing upon Board approval, with a maximum allowable compensation of one-million five hundred thousand (\$1,500,000), except as permitted in Paragraph 1.5 below.

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

- 1.5.1. For the PROJECTS/SERVICES authorized under this CONTRACT, A-E shall be compensated in accordance with the following:
- 1.5.2. For completion and approval of all PROJECTS/SERVICES where "Extra Work" (defined as changes in approved portions of the PROJECT/SERVICES required by and ordered in writing by DIRECTOR which changes constitute a change in or departure from said approved portions of PROJECTS/SERVICES) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as "Attachment B", attached hereto and incorporated herein by reference.
- 1.5.3. Where extra work is authorized for PROJECTS/SERVICES:
  - a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by DIRECTOR. If this CONTRACT is not approved by the Board of Supervisors, any change that increases the cumulative CONTRACT price beyond \$100,000 must be approved by the Board. Increases in the CONTRACT amount for services within the existing scope of work may be granted by the DIRECTOR where the amount does not exceed 25 percent of the existing CONTRACT price or \$100,000, whichever is less.
  - b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.
- 1.5.4. For partial completion of work of PROJECTS/SERVICES followed by default on part of A-E:

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

## **2. LABOR**

### **2.1 Non-Employment of COUNTY Personnel**

- 2.1.1 A-E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of COUNTY in professional classifications of the same skills required for the performance of this CONTRACT who is involved in this Project in a participatory status during the life of this CONTRACT regardless of the assignments said employee may be given or the days or hours employee may work.
- 2.1.2 Nothing in this CONTRACT shall be deemed to make A-E, or any of A-E's employees or agents, agents or employees of the COUNTY. A-E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this CONTRACT. Anything in the CONTRACT which may appear to give COUNTY the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of COUNTY, only in the results of the work.

### **2.2 Non-Discrimination**

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

### **2.3 Employee Eligibility Verification**

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

### **2.4 Independent Contractor**

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

contractor.

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

**2.5 Conflict of Interest Contractor Personnel**

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

- 2.5.2** A-E's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the COUNTY.

**2.6 Labor Code Notice**

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

**3. INSURANCE**

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

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

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

1. In addition to the duty to indemnify and hold the COUNTY harmless against any and all liability, claim, demand or suit resulting from A-E's, its agents, employee's or

subcontractor's performance of this CONTRACT, A-E shall defend the COUNTY at its sole cost and expense with counsel approved by Board of Supervisors against same; and

2. A-E's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
3. The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the A-E's SIR provision shall be interpreted as though the A-E was an insurer and the COUNTY was the insured.

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

A. Qualified Insurer

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

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

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

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

B. Required Coverage Forms

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

C. Required Endorsements

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

- a. An Additional Insured endorsement using ISO form CG 2010 or CG 2033 or a form at least as broad naming the **County of Orange, its elected and appointed officials, officers, employees and agents** as Additional Insureds, or provide blanket coverage, which will state **As Required By Written Contract**.
  - b. A primary non-contributing endorsement using ISO Form CG 20 01 0413, or a form at least as broad evidencing that the A-E's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.
2. The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against **the County of Orange, its elected and appointed officials, officers, employees and agents**, or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.
3. All insurance policies required by this CONTRACT shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, employees and agents when acting within the scope of their appointment or employment.
4. A-E shall notify COUNTY in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to COUNTY. Failure to provide written notice of cancellation may constitute a material breach of the CONTRACT, upon which the COUNTY may suspend or terminate this CONTRACT.
5. If A-E's Professional Liability policy is a "claims made" policy, A-E shall agree to maintain professional liability coverage for two (2) years following completion of CONTRACT.
6. The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
7. Insurance certificates should be forwarded to the agency/department address listed on the solicitation.
8. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
9. COUNTY expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this CONTRACT. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect COUNTY.
10. COUNTY shall notify A-E in writing of changes in the insurance requirements. If A-E does not deposit copies of acceptable Certificates of Insurance and endorsements with COUNTY incorporating such changes within thirty (30) days of receipt of such notice, this CONTRACT may be in breach without further notice to A-E, and COUNTY shall be entitled to all legal remedies.
11. The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this CONTRACT, nor act in any way to reduce the policy coverage

and limits available from the insurer.

#### **4. INDEMNITY/COMPLIANCE**

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



**indemnify and hold COUNTY and COUNTY INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

**5. TERMINATION**

**5.1 Termination of Contract for Cause**

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

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

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

**5.2 Termination for Convenience**

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

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

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

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

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

**5.3 Breach of Contract**

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

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

**5.4 Default**

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

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

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

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

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

**6.3 Amendments**

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

**6.4 Successors and Assigns**

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

**6.5 Entirety**

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

**6.6 Severability**

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

**6.7 Binding Obligation**

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

**6.8 Governing Law and Venue**

- 6.8.1** This CONTRACT has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this CONTRACT, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the PARTIES hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.
- 6.8.2** The PARTIES specifically agree that by soliciting and entering into and performing PROJECTS/SERVICES under this CONTRACT, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all PROJECTS/SERVICES under this CONTRACT is completed, and continuing until the expiration of any applicable limitations period.

**6.9 Ownership of Documents**

- 6.9.1** All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A-E and/or anyone acting under the supervision of A-E pursuant to this CONTRACT, shall become the property of COUNTY upon preparation by A-E and may be used by the COUNTY as it may require without additional cost to the COUNTY.
- 6.9.2** COUNTY shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A-E shall be held harmless for release of such data as may be prepared

or created under this CONTRACT to any third party. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this CONTRACT, A-E shall first obtain the written approval of COUNTY.

#### **6.10 Confidentiality**

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

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

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

#### **6.11 Publication**

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

**6.11.2** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this CONTRACT or any subsequent amendment of, or effort under this CONTRACT. A-E must first obtain review and approval of said media contact from the COUNTY through the COUNTY'S Project Manager. Any requests for interviews or information received by the media should be referred directly to the COUNTY. A-E's are not authorized to serve as a media spokespersons for COUNTY projects without first obtaining permission from the COUNTY Project Manager.

#### **6.12 Records and Audit/Inspections**

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

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

**6.12.3** Upon termination or completion of the CONTRACT A-E shall forward all records pertaining to this Agreement to the County's project manager.

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

later.

- 6.12.5** Should A-E cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

**6.13 Notices**

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

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

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

For A-E:

Butier Engineering, Inc.  
17822 E. 17<sup>th</sup> Street, Suite 404  
Tustin, CA 92780  
Attn: Mark Butier  
Phone: 714.832.7222  
E-mail: [jrbutier@butier.com](mailto:jrbutier@butier.com)

For COUNTY:

CEO Real Estate  
601 N. Ross Street  
Santa Ana, CA 92701  
Attn: Zoila Finch  
Phone: 949.5856461  
E-mail: [Zoila.Finch@ocgov.com](mailto:Zoila.Finch@ocgov.com)

cc: OC Public Works Procurement Services  
300 N. Flower St., Suite 838  
Santa Ana, CA 92703  
Attn: Helen Hernandez  
Phone: 714.667.9626  
E-mail: [Helen.Hernandez@ocpw.ocgov.com](mailto:Helen.Hernandez@ocpw.ocgov.com)

**6.14 Attorney's Fees**

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

**6.15 Interpretation**

- 6.15.1** CONTRACT has been negotiated at arm's length and between persons sophisticated and

knowledgeable in the matters dealt with in this CONTRACT.

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

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

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

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

## **6.16 Headings**

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

## **6.17 Acceptance**

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

## **6.18 Changes**

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

## **6.19 Assignment**

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

## **6.20 Changes in Ownership**

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

**6.21 Force Majeure**

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

**6.22 Calendar Days**

- 6.22.1** Any reference to the word “day” or “days” herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

**6.23 Title to Data**

- 6.23.1** All materials, documents, data or information obtained from the COUNTY data files or any COUNTY medium furnished to the A-E in the performance of this CONTRACT, will at all times remain the property of the COUNTY. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this CONTRACT without the express written consent of the COUNTY.
- 6.23.2** All materials, documents, data or information, including copies furnished by COUNTY and loaned to A-E for his temporary use, must be returned to the COUNTY at the end of this CONTRACT unless otherwise specified by the DIRECTOR.

**6.24 Availability of Funds**

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

**6.25 Contingency of Funding**

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

**6.26 Contract Construction**

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

**6.27 Conflicts of Interest**

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

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

**6.28 Usage**

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

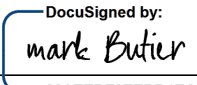


County of Orange, OC Public Works  
Butier Engineering, Inc.

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

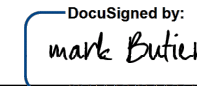
**Butier Engineering, Inc.**  
a state of California Corporation,

Date: 10/1/2019

By:  DocuSigned by:  
Signature 89AEEDF2EEDD4EC...  
mark Butier Vice President  
Print Name & Title

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

Date: 10/1/2019

By:  DocuSigned by:  
Signature 89AEEDF2EEDD4EC...  
mark Butier Chief Financial Officer  
Print Name & Title

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

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

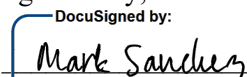
Date: \_\_\_\_\_

By: \_\_\_\_\_

Print  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

By:  DocuSigned by: 10/1/2019  
Deputy AF995336249F...

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**ATTACHMENT A  
SCOPE OF SERVICES****I. BACKGROUND**

The Harbor is a 276.8-acre marine oriented recreational facility that provides year-round activities for boaters, fisherman, local residents, tourists, and the general public. The configuration of the Harbor has three major components: the cove area adjacent to the bluffs (81.5 acres); the island area, connected by a bridge to the cove area (25.6 acres); and the marina areas in and adjacent to the water (169.7 acres).

The main infrastructure components of the Harbor (outer breakwater, the island, and quay walls) were originally constructed in 1969. Other components were completed over the next few years. Many areas within the Harbor were developed, constructed and operated by private entities under long-term (30-year) ground lease agreements until about 15 years ago. As these leases expired, the COUNTY took control of most of these areas. In some cases, the original developer stayed on to operate and maintain these areas under an operating agreement. A few areas remain under long-term lease agreements.

The COUNTY is revitalizing and redeveloping portions of the Harbor by entering into a Public-Private Partnership (through a master ground lease) with a real estate development team Dana Point Harbor Partners (“Development Team”). As a part of this process, the COUNTY is requiring that certain areas of the Harbor be demolished and reconstructed or refurbished consistent with the Dana Point Harbor Revitalization Plan, as that plan may be revised by the Development Team (“DPH Revitalization Plan”).

The DPH Revitalization Plan is a consensus plan, which was developed through extensive community outreach, public hearings, agency reviews, and approvals. It provides extensive descriptions of planned future landside and waterside improvements in the Harbor and is described in its entirety in the Dana Point Harbor Revitalization Plan and District Regulations.

The current entitlements related to implementing the DPH Revitalization Plan include:

- DPH Revitalization Final Environmental Impact Report 591
- DPH Revitalization FEIR 591 Addendum
- DPH Marina Improvement Project (Waterside) SEIR 613
- DPH Revitalization Plan & District Regulations (Local Coastal Program)
- DPH Revitalization Commercial Core Project - Coastal Development Permit CDP 13-0018
- DPH Revitalization Commercial Core Project - Phase 1 Intersection and Roadway Improvement Plans

**II. PREMISE**

The following project areas\* have become the responsibility of the Development Team under two master ground leases.

**1. Commercial Core** (Land: 29.25 acres/Water: 3.7 acres) includes:

- i. Rentable Space
  - a. Restaurant – 51,323 sq. ft.
  - b. Retail – 26,600 sq. ft.
  - c. Office – 2,000 sq. ft.
- ii. Dry Boat Storage – 516 surface spaces
- iii. Boat Launch Ramp – 334 spaces for vehicle with trailers

**2. Hotel** (3.5 Acres) includes:

- i. 136 Rooms
  - ii. Function/Meeting – 2,000 sq. ft.
  - iii. Fitness/Health Center – 450 sq. ft.
- 3. Marinas (2,409 Boat Slips, 42 Guest Boat Slips) include:**
- i. West Basin Marina
    - a. Land: 8.6 acres/Water: 27.5 acres
    - b. 982 Boat Slips
    - c. 42 Guest Boat Slips
  - ii. East Basin Marina
    - a. Land: 11.9 acres/Water: 42.2 acres
    - b. 1,427 Boat Slips
- 4. Parking**
- i. 3,962 Parking Spaces
- 5. Landscaping/Common Area Amenities**
- i. Island landscaping and public park amenities (e.g. shelters and restrooms)
  - ii. Puerto Place landscaping and public park amenities
- 6. Existing Development Team Tenant Leases**
- i. Dana Point Harbor Fuel Docks
  - ii. Dana Point Harbor Shipyard
  - iii. Dana Point Harbor Yacht Club
  - iv. Dolphin Safari
  - v. Pacific Asian Enterprises dba Nordhavn Yachts

***\*Refer to Exhibit 1 for the locations of the project areas.***

### **III. CONTRACT TASK ORDER**

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

The CTO shall include a detailed *Scope Statement*, describing tasks to be performed with a specific list of deliverables for each task, schedule of work and cost to complete the work. The schedule of work shall allow enough time for meetings with COUNTY Management staff to review the work progress, provide technical and policy direction, resolve problems and ensure adherence to the work completion schedule. The CTO shall include a cover sheet provided by COUNTY Project Management staff with the appropriate signature blocks and contract information. Once both Parties agree, and all Parties have signed the CTO, COUNTY Project Manager shall provide A-E with a Notice to Proceed (“NTP”) to begin work. A-E shall submit all plans, reports and other documents produced under the CTO to the assigned COUNTY Project Manager within the timeframe indicated in the CTO or as directed by COUNTY Project Management staff. A-E shall perform no work unless issued a CTO and NTP by COUNTY Project Manager.

**IV. SCOPE OF SERVICES**

The OWNERS REPRESENTATIVE under the terms and conditions of this CONTRACT shall perform those services described below, pertaining to project oversight of the Dana Point Harbor Revitalization Project begin performed by the Development Team ("Project") and all its elements as defined in this CONTRACT. The Project is comprised of various capital improvement projects involving rehabilitation and modification of the building commercial core, design and construction of infrastructure, design and construction of new structures, environmental projects, and miscellaneous projects and potential engineering studies. To supplement existing resources, COUNTY intends to issue "On-Call Services" for use by the COUNTY on an "as-needed" basis. No specified amount of work is guaranteed to A-E.

**V. BASIC SERVICES AND RESPONSIBILITIES****A. Manner of Performance**

OWNERS REPRESENTATIVE may be requested perform a broad range of oversight and advisory services, which shall include comprehensive oversight of project agreements (may also be referred to as contracts), including but not limited to, Architect-Engineer agreements for services such as architectural and engineering design and Construction Administration services, Construction Management services, Commissioning services, Design-Build work, and Construction work. Additional services shall include but would not be limited to: technical services, engineering consulting services, coordination services, planning services, predesign trade-off studies, conceptual design and conceptual engineering services, cost/schedule control services, and value engineering.

**B. General Duties and Responsibilities****1. Mobilization and Administration**

- a. Comply with all Policies & Procedures pertinent to COER project management functions and practice standards, and as well as applicable pertinent regulations, codes, manuals and controlling criteria.
- b. Upon request of the COUNTY, maintain electronic project files on OWNERS REPRESENTATIVE Electronic Project Management and Document Control System, Procore Systems will be utilized for this project.
- c. Ensure that all work is fully documented for future audits of Projects and archive all Project records.
- d. Maintain project filing system which, shall contain, originals or copies of all information, drawings, specifications, letters, other documents, contracts, purchase orders, books, and other records connected with the Project and of this CONTRACT. Maintain the Project Filing System in a central repository at the OWNERS REPRESENTATIVE's building space.
- e. Upon completion of individual Project(s), assemble all records in labeled and coded archiving system approved by the COUNTY.

**2. Project Management / Oversight**

- a. Verify Project budgets, schedules and phasing.
- b. Assist the COUNTY in the preparation and administration of Agenda Staff Reports (ASRs). Provide the COUNTY with supporting data and technical information required for preparing ASRs.
- c. Provide monitoring of Project schedule and recommend changes where necessary. Identify potential variances between scheduled and probable completion dates, review schedule for work not started or incomplete and advise the COUNTY regarding necessary adjustments in the work to meet scheduled completion dates. Provide summary reports and document all changes in schedule. Implement any adjustments or remedial measures recommended to the COUNTY which the COUNTY has approved.
- d. Monitor the approved Project construction budget, incorporate approved changes as they occur, and develop cash flow reports and revised forecasts as needed to keep the COUNTY informed. This shall be made part of the project record.

- e. Schedule, conduct and document meetings, and prepare and distribute meeting minutes within three (3) business days.
- f. Plan, manage, and coordinate the work of other A-Es, Consultants, Construction Managers, and Construction Contractors contracted by the COUNTY assigned to the OWNERS REPRESENTATIVE. Assist the COUNTY in enforcing the terms and conditions of contracts between the COUNTY and third parties relating to Projects. Identify contract violations and recommend courses of action to the COUNTY to remediate contract violations.
- g. Coordinate with other public and private entities, such as the City of Dana Point, California Coastal Commission, South Coast Water District, and South Orange County Wastewater Authority. Assist the COUNTY in drafting agreements with agencies as directed.
- h. Subject to COUNTY approval, the OWNERS REPRESENTATIVE shall draft, justify, present, and process permits, licenses required for any part of the project within OWNERS REPRESENTATIVE's Scope of Services, with any person, agency, or entity.
- i. Attend monthly status review meetings and provide written and/or oral project status reports, emphasizing problems or potential problems, and make recommendations on a monthly basis, or more often at the discretion of the COUNTY.
- j. Coordinate the requirements of public utility companies and municipalities. Coordinate facilities requirements to ensure utility systems are compatible with the Project requirements.
- k. Review, analyze, and advise the COUNTY regarding general engineering aspects of Projects.
- l. Manage the Projects to minimize the impact on current Dana Point Harbor tenants and Marina operations.
- m. Advise and assist the COUNTY on City of Dana Point matters related to Projects.

## **VI. DUTIES AND RESPONSIBILITIES – GENERAL**

### **A. Administrative Requirements**

#### **1. Architect-Engineer Contracts**

The OWNERS REPRESENTATIVE, upon request by the COUNTY, shall assist the COUNTY in the evaluation of any technical or design submittals by potential Architect-Engineers.

#### **2. Development Team and Potential Construction Management Contracts**

The OWNERS REPRESENTATIVE, upon request by the COUNTY, shall assist the COUNTY in the evaluation of any technical, design, and/or construction management submittals the Development Team and/or Construction Management Contracts. All such assistance shall be separately documented under the OWNERS REPRESENTATIVE's cover letters or memos as being provided by the OWNERS REPRESENTATIVE.

### **B. Contract Management and Oversight**

- 1. The OWNERS REPRESENTATIVE shall be responsible for ensuring that all assigned COUNTY contractors, if any, perform all work in accordance with their contracts and respective scopes of services, general conditions, special requirements, and other requisites; that all such work shall be performed in accordance with the contract and project schedule; and further, the OWNERS REPRESENTATIVE shall be responsible for reporting to the COUNTY and documenting all deviations, breaches, and variances from the contracts and contract schedules.
- 2. The OWNERS REPRESENTATIVE shall be responsible for reviewing and processing the contractor's payment requests and schedule updates. The OWNERS REPRESENTATIVE shall ensure that all payment requests and schedule updates are accurate, properly documented, and comply with the subject contracts. The OWNERS REPRESENTATIVE shall be responsible for independently verifying the accuracy of all payment requests and schedule updates. The OWNERS REPRESENTATIVE shall be responsible for reporting to the COUNTY and documenting any payment requests or schedule updates which it believes are not in accordance with the subject contracts.

3. In accordance with the foregoing duties and responsibilities, the OWNERS REPRESENTATIVE shall schedule conferences and meetings and make site visits so as to observe the work of the contractors and the quality and progress of the contractor's work.
4. The OWNERS REPRESENTATIVE shall coordinate the submittal and processing of design and bid documents through regulatory agencies and authorities, including those to be determined.
5. The OWNERS REPRESENTATIVE shall manage the Contractors' amendment requests and change order requests, verify their validity, and negotiate their price. The OWNERS REPRESENTATIVE shall assist the COUNTY with the issuance of contract amendments and change orders.
6. The OWNERS REPRESENTATIVE may coordinate the activities of land surveying firms including COER's land surveying teams, Geotechnical Investigation firms, and Special Testing and Inspection firms. The OWNERS REPRESENTATIVE may coordinate construction staging areas, construction site access and egress, and Contractor parking.
7. The OWNERS REPRESENTATIVE may manage and coordinate the closeout of Contractors' agreements, including the commissioning, testing, and start-up of building systems, final inspections of completed work, assemblage of As-Built and Record Drawings, Operations & Maintenance Manuals, and warranties and guarantees. The OWNERS REPRESENTATIVE shall secure final acceptance certificates for work, Notices of Completion, and Certificates of Occupancy.

### C. Duties and Responsibilities - By Job Category

#### 1. Program Management/Project Management Oversight:

- a. These positions perform wide-ranging and professional project management /oversight duties and responsibilities, including, but not limited to:
  - i. Prepare project administration documents for Project, including: Architect-Engineer (A-E) Requests for Qualifications and Requests for Proposals, A-E Services Agreements, Contractor and Design-Builder Requests for Pre-qualifications and other related project administration documents;
  - ii. Solicit A-E Statements of Qualifications; engage in and manage the review, evaluation and selection processes of A-E firms and Design-Build entities; make selection recommendations and negotiate fees; prepare construction bid documents and manage projects' bidding and construction phases; provide billability and constructability reviews for projects' bidding and construction documents; provide planning, administrative processing, and professional and technical reviews for design and construction of capital projects;
  - iii. Coordinate and monitor design-phase and construction-phase progress to ensure compliance with project's contractual and construction specifications requirements; manage and coordinate the complete overall change management processes for both A-E and construction contracts.

### D. Construction Management Oversight:

1. Duties and responsibilities within the Construction Management job category include, but are not limited to:
  - a. Coordinate project communication between the contractor and the A-E; assure that contractors adhere to all project site safety requirements, and that proper inspections, observations and reporting in that regard are adhered to;
  - b. Coordinate the Quality Assurance/Quality Control (QA/QC) requirements, including testing and inspection requirements, and development of the Special Inspection & Testing schedule;
  - c. Coordinate regulatory and QA inspections with COER inspectors and outsourced QA personnel, and provide assistance as needed to inspectors; provide constructability reviews for projects' bidding and construction documents; review, analyze, and track project schedule, and monitor potential delays;
  - d. Assist the project manager with the review of change orders for technical merit, and collaborate as needed with other project team members on the proper execution of necessary steps for concluding change orders;
  - e. When warranted, assist with the negotiation and documentation of the final change order price, and assure that all time and materials are verified by the COER representative when the change is

- Time & Material-based; review and process contractors' progress payment requests via Procore, assuring that all work-in-place and billed quantities are verified for accuracy and billability;
- f. Assure that contractors adhere to all environmental compliance matters, in accordance with projects' contractual and technical requirements; attend projects' regularly-scheduled progress meetings; coordinate projects' submittal processes, reviews, and transmittals;
  - g. Coordinate projects' Request for Information (RFI) processes, reviews, and transmittals; assure that As-Built and Record Drawings are properly coordinated, maintained and well-documented throughout the construction phase;
  - h. Write project status reports on a variety of issues for COER management's information and consideration, and attend meetings as necessary to present projects' progress status and other reportable conditions;
  - i. Coordinate projects' close-out phase, including scheduling and attendance at the punch list and final job walks, monitoring and assuring the execution of the punch list process, and securing of close-out documents including warranties, guarantees, and Operations & Maintenance Manuals; and perform other Construction Management-related duties.

**E. Contract Administration Oversight:**

1. Duties and responsibilities within the Contract Administration job category include, but are not limited to:
  - a. Provide support to the project team in all matters related to contract administration; establish familiarity with new incoming changes and potential changes for clarification of work;
  - b. Collaborate with construction estimators to secure Independent Cost Estimate (ICE) and analyze ICE and COP variances;
  - c. Assist with the negotiation and documentation of the final change order price, and assure that all time and materials are verified by the COER representative when the change is Time & Material-based;
    - i. Assist with the preparation of documentation for project schedule changes;
    - ii. Prepare change orders' Records of Negotiation (RON); assure that all wet signatures are secured where needed on all change order documents;
    - iii. Assure that all required documentations are entered into Procore and advanced to the appropriate persons for proper and timely processing;
    - iv. Assist with the presentation of change orders, ensure distribution of documents to the project team; and perform other Contract Administration-related duties and responsibilities.

**F. Field Representation Inspection /Site Coordination:**

1. Site Coordinators/Field Representatives work under the general supervision of COER's project managers, construction managers, or other designated project team members, and they may be responsible for overseeing several disciplines.
2. Duties and responsibilities within the Site Coordination/Field Representation job category include, but are not limited to:
  - a. Provide assistance to contractors with access to work areas act as liaison and facilitate communication between Dana Point Harbor staff, tenants and contractors and other stakeholders;
  - b. Keeping activity sites safe and secure;
  - c. Submit daily field reports on activities;
  - d. Escort contractors and/or other project stakeholders as assigned, and facilitate COUNTY and/or tenant work;
  - e. Provide biddability and constructability reviews for projects' bidding and construction documents; provide observation and inspection of construction activities for adherence to specifications and contract documents;
  - f. Provide oversight of field special testing and inspection in some instances depending on the Site Coordinator's/Field Representative's expertise;
  - g. When warranted, assist with the negotiation and documentation of final change order pricing, and assure that all T&M are verified.

**G. Procore Administration/Procore Architecture Oversight:**

1. Duties and responsibilities within the Procore Administration/Procore Architecture job category include, but are not limited to:
  - a. **Support Management** for the Internal and External stakeholders which includes Company Administration - add companies and company permissions;
  - b. User Administration & Management - add user groups and group permissions, add users, manage user permissions and user password control;
  - c. Data Management - provide data element updates and maintenance;
  - d. Cost Management - create WBSs and provide Cost Sheet administrative support;
  - e. Document Management - ensure comprehensive document management in Document Manager;
  - f. Procore User Report Template Management - develop, implement, and update the report templates;
  - g. Management Reports Administration - collaborate with management and stakeholders to evolve business reporting requirements;
  - h. Program/Project Administration - set up new projects in the system and close out completed projects.
  - i. **Procore Architecture Management**, which includes Business Process (BP) configuration & imports, BP management, BP setup and maintenance, data definitions and Elements Management, creation of "smartforms."
  - j. **Training Management**, which includes development and updating of the training manual, and scheduling and conduct of group and individual training sessions.

**H. Cost Management Oversight:**

1. Duties and responsibilities within the Cost Management job category include, but are not limited to:
  - a. Monitor and chart the progress of the project; analyze and recommend resource availability and allocation;
  - b. Coordinate with and report project cost and performance metrics to various departments and stakeholders;
  - c. Evaluate the actual position of the project and compare the actual state with the desired state and recommend corrective actions as required; develop and maintain detailed project schedules;
  - d. Monitor cost and commitment through payment requests and change order review;
  - e. Ensure adherence to cost management best practices;
  - f. Coordinate and regulate cost tracking meetings such as project cost status meetings, expenditure and cost trend analyses, and cost projection at completion and other related project cost management concepts; apply various project progress methods to ensure the project schedule is on track to meet deadlines or deliverables;
  - g. Develop and monitor project cost forecasts, assist the project manager to complete projects on time and within the approved budget;
  - h. Design and set up the most suitable and effective control procedures to meet objectives in compliance with contractual specifications;
  - i. Support the project manager's decision making processes by providing information necessary for rapid identification of any unfavorable trend or any potential problem in order to start immediate corrective actions;
  - j. Create a schedule/cost/risks awareness atmosphere among all projects participants; organize and maintain the best integration between scheduling and cost control and risks management functions ensuring that any activity is carefully planned and controlled in terms of time, budget and scope of work;
  - k. Manage and maintain current and accurate records on financial document control systems;
  - l. Perform internal and vendor audits on the quality, accuracy, and completeness of required documents, database records and information;
  - m. Properly design project control systems to the specific complexity of a given project;
  - n. Propose and implement project controls plans;
  - o. Establish the overall project breakdown structure to meet control requirements;



- p. Provide expert advice to the management team; manage the project financial control including production of the initial cost estimating;
- q. Develop financial and cost control and reporting tools;
- r. Provide biddability and constructability reviews for projects' bidding and construction documents; and perform other duties and responsibilities related to this category.

**I. Construction Estimating Oversight:**

- 1. Duties and responsibilities within the Construction Estimating job category include, but are not limited to:
  - a. Create initial and conceptual budgetary phase estimates;
  - b. Estimate validation and/or creation for all phases of project design, including pre-design, schematic design, design development, 50-percent construction documents, and 90-percent construction documents;
  - c. Create post-award estimates, including changes to contract scope, unforeseen site conditions, and change order estimates;
  - d. Analyze drawings, specifications, and other project documents to prepare time, cost, materials, and labor estimates;
  - e. Confer with COER, engineers, architects, contractors and subcontractors on changes and adjustments to cost estimates;
  - f. Consult with COER, vendors, construction managers and foremen, and other stakeholders to discuss and formulate estimates and resolve issues; assess cost effectiveness of products, projects or services;
  - g. Perform other construction estimating-related duties and responsibilities as assigned.

**J. Construction Scheduling Oversight:**

- 1. Duties and responsibilities within the Construction Scheduling job category include, but are not limited to:
  - a. Provide scheduling for the Dana Point Harbor Projects and additional projects as directed;
  - b. Produce, review, validate, approve, and update Critical Path Method (CPM) schedules, recovery schedules, cost-loaded schedules, and "what-if" analyses considering schedule options for alternate project scenarios;
  - c. Prepare schedules in a wide range of presentations, including Gantt and Network Diagram;
  - d. Provide on-call and as-needed training of staff and other users on scheduling techniques;
  - e. Prepare and maintain reports including cash flow, resource leveling, earned value, budget, critical tasks, and milestones for all schedules as required or directed;
  - f. develop CPM construction schedules from drawings and specifications;
  - g. Review and analyze complex construction schedules and provide professional opinion on projects' schedule status;
  - h. Create reports as necessary on project progress as well as predictions of the work moving forward;
  - i. Confirm that project progress is consistent with its schedule and other project records;
  - j. Prepare status reports as requested;
  - k. Review and analyze look-ahead reports and schedules and advise project team of potential cost and schedule impacts and inefficiencies;
  - l. attend meetings and advise project team of actual progress and related cost implications;
  - m. Develop potential recovery/mitigation plans for time and cost;
  - n. Provide biddability and constructability reviews for projects' bidding and construction documents;
  - o. Perform other construction scheduling related duties and responsibilities as assigned.

**K. Design and Engineering Oversight:**

- 1. Duties and responsibilities within the Design and Engineering job category include, but are not limited to:

- a. Provide design and engineering peer review for validation and verification of design concept and detailed design technical viability and effectiveness;
- b. Provide biddability and constructability reviews for projects' bidding and construction documents;
- c. Plan, organize, supervise and review the design and preparation of drawings, specifications and estimates in connection with the construction or maintenance of a wide variety of engineering projects; utilize available computer technology for optimization of engineering designs;
- d. Perform difficult professional engineering work in connection with cost analysis, progress reports and research or other specialized technical studies, including materials testing, traffic and transportation evaluation and control reports;
- e. Coordinate the inspection of public works structures under construction or repair including controlling quantity and quality of materials, laying out work, interpreting plans and specifications, preparing progress reports and supervising the work of inspectors performing some of the foregoing tasks;
- f. Submit change orders modifying the contract to cover changes in design;
- g. Perform project reviews and field construction inspections;
- h. Review plans and check for compliance with COUNTY codes and designated requirements and make recommendations for modifications; confer with contractors, engineers and architects;
- i. Review changes and recommend acceptance of final plans;
- j. Plan and organize the preparation of materials test reports and reviews and evaluate test results in relation to construction procedures;
- k. Review designs relating to various projects; coordinate relocation and change of equipment or structures of public utilities with COUNTY construction work;
- l. Perform studies for the determination and evaluation of traffic controls and transportation systems and develop recommended solutions and plans; conduct technical investigations required for the planning of a wide variety of civil engineering projects, and prepare detailed reports;
- m. Perform or direct the preparation of difficult or complex technical engineering studies;
- n. Generate and/or assist in the generation of 3rd party independent design and engineering fee estimates for A-E scopes of services for COER's use when negotiating design fees;
- o. Perform other duties and responsibilities related to this category as assigned.

**L. Design and Engineering Quality Assurance/Quality Control Oversight:**

1. Duties and responsibilities within the Design and Engineering Quality Assurance/Quality Control job category include, but are not limited to:
  - a. Review independently produced design products for overall quality and identification of potential problems, and ensure that the product optimizes all customer interests;
  - b. Provide design and engineering peer review for validation and verification of design concept and detailed design technical viability and effectiveness;
  - c. Provide biddability and constructability reviews for projects' bidding and construction documents;
  - d. Evaluate the criteria of project design and construction documents against the project A-E's products and deliverables, including but not limited to: performance criteria; safety; operation as planned; scope and cost consistency with purpose and need; costs well managed (support & capital); timeliness; risks well managed; meets purpose and need; maintainability; minimized impact; meets or exceeds standards or approved design exceptions; legal considerations; and cost effective standards for construction contract documents;
  - e. Generate or assist in the generation of 3rd party independent design and engineering fee estimates for A-E scopes of services for COER's use when negotiating design fees with A-Es; and perform other duties and responsibilities related to this category as assigned.

**M. Resident/Field Engineering Oversight:**

1. Duties and responsibilities within the Resident/Field Engineering job category include, but are not limited to:

- a. Provide biddability and constructability reviews for projects' bidding and construction documents;
- b. Create schedules for construction staff working in the field; perform field quality control observations and assessments;
- c. Inspect and assess the quality of materials being used for construction projects; calculate the quantity of material, supplies and equipment needed for each individual project;
- d. Verify and approve invoices of purchases; oversee the work of field staff to ensure efficacy of work procedures;
- e. Ensure compliance to project specifications; ensure that construction activities are being carried out in accordance with preset safety rules; ensure availability of resources and materials at all times;
- f. Provide recommendations for repair work and make sure that deadlines are met;
- g. Perform continuous evaluation of trends and ensure that preventative maintenance is managed at each stage of the project;
- h. Survey maps and blueprints prior to creation of construction plans;
- i. Determine project feasibility and direct all resources to the site in a time efficient manner;
- j. Provide technical advice to field staff in order to ensure that construction procedures are being carried out properly;
- k. Identify construction constraints and plan and carry out measures to counter them;
- l. Prepare public reports such as bid proposals and environmental impact statements;
- m. Test sites to ensure appropriateness for construction project;
- n. Prepare period reports and assessments for each project phase;
- o. Perform other duties and responsibilities related to this category as assigned.

**N. Information Processing/ Administration Oversight:**

1. Duties and responsibilities within the Information Processing/Clerical job category include, but are not limited to:
  - a. Prepare documents and reports by collecting, analyzing, and summarizing information;
  - b. Perform transcription and data entry services;
  - c. Establish, maintain, and perform office support services;
  - d. Establish and perform information processing services;
  - e. Organize information by studying, analyzing, interpreting, and classifying data;
  - f. Perform other duties and responsibilities related to this category as assigned.

**O. Monitor Development Team's Compliance with the Terms and Conditions of the Option and Lease(s)**

1. Ongoing review of the Project's financial performance relative to the Approved Proposal Submittals included as an exhibit to the Lease.
2. Monitor and assist with updates to the Development Team's Marketing Plan.
3. Review and analyze Development Team proposed sub-leases and vendor agreements submitted to the COUNTY for approval, if any.

**P. Develop and Manage Project-Specific Procedures for Communications, Administration, Document Management, Issue and Resolution Tracking, and Warranty Callback Management**

1. Assist in developing and maintain a Project contact list and organization chart.
2. Assist in development and maintain a master calendar and timeline including important dates related to the Master Ground Leases, project entitlements, construction schedule, sub-leases and public events in Dana Point Harbor. Notify the COUNTY in advance of critical dates.
3. Review COUNTY budget, accounting standards, chart of accounts, processes, restrictions and reporting requirements related to the use of funds from the Dana Point Tidelands Fund 108.
4. Review State restrictions and reporting requirements related to the use of funds from the Dana Point Tidelands Fund 108. Develop processes to address restrictions and reporting requirements.

5. Maintain, index and manage property management documentation on behalf of the COUNTY including, but not limited to: sub-leases, property management agreements, contact lists, calendar of critical lease dates, lease abstracts, tenant communication, tenant financials.

**Q. Facilitate Communication Between COUNTY, the Development Team and the Various Harbor Stakeholders**

1. Upon request from the COUNTY, initiate community engagement and outreach to elected officials, Harbor stakeholders, tenants, property managers, vendors, the City of Dana Point and neighboring homeowner associations. Attend local community events, public hearings and Dana Point Boater Association meetings.
2. Maintain relationships, open lines of communication and source feedback from the Harbor stakeholders, tenants, property managers, vendors and the City of Dana Point regarding the Development Team's management of Dana Point Harbor pursuant to the Lease. Attend local community events, public hearings and Dana Point Boater Association meetings.
3. Coordination of Development Team approval requests including providing the COUNTY with analysis and recommendations.

**VII. LIMITATIONS OF AUTHORITY**

The OWNER'S REPRESENTATIVE shall report to the Chief Real Estate Officer, or other designated COUNTY official, and serve as a liaison to the Development Team and all Project consultants, if any. The OWNER'S REPRESENTATIVE will act only with such authority as specifically delegated by the COUNTY. The OWNER'S REPRESENTATIVE will have no authority to commit the COUNTY to work, costs, or schedule modifications.

**VIII. NO GUARANTEE OF WORK / AUTHORIZATION OF TASKS**

This CONTRACT is a capacity contract to provide the basic services detailed above. The capacity contract does not guarantee work at the initial stage, but rather establishes a not-to-exceed dollar capacity that may be utilized throughout the approved contract time period. Each of the "tasks" above will require written authorization from the COUNTY prior to initiation of the defined services. The COUNTY will not be responsible for services performed without written authorization. The COUNTY also reserves the right to self-perform any of these services, or tasks, based upon the availability and expertise of COUNTY resources.

**ATTACHMENT B  
COST/COMPENSATION**

- I. COMPENSATION:** This is a fixed-fee usage CONTRACT between COUNTY and A-E for Dana Point Harbor Revitalization Project as set forth in Attachment A, "Scope of Work".

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

- II. PRICING:** Payment shall be made in accordance with the provisions of this CONTRACT.

LN	Classification Titles	Average Direct Rate	Over Head Rate	Fee		COUNTY's Proposed Rates
			103.00%	10%	Loaded Hourly Rate	
1	Project Director	\$90.00	\$92.70	\$18.27		\$201.00
2	Program Manager	\$88.00	\$90.64	\$17.86		\$191.00
3	Senior Construction Manager	\$85.00	\$87.55	\$17.26		\$178.00
4	Senior Scheduler	\$88.00	\$90.64	\$17.86		\$160.00
5	Senior Resident Engineer	\$85.00	\$87.55	\$17.26		\$190.00
6	Resident Engineer	\$80.00	\$82.40	\$16.24		\$179.00
7	Field Engineer	\$75.00	\$77.25	\$15.23		\$167.00
8	Document Control IT Support/GIS	\$58.00	\$59.74	\$11.77		\$130.00
9	QA/QC Lead	\$70.00	\$72.10	\$14.21		\$156.00
10	Administration Technical Support	\$44.00	\$45.32	\$8.93		\$98.25

**Total CONTRACT Amount Shall Not Exceed: \$1,500,000**

- III. PRICE INCREASES/DECREASES:** No price increases will be permitted during the term of this CONTRACT. All price decreases will automatically be extended to COUNTY.
- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to COUNTY during the term of this CONTRACT not otherwise specified and provided for within this CONTRACT.
- V. A-E'S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on COUNTY sites during the performance of work and services under this CONTRACT.
- VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the COUNTY Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by COUNTY:

- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the COUNTY Project Manager.
- 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the COUNTY Project Manager.
- 3) Other actual costs and/or payments specifically approved and authorized in writing by the COUNTY Project Manager and actually incurred by A-E in performance of this CONTRACT.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by COUNTY Project Manager and are subject to the following restrictions:
  - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this CONTRACT shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and COUNTY locations, including Dana Point Harbor, as well as mileage within COUNTY property will not be reimbursed.
  - b) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
  - c) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the COUNTY. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

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

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

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

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

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

*County of Orange, OC Public Works*  
*Butier Engineering, Inc.*

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*MA-012-20010241*

- G. Description of Services
- H. Total
- I. Taxpayer ID number

Invoices and support documentation are to be forwarded to:

OC Public Works  
601 N. Ross  
Santa Ana, CA 92701

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

ATTACHMENT C  
STAFFING PLANI. A-E KEY PERSONNEL

Name	Classification/Designation	Years of Experience	Licenses/Certifications (include license number)
Mark Butier	Project Coordinator	28	Engineering, CA Class A, 716863
Joseph Blum	Program Manager	30	Engineering in Training, CA, 54215
Vladimir Bruce, P.E.	Senior Construction Monitor (landslide)	22	Civil Engineer, CA 59405
Casey Harris	Senior Scheduler/Constructability Review	40	
Jason Kraus, P.E., CWI, QSD, QSP	Scheduler/Claims Review	14	Civil Engineer, CA, 72533; AACE International Planning and Scheduling, 55996; SWPPP practitioner, 22636; American welding Inspector, 12021221
Bryan Wilson	Lead Field Engineer	18	
Mark Lewotsky, CWI	Lead QA/QC Field Inspector	26	Welding Inspector, 08120371

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

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

II. SUBCONTRACTOR(S) (IF APPLICABLE)

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

Company Name & Address	Contact Name and Telephone Number	Project Function
Blue Mountain Development, Inc.	Nicholas Brio	Option/Master Lease Agreement
CAA Planning, Inc.	Shawna Schaffner	Constructability Review Team- Waterside
MW Construction Services, Inc.	Mark Williams	Schedule Review – Cost Estimator